

## Chapter 11 - FLOOD DAMAGE PREVENTION<sup>[1]</sup>

Footnotes:

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**Cross reference**— Buildings and structures, Ch. 5; municipal utilities and services, Ch. 14; planning, Ch. 19; land use and development ordinance, App. A.

### ARTICLE I. - IN GENERAL<sup>[2]</sup>

Footnotes:

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**Editor's note**— Ord. No. 924, adopted July 2, 2007, did not specifically amend the Code. Therefore, for purposes of clarity, such ordinance has redesignated and amended §§ 11-1—11-13 as new §§ 11-61—11-101, at the editor's discretion. See article IV for similar provisions.

Secs. 11-1—11-25. - Reserved.

### ARTICLE II. - ADMINISTRATION

Sec. 11-26. - Designation of local administrator.

The utility superintendent is hereby appointed to administer and implement the provisions of this chapter.

(Ord. No. 744, Art. 4, § A, 9-15-81; Ord. No. 780, Art. 4, § A, 4-21-87)

Sec. 11-27. - Permit procedures.

Application for a development permit shall be made to the utility superintendent on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- (1) *Application stage.*
  - (a) Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all structures;
  - (b) Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed;
  - (c) Certificate from a registered professional engineer or architect that the nonresidential floodproofed structure will meet the floodproofing criteria in section 11-42(2);
  - (d) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and,
- (2) *Construction stage.* Provide a flood elevation or floodproofing certification after the lowest floor is completed, or in instances where the structure is subject to the regulations applicable to coastal high hazard areas, after placement of the horizontal structural members of the lowest

floor. Upon placement of the lowest floor, or floodproofing by whatever construction means, or upon placement of the horizontal structural members of the lowest floor, whichever is applicable, it shall be the duty of the permit holder to submit to the utility superintendent a certification of the elevation of the lowest floor, floodproofed elevation, or the elevation of the lowest portion of the horizontal structural members of the lowest floor, whichever is applicable, as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized for a particular building, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holder's risk. The utility superintendent shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make said corrections required hereby, shall be cause to issue a stop-work order for the project.

(Ord. No. 744, Art. 4, § B, 9-15-81; Ord. No. 780, Art. 4, § B, 4-21-87)

Sec. 11-28. - Duties and responsibilities of the utility superintendent.

Duties of the utility superintendent shall include, but not be limited to:

- (1) Review all development permits to assure that the permit requirements of this chapter have been satisfied.
- (2) Advise permittee that additional federal or state permits may be required, and if specific federal or state permit requirements are known, require that copies of such permits be provided and maintained on file with the development permit.
- (3) Notify adjacent communities and the Alabama Department of Economic and Community Affairs prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
- (5) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, in accordance with section 11-27(2).
- (6) Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed, in accordance with section 11-27(2).
- (7) When floodproofing is utilized for a particular structure, the utility superintendent shall obtain certification from a registered professional engineer or architect, in accordance with section 11-42(2).
- (8) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the utility superintendent shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (9) When base flood elevation data or floodway data have not been provided in accordance with section 11-7, then the utility superintendent shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer the provisions of Article III.
- (10) All records pertaining to the provisions of this chapter shall be maintained in the office of the utility superintendent and shall be open for public inspection.

(Ord. No. 744, Art. 4, § C, 9-15-81; Ord. No. 780, Art. 4, § C, 4-21-87)

Sec. 11-29. - Variance procedures.

- (a) The appeal board as established by the city shall hear and decide appeals and requests for variances from the requirements of this chapter.
- (b) The appeal board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the utility superintendent in the enforcement or administration of this chapter.
- (c) Any person aggrieved by the decision of the appeal board or any taxpayer may appeal such decision to the circuit court, as provided in Section 11-52-81, Code of Alabama (1975).
- (d) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the state inventory of historic places without regard to the procedures set forth in the remainder of this section, except for section 11-29(h)(1) and (4), and provided the proposed reconstruction, rehabilitation, or restoration will not result in the structure losing its historical designation.
- (e) In passing upon such applications, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter, and:
  - (1) The danger that materials may be swept onto other lands to the injury of others;
  - (2) The danger to life and property due to flooding or erosion damage;
  - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (4) The importance of the services provided by the proposed facility to the community;
  - (5) The necessity of the facility to a waterfront location, in the case of a functionally dependent facility;
  - (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - (7) The compatibility of the proposed use with existing and anticipated development;
  - (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  - (9) The safety to access to the property in times of flood for ordinary and emergency vehicles;
  - (10) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
  - (11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (f) Upon consideration of the factors listed above, and the purposes of this chapter, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
- (g) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (h) Conditions for variances:
  - (1) Variances 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 a historical

building, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building.

