

Chapter 5 - BUILDINGS, CONSTRUCTION AND RELATED ACTIVITIES

Footnotes:

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Cross reference— *Building debris, §§ 10-29(b), 12-40.*

ARTICLE I. - IN GENERAL

Sec. 5-1. - Technical codes—Adopted by reference.

- (a) For the purposes of establishing uniform rules and regulations, the council hereby adopts by reference the following codes and subsequent amendments issued thereto:
- (1) International Building Code, 2012 edition.
 - (2) International Fuel Gas Code, 2012 edition.
 - (3) International Plumbing Code, 2012 edition.
 - (4) International Mechanical Code, 2012 edition.
 - (5) International Residential Code, 2012 edition.
 - (6) International Residential Code Appendix G 2012 edition, Copyrights 2012 by the International Code Council Incorporated.
 - (7) National Electrical Code, 2011, Copyrights 2010 by the National Fire Prevention Association Incorporated.
 - (8) City of Daphne supplemental Code for Residential Structures in addition to the International Residential Code 2012 (attached to Ordinance No. 2012-40).
- (b) International Building Code, 2012 Edition, International Fuel Gas Code, 2012 Edition, International Mechanical Code, 2012 Edition, International Plumbing Code, 2012 Edition, International Residential Code, 2012 Edition, and the National Electrical Code, 2012 Edition are hereby adopted and incorporated as if fully set out in this section, with additions, deletions and changes to the International Residential Code, 2012 Edition as prescribed in subsection (c) and from the date on which this section shall take effect, the provisions thereof shall be controlling in the construction or alteration, or alteration, or repair of all building and other structures therein contained within the corporate limits of the City of Daphne.
- (c) The following section of the International Residential Code 2012 Edition is hereby revised in its entirety to read as follows:

R.106.1 Submittal documents. Construction documents, special inspection and structural observation programs and other data shall be submitted in two sets with each application for a permit the prepared by a registered design professional for all new residential homes and for additions exceeding 750 square feet. Where special conditions exist, the Building Official is authorized to require additional construction documents to be prepared by a registered design professional.

EXCEPTION: The Building Official is authorized to waive the submission of construction documents and other data not required to be prepared by a registered design professional if it is found that the nature of the work applied for is such that reviewing of construction documents is not necessary to obtain compliance with this code.

(Ord. No. 1967-1, § 1, 1-9-67; Ord. No. 1979-1, §§ 1—3, 1-2-79; Ord. No. 1988-04, §§ 1—3, 4-18-88; Ord. No. 1996-12, 3-4-96; Ord. No. 2007-23, § 1, 5-21-07; Ord. No. 2008-03, § 1, 1-7-07; Ord. No. 2012-40, § 1, 6-18-12)

Sec. 5-2. - Same—Administration and enforcement.

Administration and enforcement of the building and safety codes of the city shall be the duty of the building official of the city. Such office is hereby established. Such official shall be appointed by the mayor and the appointment shall be approved by the city council.

(Ord. No. 1993-01, § 1, 1-4-93)

Sec. 5-3. - Permit fees.

(1) *Building permit fees.* Each person, firm corporation or other entity engaged in building or constructing any individual building or remodeling or adding to air conditioning, roofing, re-roofing, storage tanks, fire sprinkler systems or repairing any existing building, shall submit plans for each such building, construction, addition, remodeling, air conditioning, roofing, reroofing, or repair, copies of bona fide signed contracts or other evidence of cost of the above referenced work to the building official, and shall, before the commencement of work, take out and secure, by payment in full, as provided for herein, a building permit for each building construction, extension, remodeling, air conditioning, roofing, re-roofing, or repairing from the City of Daphne, Alabama, along with payment for all required inspection fees contained in subsections (2) through (5) herein. For the purpose of determining the fee for the issuance of a building permit, the valuations of the requested work shall be determined by bonafide signed contracts, or other evidence of cost as submitted by the person, firms, corporations or other entities requesting a building permit.

(a) *Basic construction and improvements.* The following charges shall be made for the issuance of building permits based on the valuation of bonafide signed contracts:

1. *New residential.*

Building	Valuation figured at \$60.00/sq. ft. (heated & cooled), \$30.00/sq. ft. (garages & porches)
Permits will be \$20.00 for the 1st \$1,000.00 of the contract amount and \$5.00 for each additional \$1,000.00 thereafter. Permit holder will also be charged a plan review and Land Disturbance Permit fee.	
Plan review	\$25.00
Land disturbance	\$50.00
Mechanical	\$110.00 flat fee
Plumbing	\$110.00 flat fee
Electrical	\$110.00 flat fee
All new residential building permits will be assessed a site containment fee of \$100.00	

2. *Miscellaneous permits.* (Additions, remodels, repairs, carports, garages, pools, decks, fences, sunrooms, etc.)

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Building	\$20.00 for 1st \$1,000.00 of contract amount, \$5.00 for each additional \$1,000.00 thereafter
Electrical	\$20.00 for 1st \$1,000.00 of contract amount, \$5.00 for each additional \$1,000.00 thereafter
Mechanical	\$20.00 for 1st \$1,000.00 of contract amount, \$5.00 for each additional \$1,000.00 thereafter
Plumbing	\$20.00 for 1st \$1,000.00 of contract amount, \$5.00 for each additional \$1,000.00 thereafter
Well Permit	\$50.00 flat fee
(\$20.00 minimum fee for all permits)	

3. *Commercial permits.*

Building	\$6.00 per \$1,000.00 of total contract amount. Permit holder will also be charged a plan review fee and must provide proof of site fee payment from City of Daphne Community Development office.
Plan Review	\$100.00
Mechanical	1.5% of subcontractors total contract amount
Plumbing	1.5% of subcontractors total contract amount
Electrical	1.5% of subcontractors total contract amount
Well Permit	\$50.00 flat fee
(Commercial mechanical, plumbing, and/or electrical permits will have a minimum fee of \$75.00)	

(b) *Moving of a building or structure.* For the moving of any mobile home, manufactured home, building or structure for which the cost to move said structure is greater than or equal to one thousand dollars (\$1,000.00), the permit fee shall be one hundred fifty dollars (\$150.00).

(c) *Demolition of a building or structure.* For the demolition of any building or structure the permit fee shall be as follows:

1. Where the building or structure is one hundred thousand (100,000) cubic feet or less the permit fee is fifty dollars.
2. Where the building or structure is greater than one hundred thousand (100,000) cubic feet the permit fee is fifty dollars (\$50.00) plus fifty cents (\$0.50) per one thousand (1,000) cubic feet or fractions thereof over one hundred thousand (100,000) cubic feet.

(d) *Mobile structure use fees.* For the use of any mobile or manufactured home or structure as an approved permanent or temporary commercial structure, as otherwise permitted by ordinances of the City of Daphne, Alabama, the use permit fee structure shall be as follows:

1. Where the mobile or manufactured home or structure is used as a permanent or temporary commercial use the permit fee shall be two hundred fifty dollars (\$250.00) for a six-month period, plus two hundred fifty dollars (\$250.00) for each six-month renewal thereafter.
2. Where the mobile or manufactured home or structure is used as a temporary construction field office the permit fee shall be fifty dollars (\$50.00) for a six-month period, plus fifty dollars (\$50.00) for each six-month renewal thereafter.
3. Where the mobile or manufactured home or structure is used as quarters for a watchman the permit fee shall be two hundred fifty dollars (\$250.00) for a six-month period, plus two hundred fifty dollars (\$250.00) for each six-month renewal thereafter.

(2) *HVAC inspection fees.* See subsection (1)(a).

(3) *Electrical inspection fees.* See subsection (1)(a).

(4) *Plumbing inspection fees.* See subsection (1)(a).

(5) *Utility connection fees.* In addition to the fees charged for the issuance of building permits as described in subsection (1) hereinabove, before issuance of a building permit, the applicant must submit evidence to the building official of payment of any connection or tap fees for water, sewer, and gas, if applicable, prior to the issuance of a permit for the construction, alteration, relocation, or repair for which a permit is sought.

(6) *Street repair and street boring permit.* Any work to be performed in the City of Daphne, Alabama, that requires a street or alley to be transversely or longitudinally cut, for any reason, shall require a permit and plans reviewed by the public works director based on the following schedule:

(a) *Fees.*

1. An application fee of twenty-five dollars (\$25.00) shall be assessed for permits and inspections at the time of application for the permit.
2. The permittee shall be required to pay additional charges for work requiring a City of Daphne official to work hours other than normal city hours at an hourly rate of forty dollars (\$40.00) for the first hour or portion thereof, required for this inspection, plus twenty-five dollars (\$25.00) for each additional hour or portion thereof required.
3. The permit fee itself is not subject to refund if the permittee chooses not to perform the work, for any reason, under said permit.

(b) *Bond.*

1. A guaranty valid for a period of one (1) year from the date of performance under the permit in the form of a noncancelable performance bond, letter of credit or cashier's check, in the amount of the one thousand dollars (\$1,000.00), payable to the City of Daphne, shall be required in the name of the permittee prior to the issuance of any permit. Said guaranty shall assure that the permittee will comply with all city standards and specifications and shall assure recovery by the city of any expenses incurred, within a period of one (1) year. The mayor or public works director have the authority to waive the bond requirement when good cause is shown.

- 2. The permittee, by acceptance of the permit, expressly guarantees complete performance of the work in an acceptance to the city, guarantees all work done by him for a period of one (1) year after the date of acceptance and agrees to maintain and make all necessary repairs during the warranty period. Failure to do so shall subject the permittee to his bond.

(7) *Site plan permit.*

- (a) Each person, firm, corporation, utility, or other entity engaged in excavation work, street paving, landscaping irrigation installation, drainage, sewer, water installation, grassing, clearing, or any other land disturbing activity that is a part of the erection, renovation, improvement, maintenance, expansion, development or completion of a business, commercial, or utility site shall be required to have a permit for all items of work or a permit for each individual item of work. Permit must be purchased or obtained prior to the commencement of any work and such permit shall only be issued upon compliance with requirements of Land Use Ordinance No. 1987-12, Article 17, Section 17.18 or any amendments thereto. No permits shall be issued prior to the approval of site plans by the planning commission. If permit is not purchased before the commencement of any work, all penalties will apply.
- (b) The schedule of fees is set out as twenty dollars (\$20.00) for the first one thousand dollars (\$1,000.00) and five dollars (\$5.00) for each additional one thousand dollars (\$1,000.00) paid for each item of work. Utilities shall not be charged a permit fee, but must comply with all other provisions of this section.
- (c) This permit will be issued by the City of Daphne planning department, and approved by the planning director, building official, and code enforcement officer or his appointed designee.
- (d) After the work has been completed the developer/contractor shall notify the planning department and request a final inspection.

(8) *Special limitation to permit and inspection fees and issuance of the same for services relative to alarms, telephone, and signaling and cable television systems.*

- (a) The provisions of the ordinance shall not apply to any work performed subject to regulatory control by Alabama Public Service Commission or other regulatory agencies.
- (b) Any independent contractor doing work controlled by these agencies which is to be performed at a time other than the time and day or days of the week when the authorized permitting department of the City of Daphne is open for business shall be deemed as emergencies and shall be controlled by the following provisions:
 - 1. The person performing such work shall immediately notify, by telephone, the public service dispatcher that the work is being performed in the city.
 - 2. The person shall obtain a permit as otherwise provided by this section on the next business day that the authorized permitting department's office is open for normal business.

(9) *Other permits and fees.*

- (a) *Re-inspection fees.* Fees will only be applied to items on original list. Any new items will not be considered a re-inspection at the time of the next inspection. All re-inspection fees must be paid prior to the re-inspection.

1st Re-inspectionNo charge

2nd Re-inspection\$50.00

3rd Re-inspection\$100.00

4th Re-inspection\$200.00

- (b) *Stop work fee.* Any stop work order issued will be charged one hundred dollars (\$100.00) for a re-inspection.

(10) *Payment of fees.* All fees determined due and payable under this section shall be paid at the office of the building inspection department of the City of Daphne, Alabama, and shall be duly received prior to issuance of any permit or

permits.