- (2) Variances shall only be issued upon (i) a showing 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, 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.
- (3) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (4) The utility superintendent shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

(Ord. No. 744, Art. 4, § D, 9-15-81; Ord. No. 780, Art. 4, § D, 4-21-87)

Secs. 11-30—11-40. - Reserved.

### ARTICLE III. - PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 11-41. - General standards.

In all areas of special flood hazard the following provisions are required:

- (1) New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;
- (2) 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;
- (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- (4) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (5) Electrical, heating, ventilation, plumbing, air conditioning equipment, 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;
- (6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- (8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding; and,
- (9) Any alteration, repair, reconstruction or improvements to a structure which is in compliance with the provisions of this chapter shall meet the requirements of "new construction" as contained in this chapter.

(Ord. No. 744, Art. 5, § A, 9-15-81; Ord. No. 780, Art. 5, § A, 4-21-87)

Sec. 11-42. - Specific standards.

In all areas of special flood hazard where base flood elevation data have been provided, as set forth in section 11-7 or section 11-28(9), the following provisions are required:

- (1) *Residential construction.* New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated no lower than one foot above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with standards of section 11-42(3).
- (2) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial, or nonresidential structure shall have the lowest floor, including basement, elevated no lower than one foot above the level of the base flood elevation. Structures located in all "A" zones may be floodproofed in lieu of being elevated provided that all areas of the structure below the required elevation are watertight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in section 11-27(2).
- (3) *Elevated buildings.* New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the base flood elevation shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.
  - (a) Designs for complying with this requirement must either be certified by a professional engineer or architect to meet the following minimum criteria:
    1. Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
    2. The bottom of all openings shall be no higher than one foot above grade; and,
    3. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
  - (b) Electrical, plumbing, and other utility connections are prohibited below the base flood elevation.
  - (c) 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 (stairways or elevator).
  - (d) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.
- (4) *Floodways.* Located within areas of special flood hazard established in section 11-7 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and has erosion potential, the following provisions shall apply:
  - (a) Encroachments are prohibited, including fill, new construction, substantial improvements and other developments unless certification (with supporting technical data) by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge;
  - (b) If paragraph (4)(1), above, is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article III;
  - (c) The placement of manufactured homes (mobile homes) is prohibited, except in an existing manufactured home (mobile home) park or subdivision. A replacement manufactured

home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of section 11-41(2) and the elevation standards of section 11-42(1) are met.

(Ord. No. 744, Art. 5, § B, 9-15-81; Ord. No. 780, Art. 5, § B, 4-21-87)

Sec. 11-43. - Standards for streams without established base flood elevations and/or floodways.

Located within the areas of special flood hazard established in section 11-7, when small streams exist but where no base flood data have been provided or where no floodways have been provided, the following provisions apply:

- (1) No encroachments, including fill material or structures, shall be located within a distance of the stream bank equal to one and one-half times the width of the stream at the top of bank or 20 feet each side from top of bank, whichever is greater, unless certification by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) New construction or substantial improvements of structures shall be elevated or floodproofed to elevations established in accordance with section 11-28(9).

(Ord. No. 780, Art. 5, § C, 4-21-87)

Sec. 11-44. - Standards for subdivision proposals.

- (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) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions) which is greater than the lesser of 50 lots or five acres.

(Ord. No. 744, § Art. 5, § C, 9-15-81; Ord. No. 780, Art. 5, § D, 4-21-87)

Sec. 11-45. - Standards for areas of shallow flooding (AO zones).

Located within the areas of special flood hazard established in section 11-7 are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

- (1) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated to the depth number specified on the flood insurance rate map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade.
- (2) All new construction and substantial improvements of nonresidential structures shall:
  - (a) Have the lowest floor, including basement, elevated to the depth number specified on the flood insurance rate map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade; or,

- (b) Together with attendant utility and sanitary facilities be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(Ord. No. 780, Art. 5, § E, 4-21-87)

Secs. 11-46—11-60. - Reserved.

#### ARTICLE IV. - FLOOD DAMAGE PREVENTION ORDINANCE—NON-COASTAL COMMUNITIES

##### DIVISION 1. - STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE, AND OBJECTIVES

Sec. 11-61. - Statutory authorization.

The Legislature of the State of Alabama has in Code of Ala. 1975, Tit. 11, Ch. 19, §§ 1—24, Ch. 45, §§ 1—11, Ch. 52, §§ 1—84 and Tit. 41, Ch. 9, § 166, authorized local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

(Ord. No. 924, art. 1, § A, 7-2-07; Amd. of 7-16-07)

Sec. 11-62. - Findings of fact.

Therefore, the City Council of the City of Bay Minette, Alabama does hereby ordain as follows:

- (1) The flood hazard areas of the City of Bay Minette are subject to periodic inundation which result in hazard to property, health and safety, and may disrupt commerce and governmental services. Also, this inundation can result in extraordinary public expenditures in flood protection and relief and impairment of the tax base which adversely affect the public health, safety and general welfare.
- (2) These potential flood losses are caused by the cumulative effect of obstruction in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to others properties which are inadequately elevated, flood-proofed or otherwise protected from flood damage.

(Ord. No. 924, art. 1, § B, 7-2-07; Amd. of 7-16-07)

Sec. 11-63. - Statement of purpose.

It is the purpose of this article to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
- (4) Control fillings, grading, dredging and other developments which may increase erosion or flood damage; and

- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert flood water or which may increase flood hazards to other lands.

(Ord. No. 924, art. 1, § C, 7-2-07; Amd. of 7-16-07)

Sec. 11-64. - Objectives.

The objectives of this article are:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as waster and gas mains, electric, telephone and sewer lines, streets and bridges located in flood plains;
- (6) 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, and;
- (7) To insure that potential home buyers are notified that property is in a flood area.

(Ord. No. 924, art. 1, § D, 7-2-07; Amd. of 7-16-07)

Sec. 11-65. - Definitions.

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article 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 other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by an independent perimeter load-bearing wall shall be considered "new construction."

*Apex* means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

*Appeal* means a request for a review of the planning commission/board of zoning adjustment interpretation of any provision of this article.

*Applicant* means a community which indicates a desire to participate in the program.

*Appurtenant structure* means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

*Area of future-conditions flood hazard* means the land area that would be inundated by the 1-percent-annual-chance (100-year) flood based on future-conditions hydrology.

*Area of shallow flooding* means a designated AO, AH, AR/AO, AR/AH, or VO zone on a community's flood insurance rate map (FIRM) which a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

*Area of special flood-related erosion hazard* is the land within a community within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designed as zone E

on the flood hazard boundary map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, zone E may be further refined.

*Area of special flood hazard* is the land in the flood plain within the community subject to a one percent or greater chance of flooding in any given year. The area may be designed as zone A on the FHBM. After detailed ratemaking has been completed in preparation of the flood insurance rate map, zone A usually is refined into zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, AR/A, VO, or V1-30, VE or V. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

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

*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.

*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, drilling operations, and permanent storage of equipment or materials.

*Elevated building* means a non-basement building built to have the lowest floor of the lowest enclosed area elevated above the ground level 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.

*Existing construction* means any structure for which the "start of construction" commenced before October 20, 1975.

*Existing manufactured home park or subdivision* means a 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 October 20, 1975.

*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.

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

- a. The overflow of inland or tidal waters; or
- b. The unusual and rapid accumulation or runoff of surface waters from any source.

*Flood hazard boundary map (FHBM)* means an official map of a community, issued by the Federal Insurance Administration, where the boundaries of areas of special flood hazard have been designated as zone A.

*Flood insurance rate map (FIRM)* means an official map of a community, issued by the Federal Insurance Administration, delineating the areas of special flood hazard and/or risk premium zones applicable to the community.

*Flood insurance study* the official report by the Federal Insurance Administration evaluating flood hazards and containing flood profiles and water surface elevations of the base flood.

*Floodplain* means any land area susceptible to flooding.

*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.

*"Functionally dependent facility"* 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 proposed walls of a structure.

*Historic structure* means any structure that is;

- a. 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;
- b. 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;
- c. 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
- d. Individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:
  1. By an approved state program as determined by the secretary of the interior, or
  2. Directly by the secretary of the interior in states without approved programs.

*Levee* means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

*Levee system* means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

*Lowest floor* means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used 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 Code.

*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. For purposes of this article, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929 or other datum.

*"National Geodetic Vertical Datum (NGVD)"* as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

*"New construction"* means ANY structure (see definition) for which the "start of construction" commenced after October 20, 1975 and includes any subsequent improvements to the structure and includes any subsequent improvements to such structures.