- (11) *Fees for additional work.*
- (a) In the event that during the performance of the work of installation or alteration permitted under the permit, additional installations or alterations are required, it shall be unlawful for the person who secured the original permit to fail to immediately remit to the building official an amount equal to the additional fees for permits and inspection incurred by the additional installations or alterations.
 - (b) Any fees not immediately remitted for installation or alteration of work not permitted on the original permit shall be subject to subsections (12) and (14) of this section.
- (12) *Double permit and inspection fees.* When work for which a permit is required is commenced prior to the obtaining of a permit, or when a building or improvement is occupied prior to the issuance of the certificate of occupancy by the building inspection department, and completion of all required inspections, permit applicant shall be required to pay a one hundred dollar (\$100.00) penalty plus a double permit fee. In no event shall the applicant pay less than one hundred thirty dollars (\$130.00). The payment of the required fee shall not relieve any person from fully complying with all of the requirements of all applicable regulations and code, nor shall it relieve them from being subject to any of the penalties therein.
- (13) *Condition of issued permit.* The building inspection department shall act upon an application for a permit with drawings and/or specifications, as filed, or as amended, without unreasonable or unnecessary delay. A permit issued shall be construed to be a license to proceed with the work and shall not be construed as authority to violate, cancel, alter, or set aside any of the provisions of this Code, nor shall such issuance of a permit prevent the building inspection department from thereafter requiring correction of errors in construction or of violations of this Code. Any permit issued shall become invalid unless the work authorized by it shall have been commenced within ninety (90) days after its issuance, or if the work authorized by such permit is suspended or abandoned for a period of ninety (90) days after the time the work is commenced, provided that for cause, one or more extensions of time for periods not exceeding ninety (90) days each, may be allowed in writing by the building inspection department.
- (14) *Liability, penalties and remedies.*
- (a) *Liability.* Any person who shall undertake work pursuant to any permit issued under the provisions of this chapter shall be liable for any damage occasioned to persons, animals, or property by reason of carelessness and negligence connected with such work and shall hold the city harmless therefore.
 - (b) *Penalties.*
 - 1. Failure of the applicant to comply with any of the terms and conditions of the permit shall be sufficient cause for cancellation of the permit by the building official, and may be cause for the refusal of future permits. The permit, the privileges granted by the permit, and the obligations of the permittee shall be binding upon the successors and subcontractors of the permittee.
 - 2. Permit requirements shall apply to emergency repairs; however, a delay of forty-eight (48) hours is granted, excluding weekends and holidays, following the beginning of such repair before the lack of a permit shall warrant a fine.
 - 3. Any excavation or construction in any street, alley, sidewalk, or other public right-of-way in the city (with or without a permit as required by this chapter) which constitutes an emergency presenting imminent danger or serious injury to person or property is hereby declared to be a public nuisance which may be summarily abated as provided in the zoning ordinance of the city.
 - (c) *Civil remedy.* In addition to the penalties established above, violations of this chapter shall be cause for the city to proceed against any surety, condemn any bond, or to commence an action in a court of competent jurisdiction for the appropriate legal and equitable relief, and any other action permitted by law.

(d) *Summons and complaint.*

1. Any summons and complaint ordinance authority of the City of Daphne shall serve upon the owner of property or each person, firm, or corporation engaged in the activities regulated thereunder, which activities are being conducted in violation of this section, a citation to appear in the Daphne Municipal Court of the City of Daphne at a time and date specified thereon to answer the charge of such violation(s) of this section. All citations shall be signed by inspectors finding such violations and shall be sent by certified mail to the contractor or persons responsible for the permit or the owner of the property on which the violation is found, as such owner's names and address appear in the records of the Baldwin County Tax Assessor's Office.
2. Provided, however, that prior to 4:00 p.m. on the date this matter is to be set before the Daphne Municipal Court, such person, firm, or corporation charged in such citation, if he has not previously settled or been convicted of three (3) or more such violations within twenty-four (24) months of the date of such citation, may dispose of the citation by settlement in the following manner:
 - a. Payment to the clerk of the Daphne Municipal Court a fine for the offenses charged in the amount of five hundred dollars (\$500.00), plus any and all charges otherwise payable to the city pursuant to the terms and conditions of this section, and the summons and complaint ordinance.
 - b. If the settlement of the charges set out in the citation is not made prior to 4:00 p.m. on the date the case is set for trial in Daphne Municipal Court and if the party charged fails to appear and answer such charge in the Daphne Municipal Court at the time or place set out in such court a warrant shall be issued charging such party with the violation set out in the citation, which warrant shall be obtained and served and tried as provided by law for the arrest and trial of offenses involving violations of the ordinances of the city.
3. If within the twenty-four (24) months preceding the issuance of a citation such person, firm, or corporation charged in such citation has been convicted of three (3) or more such violations, settlement cannot be voluntarily made to the clerk of the Daphne Municipal Court as referred to above. Said person, firm, or corporation shall be required to stand trial in the Daphne Municipal Court.
4. Once the warrant has been issued and tried before the municipal court, a person found guilty of such violations shall be guilty of a misdemeanor and shall be punished as provided in section 1-7 of the Code of Ordinances of the City of Daphne, which shall include the payment of any fines levied by the court, plus any court cost herein provided and issued by the court. Each day such offense continues shall constitute a separate offense.

(15) *Unused permits and refunds.*

- (a) The finance director of the City of Daphne is authorized to make refund of amounts paid for permits issued under this ordinance at any time within ninety (90) days ;b2;after the issuance of said permits provided the building inspector certifies to said finance director as follows:
 1. The permit for which the refund is requested has been canceled and no work begun thereunder; or
 2. The inspection for which a refund of fee therefore paid is requested has not been made.
- (b) Any refund made under the provision of this section shall be subject to an administrative charge of twenty dollars (\$20.00) which amount shall be deducted from the amount of refund applied for.

(Ord. No. 2004-10, §§ I—XV, 4-5-04; Ord. No. 2006-55, 8-7-06; Ord. No. 2012-40, § II, 6-18-12)

Editor's note— Ord. No. 2004-10, adopted April 5, 2004, repealed Ord. No. 2002-30 from which § 5-3 derived, and enacted similar provisions to read as herein set out.

Any person, before engaging in earth moving operations, including but not limited to any digging, boring, tunneling, backfilling or removal of above ground structures by any means whatsoever, including but not limited to the use of hand tools, mechanical equipment or explosives capable of cutting or rupturing natural gas pipelines, in the immediate vicinity of any natural gas pipeline or related facility of the city, shall first obtain from the city a permit before undertaking such operation.

(Ord. No. 1983-1, § 1, 9-6-83)

Sec. 5-5. - Same—Notice of operation; marking; inspection.

The city shall be notified of any proposed operation referred to in section 5-4 not less than forty-eight (48) hours prior to the time any operation is to begin and no operation shall begin under the permit until the pipeline and any related facilities have been marked by the city superintendent or the superintendent's designees. No operation shall be closed, until the inspection by city superintendent or designees for damage, and there shall be on file a copy of line location request with the approval and signature of the superintendent.

(Ord. No. 1983-1, § 2, 9-6-83)

Sec. 5-6. - Same—Violation.

Any person who shall fail or refuse to secure the permit required in section 5-4 or who shall fail to give notice of any operation as required in section 5-5 shall be guilty of a misdemeanor. Each day that any operation is continued in violation shall constitute a separate offense. If a person convicted of a violation shall be a licensed plumber, contractor, gas fitter or other person doing business under a license issued by the city, the council may revoke the license to do business in the city or its police jurisdiction thereafter.

(Ord. No. 1983-1, § 3, 9-6-83)

Sec. 5-7. - Sand, gravel, etc., pits—Screening required; exemption.

- (a) Any person within the city who owns or controls any pit or area used for the sale of top soil, sand, clay, rock, gravel, etc., when the same is located at, on or near a public right-of-way shall provide a screen to conceal the open pits.
- (b) Pits which are located in such a manner that the natural terrain obscures the pit and its operation shall not be required to be screened.

(Ord. No. 1968-8, §§ 1, 3, 7-15-68)

Sec. 5-8. - Same—Specifications for screen.

The screen to be provided shall be a minimum of six (6) feet in height, constructed of solid boards or a chain link fence with laths interwoven in such a manner as to provide a tight surface.

(Ord. No. 1968-8, § 2, 7-15-68)

Sec. 5-9. - Same—Fence to prevent entry.

Any pit located near a residential area is considered to constitute a safety hazard and the same shall be fenced to obstruct a view of the pit and its operation and also shall be fenced in a manner which will discourage and prevent entry by unauthorized persons.

(Ord. No. 1968-8, § 4, 7-15-68)

Sec. 5-10. - Same—Drainage or treatment of water to control insects.

Any pit or hole that cannot be drained, and in which water accumulates and remains to form a pool to become stagnant, shall be treated in such a manner as to control the breeding of obnoxious, disease-bearing mosquitoes and other insects.

(Ord. No. 1968-8, § 5, 7-15-68)

Sec. 5-11. - Same—Setback from property line.

No pit shall be dug within thirty (30) feet of any property line and no pit shall be dug near a property line when the removal of the material would cause an erosion problem for the adjacent property owner.

(Ord. No. 1968-8, § 6, 7-15-68)

Secs. 5-12—5-19. - Reserved.

ARTICLE II. - FLOOD DAMAGE PREVENTION

Footnotes:

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Editor's note— Ord. No. 2019-10, adopted March 4, 2019, repealed the former Art. II, §§ 5-20—5-33, 5-46—5-48, 5-51—5-58, and enacted a new Art. II as set out herein. The former Art. II pertained to similar subject matter and derived from Ord. No. 2009-01, art. 1, §§ A—D, art. 2, §§ A—I, art. 3, §§ A—C, art. 4, §§ A—F, art. 6, January 5, 2009.

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

Sec. 5-20. - Statutory authorization.

The legislature of the State of Alabama has in Title 11, Chapter 19, Sections 1-24, Chapter 52, Sections 1-84, and Title 41, Chapter 9, Section 166 of the Code of Alabama, 1975, authorized local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City Council of Daphne, Alabama, does ordain as follows:

(Ord. No. 2019-10, art. 1, § A, 3-4-19)

Sec. 5-21. - Findings of fact.

The flood hazard areas of Daphne, Alabama are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood relief and protection, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare. These flood losses are caused by the occupancy in flood hazard areas of uses vulnerable to floods, which are inadequately elevated, flood proofed, or otherwise unprotected from flood damages, and by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities.

(Ord. No. 2019-10, art. 1, § B, 3-4-19)

Sec. 5-22. - 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 condition in specific areas by provisions designed to:

- (1) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage time of initial construction;
- (2) Restrict or prohibit uses which are dangerous to health safety and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion;
- (3) Control filling, grading, dredging and other development which may increase flood damage or erosion, and;
- (4) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands;
- (5) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters.

(Ord. No. 2019-10, art. 1, § C, 3-4-19)

Sec. 5-23. - Objectives.

The objectives of this article are:

- (1) To protect human life and health;
- (2) 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;
- (3) 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;
- (4) To minimize expenditure of public money for costly flood control projects;
- (5) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (6) To minimize prolonged business interruptions, and;
- (7) To insure that potential home buyers are notified that property is in a flood area.

(Ord. No. 2019-10, art. 1, § D, 3-4-19)

DIVISION 2. - GENERAL PROVISIONS

Sec. 5-24. - Lands to which this article applies.

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

(Ord. No. 2019-10, art. 2, § A, 3-4-19)

Sec. 5-25. - Basis for area of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in its DFIRM and Flood Insurance Study (FIS), dated April 19, 2019, with accompanying maps and other supporting data and 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 Baldwin 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.

Upon the issuance of a letter of final determination (LFD) by FEMA, the revised flood hazard data shall be used and replace all previously effective flood hazard data provided by FEMA for the purposes of administering these regulations. Where adopted regulatory standards conflict, the more stringent base flood elevation shall prevail. Preliminary FIS data may be subject to change by a valid appeal.

(Ord. No. 2019-10, art. 2, § B, 3-4-19)

Sec. 5-26. - 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 in identified areas of special flood hazard and community flood hazard areas within the community.

(Ord. No. 2019-10, art. 2, § C, 3-4-19)

Sec. 5-27. - 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. 2019-10, art. 2, § D, 3-4-19)

Sec. 5-28. - 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. 2019-10, art. 2, § E, 3-4-19)

Sec. 5-29. - 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. 2019-10, art. 2, § F, 3-4-19)

Sec. 5-30. - 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 consideration. 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 Daphne or by any officer or employee thereof for any flood damage that result from reliance on this article or any administrative decision lawfully made there under.

(Ord. No. 2019-10, art. 2, § G, 3-4-19)

Sec. 5-31. - Penalties for violation.

- (1) *Notice of violation.* If the community determines that an applicant or other responsible person has failed to comply

with the terms and conditions of a permit, or the provisions of this article, it shall issue a written notice of violation, by certified return receipt mail, to such applicant or other responsible person. Where the person is engaged in activity covered by this article without having first secured a permit, the notice shall be served on the owner or the responsible person in charge of the activity being conducted on the site. The notice of violation shall contain:

- (a) The name and address of the owner or the applicant or the responsible person;
- (b) The address or other description of the site upon which the violation is occurring;
- (c) A statement specifying the nature of the violation;
- (d) A description of the remedial measures necessary to bring the action or inaction into compliance with the permit or this article and the date for the completion of such remedial action;
- (e) A statement of the penalty or penalties that may be assessed against the person to whom the notice of violation is directed, and;
- (f) A statement that the determination of violation may be appealed to the community by filing a written notice of appeal within thirty (30) days after the notice of violation (except, that in the event the violation constitutes an immediate danger to public health or public safety, twenty-four (24) hour notice shall be sufficient).