*New manufactured home park or subdivision* means a 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 either final site grading or the pouring of concrete pads) is completed on or after October 20, 1975.

*Repetitive loss* means flood-related damages sustained by a structure on two separate occasions during a ten-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.

*Recreational vehicle* means a vehicle which is:

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

*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.

*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 50 percent of the market value of the structure before the damage occurred. Substantial damage also means flood related damages sustained by a structure on two separate occasions during a ten-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.

*Substantial improvement* means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "repetitive loss" or "substantial damage", regardless of the actual repair work performed. 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. This term includes structures which have incurred "substantial damage", 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 50 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 article which permits construction in a manner otherwise prohibited by this article.

(Ord. No. 924, art. 6, 7-2-07; Amd. of 7-16-07)

Secs. 11-66—11-70. - Reserved.

## DIVISION 2. - GENERAL PROVISIONS

Sec. 11-71. - Lands to which this article applies.

This article shall apply to all areas of special flood hazard within the jurisdiction of the City of Bay Minette, Alabama.

(Ord. No. 924, art. 2, § A, 7-2-07)

Sec. 11-72. - Basis for area of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in its flood insurance study (FIS), dated July 17, 2007, with accompanying maps and other supporting data and any revision thereto, are adopted by reference and declared a part of this article. For those land areas acquired by a municipality through annexation, the current effective FIS and data for (\*unincorporated county\*) are hereby adopted by reference. Areas of special flood hazard may also include those areas known to have flooded historically or defined through standard engineering analysis by governmental agencies or private parties but not yet incorporated in a FIS. (\*specifically identify\*).

(Ord. No. 924, art. 2, § B, 7-2-07)

Sec. 11-73. - Establishment of development permit.

A development permit shall be required in conformance with the provisions of this article prior to the commencement of any development activities.

(Ord. No. 924, art. 2, § C, 7-2-07)

Sec. 11-74. - Compliance.

No structure or land shall hereafter be located, extended, converted or altered without full compliance with the terms of this article and other applicable regulations.

(Ord. No. 924, art. 2, § D, 7-2-07)

Sec. 11-75. - Abrogation and greater restrictions.

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

(Ord. No. 924, art. 2, § E, 7-2-07)

Sec. 11-76. - Interpretation.

In the interpretation and application of this article all provisions shall be: (1) considered as minimum requirements; (2) liberally construed in favor of the governing body, and; (3) deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 924, art. 2, § F, 7-2-07)

Sec. 11-77. - Warning and disclaimer of liability.

The degree of flood protection required by this article 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 article does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the City of Bay Minette or by any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

(Ord. No. 924, art. 2, § G, 7-2-07)

Sec. 11-78. - Penalties for violation.

Violation of the provisions of this article or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00 or imprisoned for not more than ten days, or both, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Bay Minette from taking such other lawful actions as is necessary to prevent or remedy any violation.

(Ord. No. 924, art. 2, § H, 7-2-07)

Secs. 11-79—11-85. - Reserved.

DIVISION 3. - ADMINISTRATION

Sec. 11-86. - Designation of ordinance administrator.

The building official is hereby appointed to administer and implement the provisions of this article.

(Ord. No. 924, art. 3, § A, 7-2-07)

Sec. 11-87. - Permit procedures.

Application for a development permit shall be made to the building official on forms furnished by the community prior to any development activities, and may include, but not be limited to the following: Plans in duplicate drawn to scale showing the elevations of the area in question and the nature, location, dimensions, of existing or proposed structures, earthen fill placement, storage of materials or equipment, and drainage facilities.

Specifically, the following information is 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) Elevation in relation to mean sea level to which any non-residential structure will be flood proofed;
  - (c) Design certification from a registered professional engineer or architect that any proposed non-residential flood-proofed structure will meet the flood-proofing criteria of division 4, section 11-97(2) and section 11-99(2);
  - (d) Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development, and
- (2) Construction stage: For all new construction and substantial improvements, the permit holder shall provide to the administrator an as-built certification of the regulatory floor elevation or flood-proofing level using appropriate FEMA elevation or flood-proofing certificate immediately after the lowest floor or flood proofing is completed. When flood proofing is utilized for non-residential structures, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same.

Any work undertaken prior to submission of these certifications shall be at the permit holder's risk. The building official shall review the above referenced certification data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to farther progressive work being allowed to proceed. Failure to submit certification or failure to make said corrections required hereby, shall be cause to issue a stop-work order for the project.