(2) *Additional enforcement actions.* If the remedial measures described in the notice of violation have not been completed by the date set forth for such completion in the notice of violation, any one or more of the following enforcement actions may be enacted against the person to whom the notice of violation was directed. Before taking any of the following actions or imposing any of the following penalties, the City of Daphne shall first notify the applicant or other responsible person in writing of its intended action. The City of Daphne shall provide reasonable opportunity, of not less than ten (10) days (except, that in the event the violation constitutes an immediate danger to public health or public safety, twenty-four (24) hour notice shall be sufficient) to cure such violation. In the event the applicant or other responsible person fails to cure such violation after such notice and cure period, the City of Daphne may take or impose any one or more of the following enforcement actions or penalties:

- (a) *Stop work order:* The community may issue a stop work order, which shall be served on the applicant or other responsible person. The stop work order shall remain in effect until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein, provided the stop work order may be withdrawn or modified to enable the applicant or other responsible person to take the necessary remedial measures to cure such violation or violations.
- (b) *Termination of water service and/or withhold or revoke certificate of occupancy:* The community may terminate utilities and/or refuse to issue and/or revoke a certificate of occupancy for the building or other improvements and/or repairs conducted or being conducted on the site until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein.
- (c) *Suspension, revocation, or modifications of permit:* The community may suspend, revoke, or modify the permit authorizing the development project. A suspended, revoked, or modified permit may be reinstated after the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein, provided such permit may be reinstated (upon such conditions as the community may deem necessary) to enable the applicant or other responsible person to take the necessary remedial measures to cure such violations.
- (d) *Civil penalties:* 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 five hundred dollars (\$500.00) or imprisoned

for not more than thirty (30) 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 Daphne from taking such other lawful actions as is necessary to prevent or remedy any violation.

- (e) *Section 1316 Declaration:* Section 1316 of the National Flood Insurance Act authorizes FEMA to deny flood insurance to a property declared by the state, county, or municipal government to be in violation of the local floodplain management ordinance. A Section 1316 declaration shall be used when all other legal means to remedy a violation have been exhausted and the structure is noncompliant. Once invoked, the property's flood insurance coverage will be terminated and no new or renewal policy can be issued; no flood insurance claim can be paid on any policy on the property, and disaster assistance will be denied.

The declaration must be in writing (letter or citation), from the community to the property owner and the applicable FEMA Regional Office, and must contain the following items:

- i. The name(s) of the property owner(s) and address or legal description of the property sufficient to confirm its identity and location;
- ii. A clear and unequivocal declaration that the property is in violation of a cited state or local law, regulation or ordinance;
- iii. A clear statement that the public body making the declaration has authority to do so and a citation to that authority;
- iv. Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and
- v. A clear statement that the declaration is being submitted pursuant to section 1316 of the National Flood Insurance Act of 1968, as amended.

If a structure that has received a Section 1316 declaration is made compliant with the community's floodplain management ordinance, then the Section 1316 declaration can be rescinded by the community and flood insurance eligibility restored.

- (3) *Administrative appeal; judicial review.* Any person receiving a notice of violation may appeal the determination of the community, including but not limited to the issuance of a stop work order, the assessment of an administratively-imposed monetary penalty, the suspension, revocation, modification, or grant with condition of a permit by the community upon finding that the holder is in violation of permit conditions, or that the holder is in violation of any applicable ordinance or any of the community's rules and regulations, or the issuance of a notice of bond forfeiture. The notice of appeal must be in writing and must be received within ten (10) days from the date of the notice of violation. A hearing on the appeal shall take place within thirty (30) days from the date of receipt of the notice of appeal by the floodplain administrator.
- (4) All appeals shall be heard and decided by the community's designated appeal board, which shall be the board of zoning adjustments, or their designees. The appeal board shall have the power to affirm, modify, or reject the original penalty, including the right to increase or decrease the amount of any monetary penalty and the right to add or delete remedial actions required for correction of the violation and compliance with the community's flood damage prevention ordinance, and any other applicable local, state, or federal requirements. The decision of the appeal board shall be final.
- (5) A judicial review can be requested by any person aggrieved by a decision or order of the community, after exhausting his/her administrative remedies. They shall have the right to appeal de novo to the Baldwin County Circuit Court.

(Ord. No. 2019-10, art. 2, § H, 3-4-19)

If any section, subsection, sentence, clause, phrase, or word of this article is for any reason held to be noncompliant with 44 Code of Federal Regulation 59-78, such decision shall not affect the validity of the remaining portions of this article.

(Ord. No. 2019-10, art. 2, § I, 3-4-19)

DIVISION 3. - ADMINISTRATION

Sec. 5-33. - Designation of floodplain administrator.

The Mayor of the City of Daphne shall designate and appoint a floodplain administrator to administer and implement the provisions of this article.

(Ord. No. 2019-10, art. 3, § A, 3-4-19)

Sec. 5-34. - Permit procedures.

Applications for a 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 in duplicate drawn to scale showing the elevations of the area in question and the nature, location, dimensions of existing or proposed structures, fill placement, storage of materials or equipment, and drainage facilities.

Specifically, the following procedures and information are required for all projects in the special flood hazard areas within the jurisdiction of the City of Daphne:

(1) *Application stage.* Plot plans shall include:

- (a) The base flood elevation (BFE) where provided as set forth in section 5-25; section 5-38; or section 5-47;
- (b) Boundary of the special flood hazard area and floodway(s) as delineated on the FIRM or other flood map as determined in section 5-25;
- (c) Flood zone designation of the proposed development area as determined on the FIRM or other flood map as determined in section 5-25;
- (d) Elevation in relation to mean sea level (or highest adjacent grade) of the regulatory lowest floor level, including basement, of all proposed structures;
- (e) Elevation in relation to mean sea level to which any non-residential structure will be flood proofed;
- (f) Design certification from a registered professional engineer or architect that any proposed non-residential flood-proofed structure will meet the flood-proofing criteria of sections 5-37(2) and 5-40(2);
- (g) A foundation plan, drawn to scale, that shall include details of the proposed foundation system to ensure all provisions of this article are met. These details include, but are not limited to, the proposed method of elevation (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls) and description of any flood openings required in accordance with sections 5-37(1), (3), 5-39(7), and 5-40(1) when solid foundation perimeter walls are used.
- (h) Usage details of any enclosed areas below the lowest floor shall be described.
 - (i) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.
 - (j) Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development including current and proposed locations of the watercourse. An engineering report shall be provided on the effects of the proposed project on the flood-carrying capacity of the watercourse and the

effects to properties located both upstream and downstream. The affected properties shall be depicted on a map or on the plot plan.

- (k) Certification of the plot plan by a licensed professional engineer or surveyor in the State of Alabama is required.
- (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.
- (a) 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.
- (b) Any work undertaken prior to submission of these certifications shall be at the permit holder's risk.
- (c) The floodplain administrator shall review the above referenced certification data submitted. Deficiencies detected by such a review shall be corrected by the permit holder immediately and prior to further 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.
- (d) The floodplain administrator shall make periodic inspections of projects during construction throughout the special flood hazard areas within the jurisdiction of the community to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. Members of his or her inspections/engineering department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.
- (e) The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable state or local law may also be revoked.
- (f) In any lot or lots/areas that will be or have been removed from the special flood hazard area utilizing a letter of map revision based on fill (LOMR-F), the top of fill level must meet the community's freeboard elevation at that location. If the top of fill level is below the freeboard elevation, all new structures, additions to existing buildings or substantial improvement must meet the required community freeboard elevation.
- (3) *Finished construction.* Upon completion of construction, a FEMA elevation certificate (FEMA Form 81-31), which depicts all finished construction elevations, is required to be submitted to the floodplain administrator prior to issuance of a certificate of occupancy.
- (a) If the project includes a floodproofing measure, a FEMA floodproofing certificate is required to be submitted by the permit holder to the floodplain administrator.
- (b) The floodplain administrator shall review the certificate(s) data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance.
- (c) In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a certificate of compliance/occupancy.
- (d) Documentation regarding completion and compliance with the requirements stated in the permit application

and with section 5-34(1) of this article shall be provided to the local floodplain administrator at the completion of construction or records shall be maintained throughout the construction stage by inspectors for the floodplain administrator. Failure to provide the required documentation shall be cause to withhold the issuance of a certificate of compliance/occupancy.

- (e) All records that pertain to the administration of this article shall be maintained and made available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.

(Ord. No. 2019-10, art. 3, § B, 3-4-19)

Sec. 5-35. - Duties and responsibilities of the administrator.

Duties of the floodplain administrator 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 and that the site is reasonable safe from flooding.
- (2) Review copies of 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 USC 1334. Maintain such permits permanently with floodplain development permit file.
- (3) When base flood elevation data or floodway data have not been provided in accordance with section 5-25, then the floodplain administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from the 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 section 5-34(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 sections 5-37(2) and 5-39(2).
- (6) When flood-proofing is utilized for a structure, the floodplain administrator shall obtain certification of design criteria from a registered professional engineer or architect in accordance with section 5-34(1)(c) and sections 5-37(2) or 5-39(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 Department of Economic and Community Affairs (ADECA) and the Office of Water Resources (OWR).
- (8) For any altered or relocated watercourse, submit engineering data/analysis within six (6) months to FEMA and ADECA/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.
- (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 floodplain administrator 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 provision of this article shall be maintained in the office of the floodplain administrator and shall be open for public inspection.
- (11) In addition, the floodplain administrator and his or her designated staff is hereby authorized and directed to enforce the provisions of this article. The administrator is further authorized to render interpretations of this article, which are consistent with its spirit and purpose.
- (12) Right of entry.

- (a) Whenever necessary to make an inspection to enforce any of the provisions of this article, or whenever the administrator has reasonable cause to believe that there exists in any building or upon any premises any condition or ordinance violation which makes such building, structure or premises unsafe, dangerous or hazardous, the administrator may enter such building, structure or premises at all reasonable times to inspect the same or perform any duty imposed upon the administrator by this article.
 - (b) If such building or premises are occupied, the administrator shall first present proper credentials and request entry. If such building, structure, or premises are unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of such building or premises.
 - (c) If entry is refused, the administrator shall have recourse to every remedy provided by law to secure entry.
 - (d) When the administrator shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building, structure, or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the administrator for the purpose of inspection and examination pursuant to this article.
- (13) Stop work orders.
- (a) Upon notice from the administrator, work on any building, structure or premises that is being performed contrary to the provisions of this article shall immediately cease.
 - (b) Such notice shall be in writing and shall be given to the owner of the property, or to his or her agent, or to the person doing the work, and shall state the conditions under which work may be resumed.
- (14) Revocation of permits.
- (a) The administrator may revoke a permit or approval, issued under the provisions of this article, in case there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.
 - (b) The administrator may revoke a permit upon determination that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this article.

(Ord. No. 2019-10, art. 3, § C, 3-4-19)

DIVISION 4. - PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 5-36. - General standards.

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

- (1) Require copies of all necessary permits 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. Maintain such permits be on file.
- (2) New construction and substantial improvements of existing structures shall be anchored to prevent flotation, collapse and lateral movement of the structure;
- (3) New construction and substantial improvements of existing structures shall be constructed with materials and utility equipment resistant to flood damage;
- (4) New construction and substantial improvements of existing structures shall be constructed by methods and practices that minimize flood damage;

- (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.
- (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 water into the system;
 - (8) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood water into the systems and discharges from the systems into flood water;
 - (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.
 - (11) Proposed new construction and substantial improvements that are partially located in an area of special flood hazard shall have the entire structure meet the standards for new construction.
 - (12) Proposed new construction and substantial improvements that are located in multiple flood hazard risk zones or in a flood hazard risk zone with multiple base flood elevations shall have the entire structure meet the standards for the most hazardous flood hazard risk zone and the highest base flood elevation.

(Ord. No. 2019-10, art. 4, § A, 3-4-19)

Sec. 5-37. - Specific standards.

In all areas of special flood hazard designated as A1—30, AE, AH, A (with estimated BFE), the following provisions are required;

- (1) *Residential and non-residential structures.* Where base flood elevation data are available, new construction or substantial improvement of any structure or manufactured home shall have the lowest floor, including the basement, elevated not lower than one (1) foot above the base flood elevation. Should the 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 5-36(4), "elevated building".
- (2) *Non-residential structures.* New construction or the substantial improvement of any non-residential structure located in A1—30, AE, or AH zones, 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 one (1) 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 standard of practice for meeting the provisions above, and shall provide such certification to the official as set forth above and in section 5-35(6).

Dry floodproofing is allowed only where flood velocities are less than or equal to five (5) feet per second. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. A flood emergency operation plan and an inspection and maintenance plan must be provided by the design professional for the building. such certification shall be provided to the floodplain administrator.

- (3) *Enclosures for elevated buildings.* All new construction and substantial improvements of existing structures that include any fully enclosed area below the base flood elevation, located below the lowest floor formed by the 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 (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding (if a structure has more than one (1) enclosed area below the base flood elevation, each shall have openings on exterior walls);
 - ii. The bottom of all openings shall be no higher than one (1) foot above grade; and
 - iii. Openings may be equipped with screens, louvers, valves and other coverings and 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.
- (c) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms. All interior walls, ceilings and floors below the base flood elevation shall be unfinished and/or constructed of flood resistant materials.
- (d) Mechanical, electrical or plumbing devices shall not be installed below the base flood elevation. The interior portion of such enclosed area(s) shall be void of utilities except for essential lighting and power as required.
- (4) *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,
 - iv. On a site in an existing manufactured home park or subdivision where a manufactured home has incurred substantial damages as the result of a flood, must have the lowest floor including basement elevated no lower than one (1) foot 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 (1) 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 thirty-six (36) inches in height above grade.
 - iii. Where no base flood elevation exists, the manufactured home chassis and supporting equipment is supported by reinforced piers or other foundation elements of at least equivalent strength and is elevated to a maximum of sixty (60) inches (five (5) feet) above grade.

- (c) All manufactured homes must be securely anchored to an adequately anchored foundation system to resist float and lateral movement. (Refer to section 5-36, above)
- (d) All recreational vehicles placed on sites must either:
 - i. Be on the site for fewer than one hundred eighty (180) consecutive days, fully 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
 - ii. The recreational vehicle must meet all the requirements for "New Construction", including the anchoring and elevation requirements of section 5-37(3)(a), (c).
- (5) Require, until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill) shall be permitted within zones A1—30 and AE on the City of Daphne FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.
- (6) Accessory structures (also referred to as appurtenant structures)—This provision generally applies to new and substantially improved accessory structures. When an accessory structure complies with all other provisions of this article (including floodway encroachment), represents a minimal investment (less than one thousand dollars (\$1,000.00)), and meets the requirements outlined below, these structures may be wet-floodproofed and do not have to be elevated or dry floodproofed.

Accessory structures include, but are not limited to, residential structures such as detached garages, storage sheds for garden tools or woodworking, gazebos, picnic pavilions, boathouses, small pole barns, and similar buildings. The following provisions apply to accessory structures built below the base flood elevation:

- (a) A permit shall be required prior to construction or installation.
- (b) Must be low value (less than one thousand dollars (\$1,000.00)) and not be used for human habitation.
- (c) Use must be restricted to parking of personal vehicles or limited storage (low-cost items that cannot be conveniently stored in the principal structure).
- (d) Must be designed with an unfinished interior and constructed with flood damage-resistant materials below the BFE.
- (e) Must be adequately anchored to prevent flotation, collapse, or lateral movement.
- (f) Must have adequate flood openings as described in section 5-36(5) and be designed to otherwise have low flood damage potential.
- (g) Shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.
- (h) Any mechanical and other utility equipment in the structure must be elevated to or above the BFE or must be floodproofed.
- (i) Under limited circumstances communities may issue variances to permit construction of wet-floodproofed accessory structures. Communities should not grant variances to entire subdivisions for accessory structures, especially detached garages. Variances should only be reviewed and issued on an individual or case-by-case basis and be based on the unique characteristics of the site.

(Ord. No. 2019-10, art. 4, § B, 3-4-19)

Located within areas of special flood hazard established in section 5-25, 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:

- (1) The community shall select and adopt a regulatory floodway based on the principle that the area chosen for the regulatory floodway must be designed to carry the waters of the base flood, without increasing the water surface elevation of that flood more than one (1) foot at any point;
- (2) Encroachments are prohibited, including 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.
- (3) A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional letter of map revision (CLOMR) and floodway revision, fulfills the requirements for such revisions as established under the provisions of § 65.12, and receives the approval of FEMA;
- (4) 44 CFR 60.3: "Require until a regulatory floodway is designated, that no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A and AE on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the city."
- (5) Only if section 5-38, provisions (1) through (3) are satisfied, then any new construction or substantial improvement shall comply with all other applicable flood hazard reduction provisions of division 4.

(Ord. No. 2019-10, art. 4, § C, 3-4-19)

Sec. 5-39. - Building standard for streams without established base flood elevation and/or floodway (A-Zones).

Located within the areas of special flood hazard established in section 5-25, where streams exist but no base flood data have been provided (A-Zones), the following provisions apply:

- (1) Base flood elevation data shall be provided for subdivision proposals and all other proposed development, including manufactured home parks and subdivisions, greater than fifty (50) lots or five (5) acres, whichever is the lesser.
- (2) All development in Zone A must meet the requirements of section 5-36 and section 5-37(1) through (4).
- (3) When base flood elevation data or floodway data have not been provided in accordance with section 5-25, then the floodplain administrator 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 provision of division 4. Only if data are not available from these sources, then the following provisions shall apply:
 - a. No encroachments, including structures or fill material shall be located within an area equal to the width of the stream or twenty-five (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.
 - b. 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 areas (including

- basement) elevated no less than three (3) feet above the highest adjacent grade.
- c. In the absence of a base flood elevation, a manufactured home must also meet the elevation requirements of section 5-37(4)(b)(ii) in that the structure must be elevated to a maximum of sixty (60) inches (five (5) feet).
 - d. Openings sufficient to facilitate automatic equalization of flood water hydrostatic forces on exterior walls shall be provided in accordance with standards of section 5-37(3)(a). The floodplain administrator shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.
 - e. Fill within the area of special flood hazard shall result in no net loss of natural floodplain storage. The volume of loss of floodwater storage due to filling in the special flood hazard area shall be offset by providing an equal volume of flood storage by excavation or other compensatory measures at or adjacent to the development site. Any excavation or other measures taken for compensatory storage shall be properly designed to provide protection against erosion or overgrowth of vegetation in order to preserve the storage volume. Proper maintenance measures shall also be undertaken to ensure the intended storage volume remains in perpetuity.

(Ord. No. 2019-10, art. 4, § D, 3-4-19)

Sec. 5-40. - Standards for areas of shallow flooding (A-O Zones).

Areas of special flood hazard established in section 5-25, 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:

- (1) All new construction and substantial improvements of residential and nonresidential structures shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified on the flood insurance rate map (FIRM) plus one (1) foot of freeboard. If no flood depth number is specified, the lowest floor, including the basement, shall be elevated at least three feet (3) above the highest adjacent grade. Openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with standards of section 5-37(3), "elevated buildings." The floodplain administrator 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 (2) 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 sections 5-34(1)(c) and 5-34(3)(b)(2).
- (3) Drainage paths shall be provided to guide floodwater around and away from any proposed structure.

(Ord. No. 2019-10, art. 4, § E, 3-4-19)

Sec. 5-41. - Coastal high hazard areas (V-Zones).

Located within the areas of special flood hazard established in section 5-25, are areas designated as coastal high hazard areas (V-Zones). These areas have special flood hazards associated with wave action and storm surge; therefore, the following provisions shall apply, in addition to the standards of division 4:

- (1) All new construction and substantial improvements of existing structures shall be located landward of the reach of the mean high tide;

- (2) All new construction and substantial improvements of existing structures shall be elevated on piles, columns, or shear walls parallel to the flow of water so that:
 - (a) The bottom of the lowest supporting horizontal structural member (excluding pilings or columns) is located no lower than one (1) foot above the base flood elevation level. All space below the lowest supporting member shall remain free of obstruction.
 - (b) Open lattice work, break away walls, or decorative screening may be permitted for aesthetic purposes only and built in accordance with sections 5-43(5) below.
 - (c) All pile and column foundations and the structures attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the combined effects of wind and water loads acting simultaneously on all building components, both (non-structural and structural). Water loading values shall equal or exceed those of the base flood. Wind loading values shall be in accordance with the most current edition of the International Building Codes.
- (3) All new construction and substantial improvements of existing structures shall be securely anchored on pilings, columns, or shear walls.
- (4) A registered professional engineer or architect shall certify that the design, specifications and plans for construction are in full compliance with the provisions contained in section 5-43(2)–(4) herein.
- (5) All space below the lowest horizontal supporting member must remain free of obstruction. Open lattice work or decorative screening may be permitted for aesthetic purposes. For all new construction and substantial improvements in VE zones and coastal AE zones, the space below the lowest horizontal-supporting member must remain free of obstruction. As an alternative, the space may be constructed with non-supporting breakaway walls, open wood or vinyl latticework, or insect screening which must be designed to break away or collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. The following design specifications are required:
 - (a) No solid walls shall be allowed, and;
 - (b) Material shall consist of lattice or mesh screening only.
 - (c) If aesthetic lattice work or screening is utilized, any enclosed space shall not be used for human habitation, but shall be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises.
 - (d) For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot. Breakaway wall enclosures shall not exceed two hundred ninety nine (299) square feet. Use of breakaway walls which exceed a design safe loading resistance of twenty (20) pounds per square foot (either by design or when so required by local codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:
 - i. Breakaway wall collapse shall result from water load less than that which would occur during the base flood, and;
 - ii. The effects of wind and water loads acting simultaneously on all building components (structural and nonstructural) must be taken into account. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those requirements by state or local building codes.
 - iii. The lowest horizontal structural member should be oriented perpendicular to the expected wave crest.
- (6) Enclosures below elevated buildings shall be useable solely for storage, parking of vehicles, or building access. Such space will not be used for human habitation and not finished or partitioned into separate rooms.
- (7) Prior to construction, plans for any structure using lattice, breakaway walls, or decorative screening must be

submitted to the floodplain administrator for approval;

- (8) Any alteration, repair, reconstruction or improvement to any structure shall not enclose the space below the lowest floor except with lattice work or decorative screening, as provided in this section.
- (9) Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures in VE zones and coastal AE zones. The floodplain administrator shall maintain a record of all such information.
- (10) There shall be no fill material used as structural support. Non-compacted fill may be used around the perimeter of a building for landscaping/aesthetic purposes provided the fill will wash out from storm surge, (thereby rendering the building free of obstruction) prior to generating excessive loading forces, ramping effects, or wave deflection. The floodplain administrator shall approve design plans for landscaping/aesthetic fill only after the applicant has provided an analysis by an engineer, architect, and/or soil scientist, which demonstrates that the following factors have been fully considered:
 - (a) Particle composition of fill material does not have a tendency for excessive natural compaction;
 - (b) Volume and distribution of fill will not cause wave deflection to adjacent properties; and
 - (c) Slope of fill will not cause wave run-up or ramping.
- (11) Under the buildings or structures, no fill may be used except for minor site grading for drainage purposes. Nonstructural fill may be used on coastal building sites for minor landscaping and site grading for drainage purposes to the extent that the fill does not interfere with the free passage of floodwaters and debris underneath the building or cause changes in flow direction during coastal storms. Changes to site grades, other than those prescribed, must be avoided as they can cause additional damage to buildings on the site or to adjacent buildings.

Fill placed in coastal zones should be similar (compatible) to the natural soils in the area and not contain large rocks or debris, organic materials, or clay. Minor site grading is to be limited to the addition of one (1) to two (2) feet of coastal zone compatible soils. If additional fill (greater than two (2) feet) or non-compatible soils are to be added to the site, certification by a professional engineer or architect shall be submitted along with design calculations demonstrating that no adverse impacts will result to the building. (For guidance, see FEMA Technical Bulletin #5 "Free of Obstruction Requirements").
- (12) Prohibit man-made alteration of sand dunes or mangrove stands which would increase which would increase potential flood damage.
- (13) Prohibit the placement of manufactured homes (mobile homes), except in an existing manufactured homes park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring and elevation standards of section 5-37(4) are met.
- (14) Permit recreational vehicles in VE zones and coastal AE zones if they meet all of the requirements of section 5-37(4)(d).

(Ord. No. 2019-10, art. 4, § F, 3-4-19)

Sec. 5-42. - Standards for subdivisions.

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- (3) All subdivisions proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (4) Base flood elevation data shall be provided for subdivision proposals and all other proposed development, including

manufactured home parks and subdivisions, greater than fifty (50) lots or five (5) acres, whichever is less.

- (5) All preliminary plans for platted subdivisions shall identify the flood hazard area and the elevation of the base flood.
- (6) All final subdivision plats will provide the boundary of the special flood hazard area, the floodway boundary, and the base flood elevations.
- (7) In platted subdivisions, all proposed lots or parcels that will be future building sites shall have a minimum buildable area outside the natural (non-filled) one percent chance annual floodplain. The buildable area shall be, at a minimum, large enough to accommodate any primary structure and associated structures such as sheds, barns, swimming pools, detached garages, on-site sewage disposal systems, and water supply wells, where applicable.

(Ord. No. 2019-10, art. 4, § G, 3-4-19)

Sec. 5-43. - Critical facilities.

Construction of new and substantially improved critical facilities shall be located outside the limits of the special flood hazard area (one (1) percent annual chance floodplain). Construction of new critical facilities shall be permissible within the SFHA only if no feasible alternative site is available and access to the facilities remains available during a 0.2 percent chance flood.

- (1) Critical facilities constructed within the SFHA shall have the lowest floor elevated three (3) feet above the base flood elevation at the site (or to the 0.2 percent chance flood elevation whichever is greater).
- (2) Floodproofing and sealing measures must be implemented to ensure that any and all on-site toxic substances will not be displaced by or released into floodwaters.
- (3) Multiple access routes, elevated to or above the 0.2 percent flood elevation, shall be provided to all critical facilities to the maximum extent possible.
- (4) Critical facilities must be protected to or above the 0.2 percent chance flood and must remain operable during such an event.
 - a. The community's flood response plan must list facilities considered critical in a flood.
 - b. Other facilities in low risk flood zones that may also be needed to support flood response efforts must be included on the critical facility list.
- (5) The use of any structure shall not be changed to a critical facility, where such a change in use will render the new critical facility out of conformance with this section.

(Ord. No. 2019-10, art. 4, § H, 3-4-19)

DIVISION 5. - VARIANCE PROCEDURES

Sec. 5-44. - Designation of variance and appeals board.

The board of zoning adjustments as established by the city council shall hear and decide requests for appeals or variance from the requirements of this article.