(Ord. No. 924, art. 3, § B, 7-2-07)

Sec. 11-88. - Duties and responsibilities of the administrator.

Duties of the building official shall include, but shall not be limited to:

- (1) Review all development permits to assure that the permit requirements of this article have been satisfied;
- (2) Review proposed development to assure that all necessary permits have been received from governmental agencies from which approval is required by federal or state law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. Require that copies of such permits be provided and maintained on file.
- (3) When base flood elevation data or floodway data have not been provided in accordance with division 2 section 11-72, then the building official shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other sources in order to administer the provisions of division 4.
- (4) Verify and record the actual elevation in relation to mean sea level (or highest adjacent grade) of the regulatory floor level, including basement, of all new construction or substantially improved structures in accordance with division 3, section 11-87(2) .
- (5) Verify and record the actual elevation, in relation to mean sea level to which any new or substantially improved structures have been flood-proofed, in accordance with division 4, sections 11-97(2) and 11-99(2).
- (6) When flood proofing is utilized for a structure, the building official shall obtain certification of design criteria from a registered professional engineer or architect in accordance with division 3, section 11-87(l)(c) and division 4, section 11-97(2) or section 11-99(2).

- (7) 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 Emergency Management Agency (AEMA).
- (8) For any altered or relocated watercourse, submit engineering data/analysis within six months to the FEMA and state 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.
- (9) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the building official shall make the necessary interpretation.  
  
Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (10) All records pertaining to the provisions of this article shall be maintained in the office of the building official and shall be open for public inspection.

(Ord. No. 924, art. 3, § C, 7-2-07)

Secs. 11-89—11-95. - Reserved.

#### DIVISION 4. - PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 11-96. - General standards.

In all areas of special flood hazard the following provisions are required:

- (1) New construction and substantial improvements of existing structures shall be anchored to prevent flotation, collapse or lateral movement of the structure;
- (2) New construction and substantial improvements of existing structures shall be constructed with materials and utility equipment resistant to flood damage;
- (3) New construction or substantial improvements of existing structures shall be constructed by methods and practices that minimize flood damage;
- (4) Elevated buildings. All new construction or substantial improvements of existing structures that include any fully enclosed area located below the lowest floor formed by foundation and other exterior walls shall be designed so as to be an unfinished or flood resistant enclosure. The enclosure shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of flood waters.
  - (a) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
    - (i) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
    - (ii) The bottom of all openings shall be no higher than one foot above grade; and,
    - (iii) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwater in both directions.
  - (b) So as not to violate the "lowest floor" criteria of this article, the unfinished or flood resistant enclosure 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; and

- (c) 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.
- (6) 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.
- (7) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (8) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- (9) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding; and
- (10) Any alteration, repair, reconstruction or improvement to a structure which is not compliant with the provisions of this article, shall be undertaken only if the non- conformity is not furthered, extended or replaced.

(Ord. No. 924, art. 4, § A, 7-2-07)

Sec. 11-97. - Specific standards.

In all areas of special flood hazard designated as AI-30, AE, AH, A (with estimated BFE), the following provisions are required:

- (1) *New construction and substantial improvements.* Where base flood elevation data are available, new construction or substantial improvement of any structure or manufactured home shall have the lowest floor, including basement, elevated no lower than one foot above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with standards of division 4, section 11-96(4), "elevated buildings."
- (2) *Non-residential construction.* New construction or the substantial improvement of any non-residential structure located in AI-30, AE, or AH zones, may be floodproofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be water tight to one foot above the base flood 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. 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 provisions above, and shall provide such certification to the official as set forth above and in section 11-88(6).
- (3) *Standards for manufactured homes and recreational vehicles.* Where base flood elevation data are available:
  - (a) All manufactured homes placed or substantially improved on: (i) individual lots or parcels, (ii) in new or substantially improved manufactured home parks or subdivisions, (iii) in expansions to existing manufactured home parks or subdivisions, or (iv) 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 including basement elevated no lower than one feet above the base flood elevation.