(Ord. No. 2019-10, art. 5, § A, 3-4-19)

Sec. 5-45. - Duties of board.

The board of zoning adjustments shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the floodplain administrator in the enforcement or administration of this article. Any person aggrieved by the decision of the board of zoning adjustments may appeal such decision to the Baldwin County Circuit Court, as

provided in Code of Alabama 1975.

(Ord. No. 2019-10, art. 5, § B, 3-4-19)

Sec. 5-46. - Variance procedures.

In reviewing requests for variance, the board of zoning adjustments shall consider all technical evaluations, relevant factors, and standards specified in other sections of this article, and:

- (1) Variance may be issued for development necessary for the conduct of a functionally dependent use, provided the criteria of the 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.
- (2) Variances shall not be issued within any designated floodway if ANY increase in flood levels during the base flood discharge would result.
- (3) In reviewing such request, the board of zoning adjustments shall consider all technical evaluation, relevant factors, and all standards specified in this and other sections of this article.
- (4) The evaluation must be based on the characteristics unique to that property and not be shared by adjacent parcels. The characteristics must pertain to the land itself, not to the structure, its inhabitants, or its owners.
- (5) Variances should never be granted for multiple lots, phases of subdivisions, or entire subdivisions.
- (6) The danger of life and property due to flooding or erosion damage including materials that may be swept onto other lands to the injury of others.
- (7) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner and the community.
- (8) The safety of access to the property during flood conditions for daily traffic and emergency vehicles.
- (9) The importance of the services provided by the proposed facility to the community.
- (10) The necessity of the facility to be at a waterfront location, where applicable.
- (11) The compatibility of the proposed use with existing and anticipated development based on the community's comprehensive plan for that area.
- (12) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
- (13) The costs associated with providing governmental services to the development during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and community infrastructure such as streets, bridges, and culverts.

Upon consideration of factors listed above, and the purpose of this article, the 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. 2019-10, art. 5, § C, 3-4-19)

Sec. 5-47. - Variances for historic structures.

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 to preserve the historic character and design of the structure.

(Ord. No. 2019-10, art. 5, § D, 3-4-19)

Sec. 5-48. - Conditions for variances.

The provisions of this article are minimum standards for flood loss reductions, therefore any deviation from the standards must be weighed carefully. Variances shall only be issued upon determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

- (1) A variance 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 level, in conformance with the procedures of subsections 5-48(3), (4), 5-49(1) and (2) of this article.
- (2) In the instance of a 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) A variance shall be issued only when there is:
 - a. A finding of good and sufficient cause,
 - b. A determination that failure to grant the variance would result in exceptional hardship, and;
 - c. 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.
- (4) A variance shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Variances shall not be issued "after the fact."

(Ord. No. 2019-10, art. 5, § E, 3-4-19)

Sec. 5-49. - Variance notification and records.

- (1) Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that specifies the difference between the base flood elevation and the elevation of the proposed lowest floor and stating that the issuance of such a variance could:
 - a. Result in rate increases in the hundreds and possibly thousands of dollars annually depending on structure and site-specific conditions; and
 - b. Increase the risk to life and property resulting from construction below the base flood level.
- (2) The floodplain administrator shall maintain a record of all variance actions and appeal actions, including justification for their issuance. Report any variances to the Federal Emergency Management Agency Region 4 and the Alabama Department of Economic and Community Affairs/Office of Water Resources upon request.
- (3) A copy of the notice shall be recorded by the floodplain administrator in the office of the city clerk and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

(Ord. No. 2019-10, art. 5, § F, 3-4-19)

DIVISION 6. - DEFINITIONS

Sec. 5-50. - Definitions.

For the purpose of this article the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, the words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely derivative.

A Zone means the area of special flood hazard without base flood elevations determined.

Accessory structure means a structure which is located on the same parcel of property as a principal structure to be insured and the use of which is incidental to the use of the principal structure. They should constitute a minimal initial investment, may not be used for human habitation, and be designed to have minimal flood damage potential. These structures are used solely for parking (two (2) car detached garages or smaller) or limited storage (small, low cost storage sheds). They are included under the general definition of structure and are consequently subject to all floodplain management regulations pertaining to structures. "Appurtenant structure" shall have the same meaning as accessory structure.

Addition (to an existing building) means any improvement that increases the square footage of a structure. These include lateral additions added to the front, side, or rear of a structure, vertical additions added on top of a structure, and enclosures added underneath a structure. NFIP regulations for new construction apply to any addition that is considered a perimeter expansion or enclosure beneath a structure. If it is considered to be a substantial improvement (more than fifty (50) percent of market value) to a structure, the existing structure will also need to be treated as new construction. Depending on the flood zone and details of the project, the existing building may not have to be elevated. The determining factors are the common wall and what improvements are made to the existing structure. If the common wall is demolished as part of the project, then the entire structure must be elevated. If only a doorway is knocked through it and only minimal finishing is done, then only the addition has to be elevated.

AE Zone means the area of special flood hazard with base flood elevations determined.

AH Zone means an area of one (1) percent chance of shallow flooding where depths are between one (1) to three (3) feet (usually shallow ponding), with base flood elevations shown.

AO Zone means an area of one percent chance of shallow flooding where depths are between one (1) to three (3) feet (usually sheet flow on sloping terrain), with depth numbers shown.

Appeal means a request for a review of the building official's interpretation of any provision of this article

AR/AE, AR/AH, AR/AO, and AR/A Zones means a flood zone that results from the decertification of a previously accredited flood protection system or levee that is in the process of being restored to provide a one (1) percent chance or greater level of flood protection. After restoration is complete, these areas will still experience residual flooding from other flooding sources.

A99 Zone means that part of the special flood hazard area inundated by the one (1) percent annual chance flood to be protected from the one (1) percent chance flood by a federal flood protection system or levee under construction, no base flood elevations are determined.

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 (1) to three (3) 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.

Area of special flood hazard is the land the floodplain within a community subject to one (1) percent or greater chance of flooding in any given year. In the absence of official designation by the Federal Emergency Management Agency, areas of special flood hazard shall be those designated by the local community and referenced in [section 5-25](#).

Base flood means the flood having one (1) percent chance of being equaled or exceeded in any given year.

Base flood elevation means the computed elevation to which floodwater is anticipated to rise during the base flood. It is also the elevation of surface water resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year. Base Flood Elevations are shown in the FIS and on the Flood Insurance Rate Map (FIRM) for zones AE, AH, A1—A30, AR, AR/A, AR/AE, AR/A1—A30, AR/AH, AR/AO, V1—V30 and VE.

Basement means that portion of a building having its floor sub-grade (below ground level) on all sides.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or the supporting foundation system.

Building means any structure built for support, shelter or enclosure for any occupancy or storage. (See structure)

Building (also see structure) means (1) A structure with two (2) or more outside rigid walls and a fully secured roof, that is affixed to a permanent site; or (2) a manufactured home (a "manufactured home," also known as a mobile home, is a structure built on a permanent chassis, transported to its site in one (1) or more sections, and affixed to a permanent foundation); or (3) a travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

Coastal high hazard area means the area subject to high velocity waters caused by, but not limited to, hurricane wave wash. The area is designated on a FIRM as Zone V1—30, VE or V.

Community means a political entity and/or its authorized agents or representatives that have the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

Community rating system (CRS) means a program developed by the Federal Insurance Administration to provide incentives for those communities in the regular program that have gone beyond the minimum floodplain management requirements to develop extra measures to provide protection from flooding.

Critical facility (aka, critical action) means facilities for which the effects of even a slight chance of flooding would be too great. The minimum floodplain of concern for critical facilities is the 0.2 percent chance flood level. Critical facilities include, but are not limited to facilities critical to the health and safety of the public such as: emergency operations centers, designated public shelters, schools, nursing homes, hospitals, police, fire and emergency response installations, vital data storage centers, power generation and water and other utilities (including related infrastructure such as principal points of utility systems) and installations which produce, use or store hazardous materials or hazardous waste (as defined under the Clean Water Act and other federal statutes and regulations).

D Zone means an area in which the flood hazard is undetermined.

Dam means any artificial barrier, including appurtenant works, constructed to impound or divert water, waste water, liquid borne materials, or solids that may flow if saturated. All structures necessary to maintain the water level in an impoundment or to divert a stream from its course will be considered a dam.

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 storage of equipment or material.

Dry floodproofing means any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate flood damages to real estate or improved real estate property, water, and sanitary facilities, structures, and their contents. Structures shall be floodproofed with a minimum of twelve (12) inches above the base flood elevation (more is recommended). Dry floodproofing of a pre-FIRM residential structure that has not been substantially damaged or improved is allowed. Dry floodproofing of a post-FIRM residential building is not allowed. Non-residential structures may be dry floodproofed in all flood zones with the exception of the coastal high hazard area or the coastal AE Zone.

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

Elevation certificate means a FEMA form used as a certified statement that verifies a building's elevation information.

Encroachment means the advance or infringement of uses, plant growth, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Existing construction means any structure for which the start of construction commenced before February 21, 1975 (i.e., the effective date of the first floodplain management code or ordinance adopted by the community as a basis for that community's participation in the National Flood Insurance Program (NFIP)).

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 home 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 February 21, 1975 (i.e., the effective date of the FIRST floodplain management regulations adopted by a community).

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 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.
- (c) Mudslides which are proximately caused by flooding as described in part "b." of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- (d) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually highwater level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in part "a." of this definition.

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

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain management regulations means this article and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Floodproofing means any combination of structural and nonstructural additions, changes or adjustments to structures, which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities or structures with their contents.

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.

"Regulatory floodway" shall have the same meaning.

Floodway fringe means that area of the special flood hazard area on either side of the regulatory floodway.

Flood protection elevation means the base flood elevation plus the community freeboard. In areas where no base flood elevations exist from any authoritative source, the flood protection elevation can be historical flood elevations or base flood elevations determined and/or approved by the floodplain administrator plus freeboard.

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.

Hardship (as related to variances of this article) means the exceptional difficulty that would result from a failure to grant the requested variance. The board of zoning adjustments requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

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 for 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:
 - (i) By an approved state program as determined by the Secretary of the Interior, or
 - (ii) Directly by the Secretary of the Interior in states without approved programs.

Letter of map change (LOMC) is an official FEMA determination, by letter, to amend or revise effective flood insurance rate maps, flood boundary and floodway maps, and flood insurance studies. LOMC's are broken down into the following categories:

- (a) *Letter of map amendment (LOMA)*: an amendment based on technical data showing that a property was incorrectly included in a designated SFHA, was not elevated by fill (only by a natural grade elevation), and will not be inundated by the one (1) percent chance flood. A LOMA amends the current effective FIRM and establishes that a specific property is not located in a SFHA.
- (b) *Letter of map revision (LOMR)*: a revision based on technical data that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. One (1)

common type of LOMR, a LOMR-F, is a determination concerning whether a structure or parcel has been elevated by fill above the BFE and is, therefore, excluded from the SFHA.

- (c) *Conditional letter of map revision (CLOMR)*: a formal review and comment by FEMA as to whether a proposed project complies with the minimum NFIP floodplain management criteria. A CLOMR does not revise effective flood insurance rate maps, flood boundary and floodway maps, or flood insurance studies.

Lowest adjacent grade means the point of the ground level immediately next to a building. This may be the sidewalk, patio, deck support, or basement entryway immediately next to the structure after the completion of construction. It does not include earth that is placed for aesthetic or landscape reasons around a foundation wall. It does include natural ground or properly compacted fill that comprises a component of a building's foundation system.

Levee means a man-made structure; usually an earthen embankment designed and constructed, in accordance with sound engineering practices to contain, control, or diverts 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 areas 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 provision of this code.

Manufactured home means a building, transportable in one (1) 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 includes park trailer, travel trailers and similar transportable structures placed on a site for one hundred eighty (180) consecutive days or longer and intended to be improved property.

Market value means the property value (as agreed between a willing buyer and seller), excluding the value of land as established by what the local real estate market will bear. Market value can be established by independent certified appraisal; replacement cost depreciated by age of building (actual cash value); or adjusted assessed values.

Mean sea level means the average height of the sea for all stages of the tide. It is used as a reference for the base flood elevations shown on a community's flood insurance rate map (FIRM). For purposes of this article, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, 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 February 21, 1975 and includes any subsequent improvements to the structure.(i.e., the effective date of the FIRST floodplain management ordinance adopted by the community as a basis for community participation in the (NFIP)) 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 February 21, 1975 (i.e., the effective date of the first floodplain management regulations adopted by a community).

Non-residential means, but is not limited to; small business concerns, churches, schools, farm buildings (including grain bins and silos), pool houses, clubhouses, recreational buildings, mercantile structures, agricultural and industrial structures, warehouses, and hotels and motels with normal room rentals for less than six months duration.

North American Vertical Datum (NAVD) of 1988 means a vertical control, corrected in 1988, used as a reference for establishing varying elevations within the floodplain.

Obstruction means, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channel construction, bridge, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

One percent flood (aka 100-year flood) is the flood that has a one (1) percent chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A or V is subject to inundation by the one (1) percent chance flood. Over the life of a thirty (30) year loan, there is a twenty-six (26) percent chance of experiencing such a flood within the SFHA.

Participating community is any community that voluntarily elects to participate in the NFIP by adopting and enforcing floodplain management regulations that are consistent with the standards of the NFIP.

Post-FIRM construction means new construction and substantial improvements for which start of construction occurred after December 31, 1974, or on or after the effective date of the initial FIRM of the community, whichever is later.

Pre-FIRM construction means new construction and substantial improvements for which start of construction occurred on or before December 31, 1974, or before the effective date of the initial FIRM of the community, whichever is later.

Probation means an action taken by FEMA to formally notify participating communities of the first of the two (2) NFIP sanctions due to their failure to correct violations and deficiencies in the administration and enforcement of the local floodplain management regulations.

Public safety and nuisance means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Recreational vehicle means a vehicle which is:

- (a) Licensed and titled as a recreational vehicle or park model;
- (b) Built on a single chassis;
- (c) 400 square feet or less when measured at the largest horizontal projection;
- (d) Has no attached deck, porch, or shed;
- (e) Has quick-disconnect sewage, water, and electrical connectors;
- (f) Designed to be self-propelled or permanently towable by a light duty truck; and
- (g) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regular program means the second phase of the community's participation in the NFIP in which second layer coverage is available based upon risk premium rates only after FEMA has completed a flood risk study for the community.

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 the 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 (2) separate occasions during a ten (10) year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty-five (25) percent of the market value of the structure before the damages occurred.

Repetitive loss property means any insurable structure for which two (2) or more claims of more than one thousand dollars (\$1,000.00) were paid by the National Flood Insurance Program (NFIP) within any rolling ten year period, since 1978. At least two (2) of the claims must be more than ten (10) days apart but, within ten (10) years of each other. A repetitive loss property may or may not be currently insured by the NFIP.

Section 1316 means no new flood insurance policy or federal disaster assistance shall be provided for any property which the Administrator finds has been declared by a duly constituted State or local zoning authority or other authorized public body, to be in violation of state or local laws, regulations or ordinances which are intended to discourage or otherwise restrict land development or occupancy in floodprone areas. If the structure is made compliant with the applicable community's floodplain management ordinance, then the Section 1316 declaration can be rescinded by the community and flood insurance and disaster assistance eligibility restored.

Severe repetitive loss structure means any insured property that has met at least one (1) of the following paid flood loss criteria since 1978, regardless of ownership:

- (a) Four or more separate claim payments of more than five thousand dollars (\$5,000.00) each (including building and contents payments); or
- (b) Two or more separate claim payments (building payments only) where the total of the payments exceeds the current market value of the property.

In either case, two (2) of the claim payments must have occurred within ten (10) years of each other. Multiple losses at the same location within ten days of each other are counted as one (1) loss, with the payment amounts added together.

Special flood hazard area (SFHA) means that portion of the floodplain subject to inundation by the base flood and/or flood-related erosion hazards as shown on a FHBM or FIRM as Zones A, AE, AH, AO, AR, AR/AE, AR/AO, AR/AH, AR/A, A99, or VE.

Sand dunes means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Start of construction means the date the development permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within one hundred eighty (180) days of the permit date. The actual start means the first placement of permanent date. The actual start means the first placement of permanent construction of the structure such as the pouring of slabs or footing, 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, footing, piers or foundation or the erection of temporary forms; note 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 it's before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred. Substantial damage means flood-related damages sustained by a structure on two (2) separate occasions during a ten

(10) year period for which the cost of repairs at the time of each such flood event, on the average equals or exceeds twenty-five (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 fifty (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 fifty (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.

Violation means the failure of a structure or other development to be fully compliant with the community's flood plain management regulation. A structure or other development without the elevation certificate, other certification, or other evidence of compliance required in the Code of Federal Regulations (CFR,44,Sec 60.3(b)(5), (c)(4), (c)(10), (d)(3),(e)(4), or (e)(5) and corresponding parts of this article is presumed to be in violation until such time as that documentation is provided.

Watercourse means any flowing body of water including a river, creek, stream, or a branch.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Wet floodproofing means a method of construction which allows water to enter a structure in such a way that will minimize damage to the structure and its contents. Wet floodproofing is appropriate for functionally dependent use and uses that facilitate open space use by variance only, structures utilized for parking or limited storage, or when all other techniques are not technically feasible. Wet floodproofing shall not be utilized as a method to satisfy the requirements of this article for bringing substantially damaged or improved structures into compliance. Wet floodproofing is not allowed in lieu of complying with the lowest floor elevation requirements for new residential buildings.

X Zones (shaded) are areas of 0.2 percent chance flood that are outside of the SFHA subject to the one (1) percent chance flood with average depths of less than one (1) foot, or with contributing drainage area less than one (1) square mile, and areas protected by certified levees from the base flood.

X Zones (unshaded) are areas determined to be outside the 0.2 percent chance floodplain.

Zone means a geographical area shown on a flood hazard boundary map or a flood insurance rate map that reflects the severity or type of flooding in the area.

(Ord. No. 2019-10, art. 6, 3-4-19)

Secs. 5-65—5-70. - Reserved.

ARTICLE III. - PUBLIC AND PRIVATE OUTDOOR LIGHTING

Footnotes:

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Editor's note— Ord. No. 2013-23, §§ I—IV, VI, adopted May 6, 2013, repealed the former Art. III, §§ 5-61—5-64, and enacted a new Art. III as set out herein. The former Art. III pertained to similar subject matter and derived from Ord. No. 2003-31, §§ I—IV, adopted Dec. 15, 2003.

Sec. 5-61. - Definitions.

For the purpose of this article, the following words and phrases shall have the meaning respectively ascribed to them by this section unless taken specific exception to elsewhere in this article.

Direct light. Light emitted directly from the lamp, off of the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire.

Fixture. The assembly that houses the lamp or lamps and can include all or some of the following parts: a housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and/or a refractor or lens.

Foot-candle. A quantitative unit of measure referring to the measurement of illumination incident at a single point. One (1) foot-candle is equal to one (1) lumen uniformly distributed over an area of one (1) square foot.

Glare. Light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see, and in extreme cases causing momentary blindness.

Grandfathered luminaires. Luminaires not conforming to this Code that were in place at the time this Code was voted into effect. When an ordinance "grandfathers" a luminaire, it means that such already-existing outdoor lighting does not need to be changed unless a specified period is specified for adherence to the Code.

Height of luminaire. The height of a luminaire shall be the vertical distance from the ground directly below the centerline of the luminaire to the lowest direct-light-emitting part of the luminaire.

Indirect light. Direct light that has been reflected or has scattered off of other surfaces.

Lamp. The component of a luminaire that produces the actual light.

Lumen. A unit of luminous flux. One (1) foot-candle is one (1) lumen per square foot. For the purposes of this article, the lumen-output values shall be the initial lumen output ratings of a lamp.

Luminaire. A complete lighting unit consisting of a lamp or lamps together with the components designed to distribute the light, to position and protect the lamps, and to connect the lamps to the power supply. A luminaire is also commonly referred to as a fixture.

Outdoor lighting. The night-time illumination of an outside area or object by any manmade device located outdoors that produces light by any means.

Temporary outdoor lighting. The specific illumination of an outside area or object by any manmade device located outdoors that produces light by any means for a period of less than fourteen (14) days, with at least one hundred eighty (180) days passing before being used again unless otherwise approved by the city council.

(Ord. No. 2013-23, § I, 5-6-13)

Sec. 5-62. - Regulations.

- (a) *Regulations.* All public and private outdoor lighting installed in the City of Daphne shall be in conformance with the requirements established by this article.
- (b) *Luminaire restrictions.*
- (1) Private outdoor luminaires shall not exceed thirty thousand (30,000) lumens and shall not exceed forty (40) feet in height. No direct light from any private outdoor luminaire owned by any owner or tenant of any property shall direct light upon any residential property, house or structure not owned by that owner or tenant. The intentional directing of light upon the personal property, house or structure of another shall not be subject to any grandfather provision as provided in this article.
 - (2) With the exception of outdoor sports luminaries, public outdoor luminaires shall not exceed fifty-five thousand (55,000) lumens. Outdoor sports luminaries shall not exceed two hundred thousand (200,000) lumens.
- (c) *Exceptions.*
- (1) All temporary emergency lighting needed by the police or fire departments or other emergency services, as well as all vehicular luminaires, shall be exempt from the requirements of this article.
 - (2) All hazard warning luminaires required by federal regulatory agencies are exempt from the requirements of this article, except that all luminaires used must be red and must be shown to be as close as possible to the federally required minimum lumen output requirement for the specific task.
 - (3) Law governing conflicts. Where any provision of federal, state, county, [or] town statutes, codes, or laws conflicts with any provision of this Code, the most restrictive shall govern unless otherwise regulated by law.
 - (4) Temporary circus, fair, carnival, or civic uses.
 - (5) Lighting necessary for construction is exempt from this Code provided said lighting is discontinued immediately upon completion of the construction work.
- (d) *Outdoor advertising signs.*
- (1) Luminaries used to illuminate outdoor advertising sign shall direct light only on the intended advertising sign and shall not direct light upon any other structure.
 - (2) Outdoor advertising signs of the type constructed of translucent materials and wholly illuminated from within shall not cause glare. Dark backgrounds with light lettering or symbols are preferred, to minimize detrimental effects.
 - (3) Compliance limit. Existing outdoor advertising structures shall be brought into conformance with this Code within ten (10) years from the date of adoption of this provision.
- (e) *Recreational facilities.*
- (1) Any light source permitted by this Code may be used for lighting of outdoor recreational facilities (public or private), such as, but not limited to, football fields, soccer fields, baseball fields, softball fields, tennis courts, or show areas, provided all the following conditions are met:
 - a. All events shall be scheduled so as to be completed before or as near to 10:30 p.m. as practicable. Under no circumstances shall an event begin after 11:00 p.m. except to conclude scheduled events that were in progress before 11:00 p.m. and circumstances prevented concluding before 11:00 p.m.
 - b. The lighting fixtures shall be specified in the lighting plan, mounted and aimed so that the illumination falls within the primary playing area and immediate surrounding so that no direct light illumination is directed off site.
- (f) *Prohibitions.*
- (1) *Laser source light.* The use of laser source light or any similar high intensity light for outdoor advertising is

prohibited. The use of laser source light or any similar high intensity light may be permitted pursuant to the provisions of subsection (g).

(2) *Searchlights.* The operation of searchlights for advertising purposes is prohibited. The use of searchlights or any similar high intensity light may be permitted pursuant to the provisions of subsection (g).

(g) *Temporary outdoor lighting.* Any temporary outdoor lighting that conforms to the requirements of this article shall be allowed. Nonconforming temporary outdoor lighting may be permitted by the city council after considering: (1) the public and/or private benefits that will result from the temporary lighting; (2) any annoyance or safety problems that may result from the use of the temporary lighting; and (3) the duration of the temporary nonconforming lighting. The applicant shall submit a detailed description of the proposed temporary nonconforming lighting to the city council, who shall consider the request at a duly called meeting of the city council. A failure by the city council to act on a request within the time allowed shall be construed a denial of the request.

(Ord. No. 2013-23, § II, 5-6-13)

Sec. 5-63. - Grandfathered luminaires.

- (a) All luminaires lawfully installed prior to the effective date of this article shall be grandfathered. However, any luminaire that replaces a grandfathered luminaire, or any grandfathered luminaire that is moved, must meet the standards of this article. Advertising signs are grandfathered only for a period of ten (10) years from effective date of this article.
- (b) Grandfathered luminaires that direct light toward streets or parking lots that cause disability glare to motorists or cyclists should be either shielded or re-directed within ninety (90) days of notification, so that the luminaires do not cause a potential hazard to motorists or cyclists.

(Ord. No. 2013-23, § III, 5-6-13)

Sec. 5-64. - Penalty.

- (a) *Violation.* It shall be an offense for any person to violate any of the provisions of this article. Each and every day during which the violation continues shall constitute a separate offense.
- (b) *Violations and legal actions.* If after investigation, the code enforcement officer finds that any provision of the article is being violated, he shall give notice by hand delivery or by certified mail, return-receipt requested, of such violation to the owner and/or to the occupant of such premises, demanding that violation be abated within thirty (30) days of the date of hand delivery or of the date of mailing of the notice. If the violation is not abated within the thirty-day period, the code enforcement officer may institute actions and proceedings, either legal or equitable, to enjoin, restrain, or abate any violations of this article and to collect the penalties for such violation, including the issuance of a municipal offense citation.
- (c) *Penalties.* A violation of this article, or any provision thereof, shall be punishable by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for any individual, corporation, association, or other legal entity for each violation. The imposition of a fine under this Code shall not be suspended. Each day of violation after the expiration of the thirty-day period provided in paragraph (b) above shall constitute a separate offense for the purpose of calculating the civil penalty.
- (d) *Summons and complaint.* This article shall also be subject to enforcement by the issuance of a summons and complaint pursuant to the provisions of Ordinance No. 1993-02, as the same may be from time to time amended.

(Ord. No. 2013-23, § IV, 5-6-13)

Secs. 5-65—5-70. - Reserved.