- (b) Manufactured homes placed or substantially improved in an existing manufactured home park or subdivision may be elevated so that either:
  - (i) The lowest floor of the manufactured home is elevated no lower than one foot above the level of the base flood elevation, or
  - (ii) The manufactured home chassis is elevated and supported by reinforced piers (or other foundation elements of at least an equivalent strength) of no less than 36 inches in height above grade.
- (c) All manufactured homes must be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. (Refer to division 4, section 11-96.)
- (d) All recreational vehicles placed on sites must either:
  - (i) Be on the site for fewer than 180 consecutive days, fully licensed and ready for highway use if it is licensed, on it's 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
  - (ii) The recreational vehicle must meet all the requirements for "New Construction," including the anchoring and elevation requirements of division 4 section 11-97(3)(a)—(c), above.
- (4) *Floodway*. Located within areas of special flood hazard established in division 2, section 11-72, are areas designated as floodway. A floodway may be an extremely hazardous area due to velocity 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. Therefore, the following provisions shall apply:
  - (a) Encroachments are prohibited, including earthen fill, new construction, substantial improvements or other development within the regulatory floodway. Development may be permitted however, 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 supporting technical data and certification thereof.
  - (b) Only if division 4, section 11-97(4)(a) above is satisfied, then any new construction or substantial improvement shall comply with all other applicable flood hazard reduction provisions of division 4.

(Ord. No. 924, art. 4, § B, 7-2-07)

Sec. 11-98. - Building standards for streams without established base flood elevations and/or floodway (A-zones).

Located within the areas of special flood hazard established in division 2, section 11-72, 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, the following provisions apply:

- (1) When base flood elevation data or floodway data have not been provided in accordance with division 2, section 11-72, then the building official shall obtain, review, and reasonably utilize any scientific or historic base flood elevation and floodway data available from a federal, state, or other source, in order to administer the provisions of division 4. Only if data are not available from these sources, then the following subsections (2) and (3) shall apply:
- (2) No encroachments, including structures or fill material, shall be located within an area equal to the width of the stream or 25 feet, whichever is greater, measured from the top of the stream

bank, unless certification by a registered professional engineer is provided demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.

- (3) In special flood hazard areas without base flood elevation data, new construction and substantial improvements of existing structures shall have the lowest floor of the lowest enclosed area (including basement) elevated no less than three feet above the highest adjacent grade at the building site. Openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with standards of division 4, section 11-96(4) "elevated buildings".

The building official shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.

(Ord. No. 924, art. 4, § C, 7-2-07)

Sec. 11-99. - Standards for areas of shallow flooding (AO zones).

Areas of special flood hazard established in division 2, section 11-72, may include designated "AO" shallow flooding areas. These areas have base flood depths of one to three feet above ground, with no clearly defined channel. The following provisions apply:

- (1) 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 feet above the highest adjacent grade. Openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with standards of division 4, section 11-96(4), "elevated buildings".

The building official shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.

- (2) New construction or the substantial improvement of a non-residential structure may be flood-proofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be water tight to the specified FIRM flood level plus two feet, above highest adjacent grade, 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. 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 provisions above, and shall provide such certification to the official as set forth above and as required in divisions 3, section 11-87(l)(c) and 11-87(2).
- (3) Drainage paths shall be provided to guide floodwater around and away from any proposed structure.

(Ord. No. 924, art. 2, § D, 7-2-07)

Sec. 11-100. - Standards for subdivisions.

- (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; and

- (d) Base flood elevation data shall be provided for subdivision proposals and all other proposed development, including manufactured home parks and subdivisions, greater than 50 lots or five acres, whichever is less.

(Ord. No. 924, art. 4, § E, 7-2-07)

Sec. 11-101. - Variance procedures.

- (a) The planning commission and/or board of zoning adjustment as established by the City of Bay Minette shall hear and decide requests for appeals or variance from the requirements of this article.
- (b) The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the building official in the enforcement or administration of this article.
- (c) Any person aggrieved by the decision of the planning commission and/or board of zoning adjustment may appeal such decision to the circuit court, as provided in section 11-52-81.
- (d) 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 an historic structure and the variance is the minimum to preserve the historic character and design of the structure.
- (e) 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 create no additional threats to public safety.
- (f) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (g) In reviewing such requests, the planning commission and/or board of zoning adjustment shall consider all technical evaluations, relevant factors, and all standards specified in this and other sections of this article.
- (h) Conditions for variances:
  - (1) 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, 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.
  - (2) The provisions of this article are minimum standards for flood loss reduction, therefore any deviation from the standards must be weighed carefully. Variances 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.
  - (3) Any applicant to whom a variance is granted shall be given written notice 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.
  - (4) The building official shall maintain the records of all appeal actions and report any variances to the federal and state emergency management agencies upon request.

- (i) Upon consideration of the factors listed above and the purposes of this article the planning commission/board of zoning adjustments may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.

(Ord. No. 924, art. 5, 7-2-07)