ARTICLE IV. - UNSAFE STRUCTURES

Footnotes:

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Editor's note— Ord. No. 2005-31, §§ II, III, adopted Aug. 1, 2005, repealed Art. IV, §§ 5-71—5-79, and enacted a new Art. IV to read as set out herein. Former Art. IV pertained to similar subject matter and derived from Ord. No. 2004-15, §§ I—IX, adopted Apr. 19, 2004.

Sec. 5-71. - Amendments to Standard Unsafe Building Abatement Code, 1985 Edition.

- (a) *Section 302.1.3 Method of Service of Notice of Hearing.* Section 302.1.3 of the Standard Unsafe Building Abatement Code, 1985 edition, is hereby amended to include the additional sentences as follows:

"In the event service by certified mail is refused, then service shall hereby be deemed effective, and the recipient thereof shall be deemed to have been notified of the contents of the Notice contained therein. In the event the notice is returned unclaimed, then the serving party may serve the recipient by publication of said notice in a local newspaper of general circulation 1 time no less than 10 days prior to the date of the hearing of the governing body."

- (b) *Chapter 7, Standard Unsafe Building Abatement code, 1985 edition (Recovery of Cost of Repair or Demolition).* Chapter 7 of the Standard Unsafe Building Abatement Code, 1985 edition, is hereby amended and expanded to include the procedures and protection afforded in Alabama Code 1975, §§ 11-53B-5 thru and including 11-53B-16, which are included herein as follows:

A. (Ala. Code §11-53B-5). *Fixing of costs.*

Upon demolition or repair of the building or structure, the appropriate city official shall make a report to the governing body of the cost thereof, and the governing body shall adopt a resolution fixing the costs which it finds were reasonably incurred in the demolition or repair and assessing the same against the property; provided, however, the proceeds of any moneys received from the sale of salvaged materials from the building or structure shall be used or applied against the cost of the demolition; and provided further, that any person, firm, or corporation having an interest in the property may be heard at the meeting as to any objection he or she may have to the fixing of such costs or the amounts thereof. The clerk of the municipality shall give notice of the meeting at which the fixing of the costs is to be considered by first-class mail to all entities having an interest in the property whose address and interest is determined from the tax assessor's records on the property or as otherwise known to the clerk. The fixing of the costs by the governing body shall constitute an assessment against the lot or lots, parcel or parcels of land upon which the building or structure was located, and as made and confirmed shall constitute a lien on the property for the amount of the assessment ("the final assessment"). The lien shall be superior to all other liens on the property except liens for taxes, and except for mortgages recorded prior to the creation of the lien for the assessment, and shall continue in force until paid. A certified copy of the resolution fixing the final assessment shall also be recorded in the office of the judge of probate of the county in which the municipality is situated.

B. (Ala. Code §11-53B-6). *Assessments against state purchased property.*

The municipality shall have the power to assess the costs authorized herein against any lot or lots, parcel or parcels of land purchased by the State of Alabama at any sale for the nonpayment of taxes, and where such an assessment is made against the lot or lots, parcel or parcels of land, a subsequent redemption thereof by any person authorized to redeem, or sale thereof by the state, shall not operate or discharge, or in any manner affect the lien of the city for the assessment, but any redemptioner or purchaser at any sale by the state of any lot or lots, parcel or parcels of land upon which an assessment has been levied, whether prior to or subsequent to a sale by the state for the nonpayment of taxes, shall take the same subject to the assessment.

C. (Ala. Code §11-53B-7). *Payment of assessments.*

The municipality, in ordering any repair or demolition the cost of which or any part thereof is to be assessed against any property in accordance with the provisions of this chapter, may provide that the same shall be paid in cash within 30 days after the final assessment; provided, however, that if the assessed amount is greater than ten thousand dollars (\$ 10,000), the property owner may, at his or her election, to be expressed by notifying the municipal official charged with the duty of collecting the assessments in writing within 30 days after the final assessment is determined, pay the final assessment in 10 equal annual installments, which shall bear interest at a rate not exceeding 12 percent per annum. Interest shall begin to accrue upon the expiration of 30 days from the date on which the final assessment is set by the governing body and the interest shall be due and payable at the time and place the assessment is due and payable.

Any person who elects to make installment payments may pay the outstanding balance of the final assessment together with all accrued interest thereon at any time during the installment payment schedule. The first installment shall be payable within 30 days after the final assessment is determined, and all installments thereof shall be payable at the office of the clerk, finance office, or treasurer of the city or town as may be prescribed. Upon full payment of the final assessments and accrued interest thereon, the municipality shall record a satisfaction of the lien in the office of the judge of probate of the county in which the municipality is located.

D. (Ala. Code §11-53B-8). *Default sale procedures.*

If the property owner fails to pay the assessment lien within 30 days, or having elected to make installment payments, fails to make any installment payment when due, the whole assessment lien shall immediately become due and payable, and the officer designated by the municipality to collect the assessment lien shall proceed to sell the property against which the assessment lien is made to the highest bidder for cash, but in no event less than the amount of the lien plus interest through the date of default. Prior to the sale, notice shall be given by publication once a week for three consecutive weeks in a newspaper published in the municipality or of general circulation therein, setting forth the date and time of the sale and the purpose for which the same is made, together with a description of the property to be sold. If the officer shall fail to advertise and sell any property on which the payments are past due, any taxpayer of the issuing municipality shall have the right to apply for a writ of mandamus requiring the official to take such action to any court of competent jurisdiction, and the court shall, on proof, issue and enforce the writ.

E. (Ala. Code §11-53B-9). *Payment and sale procedures.*

- (a) Any property owner, notwithstanding his or her default, may pay the assessment lien with interest and all costs if tendered before a sale of the property.
- (b) The cost of any notice and sale resulting from a default on paying an assessment shall constitute a charge against the property to be sold and shall be retained out of the proceeds of the sale.
- (c) The officer making the sale shall execute a deed to the purchaser, which shall convey all the rights, title, and interest which the party against whose property the assessment was made had or held in the property at the date of making the assessment or on the date of making the sale. Any surplus arising from the sale shall be paid to the city or municipal treasurer to be kept as a separate fund by the treasurer for the owner upon the responsibility of his or her official bond. The municipality may, by its agents, purchase real estate sold as provided under this article and, in the event of the purchase, the deed for the same shall be made to the municipality.
- (d) No mistake in the notice of sale in the description of the property or in the name of the owner shall vitiate the assessment or the lien and if for any reason, the sale made by the municipality is ineffectual to pass title, it shall operate as an assignment of the lien, and, upon the request of the purchaser, supplementary

proceedings of the same general character as required in this chapter may be had to correct the errors in the proceedings for his or her benefit or the lien so assigned to him or her may be enforced by civil action.

F. (Ala. Code §11-53B-10). *Post sale redemption requirements.*

- (a) Any real property heretofore or hereafter sold for the satisfaction of an assessment lien imposed thereon by the governing body of a municipality may be redeemed by the former owner, or his or her assigns, or other persons authorized to redeem property sold for taxes by the state, within two years from the date of the sale by depositing with the officer designated by the municipality to collect the assessments the amount of money for which the lands were sold, with interest thereon at the rate of 12 percent per annum from the date of the sale through the date of the payment.
- (b) In addition to any other requirements set forth in this section, the proposed redemptioner must pay or tender the purchaser or his transferee all insurance premiums paid or owed by the purchaser with accrued interest on the payments computed from the date the premiums were paid at 12 percent per annum through the date of payment.
- (c) In addition to any other requirements set forth in this section, the proposed redemptioner must pay or tender to the purchaser or his transferee the value of all permanent improvements made on the property determined in accordance with this section. As used herein "permanent improvements" shall include, but not be limited to, all repairs, improvements and equipment attached to the property as fixtures. The proposed redemptioner shall make written demand upon the purchaser of a statement of the value of all permanent improvements made on the property since the assessment sale. In response to written demand made pursuant to this section, the purchaser shall within 10 days from the receipt of the demand, furnish the proposed redemptioner with the amount claimed as the value of the permanent improvements, and within 10 days after receipt of the response, the proposed redemptioner either shall accept the value so stated by the purchaser, or disagreeing therewith, shall appoint a referee to ascertain the value of the permanent improvements. The proposed redemptioner shall in writing (i) notify the purchaser of his or her disagreement as to the value; and (ii) inform the purchaser of the name of the referee appointed by him or her. Within 10 days after the receipt of the notice, the purchaser shall appoint a referee to ascertain the value of the permanent improvements and advise the proposed redemptioner of the name of the appointee. The two referees shall, within 10 days after the purchaser has appointed his or her referee, meet and confer upon the award to be made by them. If they cannot agree, the referees shall at once appoint an umpire, and the award by a majority of the body shall be made within 10 days after the appointment of the umpire and shall be final between the parties.
- (d) If the proposed redemptioner fails or refuses to nominate a referee as provided in subsection (c), he or she shall pay the value put upon the improvements by the purchaser. If the purchaser refuses or fails to appoint a referee, as provided in subsection (c), the purchaser shall forfeit his or her claim to compensation for the improvements. The failure of the referees or either of them to act or to appoint an umpire shall not operate to impair or forfeit the right of either the proposed redemptioner or the purchaser in the premises. In the event of failure without fault of the parties to affect an award, the appropriate court shall proceed to ascertain the true value of the permanent improvements and enforce the redemption accordingly.
- (e) In addition to all other payments provided hereunder, the proposed redemptioner shall also pay interest to the purchaser on the value of all permanent improvements computed from the date the improvements were made at the rate of 12 percent per annum through the date of the payment.

G. (Ala. Code §11-53B-11). *Time extension.*

The fixed two-year period of redemption allowed by Section 11-53B-10 for the redemption of any property heretofore or hereafter sold for the satisfaction of any assessment lien may be extended to a date 60 days after the date of the certificate of warning to redeem provided for in Section 11-53B-12, but in no event for a longer period than six years from the date of such sale.

H. (Ala. Code §11-53B-12). *Certificate of warning.*

At any time after an assessment sale deed has been recorded in the office of the judge of probate of the county in which the property therein described lies and after expiration of the fixed two-year period of redemption allowed by Section 11-53B-10, any person may apply to the judge of probate for the certificate of warning to redeem, which references the recorded volume and page number of the deed to be recorded in the real estate records, in substantially the following form: "I hereby certify that on or prior to the date of this certificate, I mailed a certified copy of the deed here recorded, together with notice that the same is here recorded, and a warning to redeem to each of the one or more persons other than the grantee in said deed, to whom the property therein described was last finally assessed for ad valorem taxation at the address of each such person as shown by said ad valorem tax assessment records. This ____ day of _____, 2__, Judge of Probate, County, Alabama."

I. (Ala. Code §11-53B-13). *Certification procedures.*

At the time of application for entry of the certificate of warning to redeem, the applicant shall deliver to the judge of probate three certified copies of the recorded deed and shall pay to the judge of probate a fee of one dollar (\$1). Copies of the deed need not include any certificate of acknowledgment. The applicant shall also deliver to the judge of probate a certified copy of the ad valorem tax assessment records of the county containing the name of the person or persons other than the grantee in the deed to whom the property described in the deed was last finally assessed for ad valorem taxation, together with the address of each person as shown by the tax assessment records, or an affidavit that there is no one else. The judge of probate shall promptly mail to each person at such address one of the aforesaid certified copies of the deed, together with an attached warning to redeem in substantially the following form: "Take notice that there is recorded in my office in Deed Book at page a deed of which the attached is a correct copy. You are warned that unless you, or those claiming under you, take prompt steps to redeem from those claiming under the deed, all rights of redemption may be lost. This ____ day of _____, 2__, Judge of Probate, County, Alabama."

Promptly upon or after mailing the notice or notices and certified copy or copies of the deed, it shall be the duty of the judge of probate to record in the real estate records the signed and dated certificate of warning substantially as prescribed by Section 11-53B-12. At the expiration of 60 days after the date of the certificate all rights to redeem from the sale shown by the deed shall cease and desist.

J. (Ala. Code §11-53B-14). *Redemption procedures.*

Redemption may be effected after expiration of the fixed two-year period of redemption allowed or provided by Section 11-53B-10 and before the extended period of redemption has expired in the same manner and at the same redemption price as is provided in Section 11-53B-10; provided, that if the judge of probate has made the certificate of warning to redeem as provided in Section 11-53B-12, said redemption price shall be increased by one dollar (\$1).

K. (Ala. Code §11-53B-15). *Emergency action.*

Notwithstanding any other provisions of this act, a municipality shall have authority to enact, and may by ordinance authorize, the appropriate city official to initiate immediate repair or demolition of a building structure when, in the opinion of the official so designated, such emergency action is required due to imminent danger of

structural collapse endangering adjoining property, the public right of way or human life or health. The cost of the emergency action shall be fixed by the municipal governing body and shall be assessed as provided in the ordinance, or, if such ordinance does not provide a method of assessment, as provided by this chapter.

L. (Ala. Code §11-53B-16). *Applicability.*

This act shall also apply to all assessment liens for demolition or renovation of record as of July 1, 2002.

(Ord. No. 2005-31, § II, 8-1-05)

Secs. 5-72—5-80. - Reserved.

ARTICLE V. - ILLICIT DISCHARGES

Sec. 5-81. - Jurisdiction.

The provisions of this article shall apply to all lands within the corporate limits of the City of Daphne.

(Ord. No. 2014-09, § II, 3-17-14)

Sec. 5-82. - Purpose.

The purpose of this article is to provide for the health, safety, and general welfare of the citizens of the City of Daphne through the regulation of non-stormwater discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This article establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the NPDES permit process. The objectives of this article are:

- (1) To regulate the introduction of pollutants to the MS4 by stormwater discharges by any user.
- (2) To prohibit illicit connections and discharges to the city's MS4.
- (3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this article.

(Ord. No. 2014-09, § III, 3-17-14)

Sec. 5-83. - Definitions.

For the purposes of this article, the following words and phrases shall have the meaning respectively ascribed to them by this section unless taken specific exception to elsewhere in this article:

Authorized enforcement personnel: Environmental programs manager, site containment inspector, and the code enforcement officer or their designee from the city designated to enforce this article.

Best management practices (BMPs): Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

City: The City of Daphne, Alabama.

Construction activity: The disturbance of soils associated with clearing, grading, excavating, filling of land, or other similar activities which may result in soil erosion. Construction activity does not include agricultural and silvicultural (forestry) practices.

Hazardous materials: Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal discharge: Any direct or indirect non-stormwater discharge to the storm drain system, except as exempted in subsection 5-86(a)(1) through (3).

Illicit connections: Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-stormwater discharge including sewage, process wastewater, swimming pool discharge, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by a city or, any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by a city.

Industrial activity: Activities subject to NPDES industrial permits as defined in the Code of Federal Regulations, 40 CFR, Section 122.26 (b) (14).

National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit: A permit issued by the EPA (or by a state under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-stormwater discharge: Any discharge to the storm drain system that is not composed entirely of stormwater.

Person: Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; sediment, solid wastes and other residues that result from constructing a building or structure; and/or noxious or offensive matter of any kind.

Premises: Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm drainage system: Publicly-owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

Stormwater: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater pollution prevention plan or SWPPP: A document which describes the best management practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater conveyance systems, and/or receiving waters to the maximum extent practicable.

Wastewater: Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

(Ord. No. 2014-09, § IV, 3-17-14)

Sec. 5-84. - Applicability.

This article shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by the city.

(Ord. No. 2014-09, § V, 3-17-14)

Sec. 5-85. - Ultimate responsibility.

The standards set forth herein and promulgated pursuant to this article are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants.

(Ord. No. 2014-09, § VI, 3-17-14)

Sec. 5-86. - Discharge prohibitions and exemptions.

(a) *Prohibition of illegal discharges.* No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than stormwater. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

(1) The following discharges are exempt from discharge prohibitions established by this article: water line flushing or other potable water sources, landscape irrigation or lawn watering, diverted stream flows, rising ground water, ground water infiltration into storm drains, uncontaminated pumped ground water, foundation or footing drains (not including active groundwater dewatering systems), crawl space pumps, air conditioning condensation, springs, non-commercial washing of vehicles, natural riparian habitat or wetland flows, firefighting activities, and any other water source not containing pollutants.

(2) Discharges specified in writing by the city as being necessary to protect public health and safety.

(3) Dye testing is an allowable discharge, but requires a verbal notification to the city prior to the time of the test.

(b) *Prohibition of illicit connections.* The construction, use, maintenance or continued existence of illicit connections to the storm drain system is prohibited. A person is considered to be in violation of this article if the person connects a line conveying sewage to the MS4, or allows such a connection to continue.

(Ord. No. 2014-09, § VII, 3-17-14)

Sec. 5-87. - Suspension of MS4 access.

(a) *Suspension due to illicit discharges in emergency situations.* The city may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the city may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

(b) *Suspension due to the detection of illicit discharge.* Any person discharging to the MS4 in violation of this article may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The city will notify a violator of the proposed termination of its MS4 access. A person commits an offense if the person reinstates MS4

access to premises terminated pursuant to this section, without the prior approval of the city.

(Ord. No. 2014-09, § VIII, 5-6-14)

Sec. 5-88. - Industrial or construction activity discharges.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the city prior to the allowing discharges to the MS4. If warranted, NPDES stormwater permitted sites, may be required to connect its non-stormwater discharges to the sanitary sewer for additional treatment to minimize the potential for pollutants entering the city's MS4.

(Ord. No. 2014-09, § IX, 5-6-14)

Sec. 5-89. - Monitoring of discharges.

- (a) *Applicability.* This section applies to all facilities that have stormwater discharges associated with industrial activity, including construction activity.
- (b) *Access to facilities.*
 - (1) The city's authorized enforcement personnel shall be permitted to enter and inspect facilities subject to regulation under this article as often as may be necessary to determine compliance with this article. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of the city.
 - (2) Facility operators shall allow the city's authorized enforcement personnel ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
 - (3) The city's authorized enforcement personnel shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the city to conduct monitoring and/or sampling of the facility's stormwater discharge.
 - (4) The city's authorized enforcement personnel has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
 - (5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or verbal request of the city. The costs of clearing such access shall be borne by the operator.
 - (6) Unreasonable delay in allowing the city's authorized enforcement personnel access to a permitted facility is a violation of a stormwater discharge permit and of this article. A person who is the operator of a facility with a NPDES permit to discharge stormwater associated with industrial activity commits an offense if the person denies the city reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this article.
 - (7) If the city's authorized enforcement personnel has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this article, or that there is a need to inspect and/or sample as part of a routine inspection and

sampling program designed to verify compliance with this article or any order issued hereunder, or to protect the overall public health, safety, and welfare of the community, then the city may seek issuance of a search warrant from the court of competent jurisdiction.

(Ord. No. 2014-09, § X, 5-6-14)

Sec. 5-90. - Requirements to prevent, control, and reduce stormwater pollutants by the use of best management practices.

The city has requirements within the latest version of the construction best management practices article and article 18 of the Land Use and Development Ordinance that identifies best management practices for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the U.S. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise, which is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the municipal separate storm sewer system.

(Ord. No. 2014-09, § XI, 5-6-14)

Sec. 5-91. - Watercourse protection.

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

(Ord. No. 2014-09, § XII, 5-6-14)

Sec. 5-92. - Notification of spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into stormwater, the storm drain system, or water of the U.S. said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify one (1) of the city's authorized enforcement personnel in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the same city authorized enforcement personnel within three (3) business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained at the facility for at least three (3) years.

(Ord. No. 2014-09, § XIII, 5-6-14)

Sec. 5-93. - Enforcement.

Whenever the city finds that a person has violated a prohibition or failed to meet a requirement of this article, the city may mandate compliance by written notice of violation to the responsible person ("notice of violation"). Such notice of violation may require without limitation:

- (1) The performance of monitoring, analyses, and reporting;
- (2) The elimination of illicit connections or discharges;
- (3) That violating discharges, practices, or operations shall cease and desist;
- (4) The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property; and
- (5) Payment of a fine to cover administrative and remediation costs; and
- (6) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work must be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

This article is also subject to enforcement by the issuance of a municipal offense ticket or summons and complaint pursuant to the ordinance titled "Establish Penalties and Enforcement Procedures for Violation of Municipal Ordinances." Each day of documented non-compliance constitutes a separate violation of this article.

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, then representatives of the city shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

(Ord. No. 2014-09, § XIV, 5-6-14)

Sec. 5-94. - Cost of abatement of the violation.

Within ten (10) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority the charges shall become a special assessment against the property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to the city by reason of such violation. The liability shall be paid in not more than twelve (12) equal payments. Interest at the rate of percent per annum shall be assessed on the balance beginning on the first day following discovery of the violation.

(Ord. No. 2014-09, § XV, 5-6-14)

Sec. 5-95. - Injunctive relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this article. If a person has violated or continues to violate the provisions of this article, the city may petition for a preliminary or permanent injunction restraining the person from activities which would create further violations or compelling the person to perform abatement or remediation of the violation.

(Ord. No. 2014-09, § XVI, 5-6-14)

Sec. 5-96. - Alternate compensatory action in lieu of enforcement.

In lieu of enforcement proceedings, penalties, and remedies authorized by this article, the city may impose upon a violator alternative compensatory action, such as storm drain stenciling, attending compliance workshops, creek cleanup, etc.

(Ord. No. 2014-09, § XVII, 5-6-14)

Sec. 5-97. - Violations deemed a public nuisance.

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this article is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

(Ord. No. 2014-09, § XVIII, 5-6-14)

Sec. 5-98. - Criminal prosecution.

Any person that has violated or continues to violate this article shall be liable to criminal prosecution to the fullest extent of the law, and be punished by a fine of not less than fifty dollars (\$50.00), but not more than five hundred dollars (\$500.00), or imprisonment not to exceed one-hundred eighty (180) days, or both.

The city may recover all attorneys' fees, court costs and other expenses associated with enforcement of this article, including sampling and monitoring expenses.

(Ord. No. 2014-09, § XIX, 5-6-14)

Sec. 5-99. - Minimum penalties.

(a) *Penalty for violation—Fines.* The following schedule of fines is hereby established by the city pursuant to this article and the laws of the State of Alabama. In addition to the fines so established, the defendant shall pay, in addition to such fine amount, any court costs which are in effect at the time of such violation occurs. If the defendant elects to plead guilty before a magistrate to a violation of any of the municipal offenses contained herein for which there is a fine set forth in this section, the fine plus applicable court cost shall apply. In lieu of appearing before a magistrate, the defendant may sign a guilty plea and waiver of trial provision on the municipal offense citation, and deliver the amount of the fine plus applicable court costs to the clerk of the municipal court or mail such amount to the Clerk of the Municipal Court for the City of Daphne at 1502 Highway 98, Daphne, Alabama 36526.

(b) *Schedule of fines.* Any person found guilty of the provisions of this article as referenced herein, the minimum fines shall apply as follows:

- (1) First offense\$50.00 plus
court cost
- (2) All subsequent offensesCourt
appearance
with fine
and court
cost

(Ord. No. 2014-09, § XX, 5-6-14)

Sec. 5-100. - Remedies not exclusive.

The remedies listed in this article are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the city to seek cumulative remedies.

(Ord. No. 2014-09, § XXI, 5-6-14)

Secs. 5-101—5-120. - Reserved.

ARTICLE VI. - CONSTRUCTION BEST MANAGEMENT PRACTICES FOR RESIDENTIAL DWELLINGS AND OTHER LAND DISTURBANCE WITHIN THE CITY

Sec. 5-121. - Jurisdiction.

The provisions of this article shall apply to all lands within the corporate limits of the City of Daphne.

(Ord. No. 2014-14, § II, 4-21-14)

Sec. 5-122. - Purpose.

The intent of this article is to provide minimum standards to ensure effective stormwater management, drainage management, and construction best management practices for individual residential dwellings and any other activity that results in more than one thousand (1,000) square feet of land disturbance that will not reach final stabilization with a fourteen (14) calendar day period within the City of Daphne other than activities that would require the issuance of a site disturbance permit from the community development department and the exceptions for land disturbances as noted in section 5-124. The fourteen (14) day period does not relieve the individual from implementing best management practices to minimize onsite and offsite impacts to wetlands, streams, public and other private property.

(Ord. No. 2014-14, § III, 4-21-14)

Sec. 5-123. - Definitions.

For the purposes of this article, the following words and phrases shall have the meaning respectively ascribed to them by this section unless taken specific exception to elsewhere in this article:

ADEM means the Alabama Department of Environmental Management.

Alabama Handbook means the latest edition of the Alabama Handbook for Erosion Control, Sediment Control, and Stormwater Management on Construction Sites and Urban Areas. A copy of the latest edition can be found on the Alabama Soil and Water Conservation Committee's (ASWCC) web page (www.swcc.state.al.us).

Article means this article regulating construction best management practices for residential dwellings and other land disturbance within the City of Daphne.

Best management practices or *BMPs* mean implementation and continued maintenance of appropriate structural and non-structural practices and management strategies to prevent and minimize the introduction of pollutants to stormwater and to treat stormwater to remove pollutants prior to discharge.

Building inspector means a city employee who under general supervision, performs technical review of plans and building permit applications for completeness and general compliance to state regulations, model codes and local ordinances. The building inspector conducts field inspections of building construction, reconstruction and alterations at various stages and at completion to assure compliance with approved plans and specifications.

City means the City of Daphne, Alabama.

Clearing means any activity that removes the vegetative surface cover.

Code enforcement officer means the city employee who carries out the city's code enforcement program whereby individuals in violation of city codes and related regulations are identified, investigated, and corrected utilizing appropriate enforcement measures.

Common plan of development or sale means any announcement or piece of documentation (e.g., sign, public notice, or hearing, sales pitch, advertisement, drawing, permit application, zoning request, computer design, etc.) or physical demarcation (e.g., boundary signs, lot stakes, surveyor markings, etc.) indicating construction activities may occur on a specific plot. Individual lots within a common plan of development are required to acquire ADEM NPDES general permit coverage for land disturbing activity since cumulatively, the lots have potential to disturb more than one (1) acre at a time.

Community development director means the city employee who plans, organizes and reviews the activities and operations of the community development department including planning and community and neighborhood enhancement.

Construction best management practices plan or CBMP plan means a plan that includes research, planning considerations, systems, procedures, processes, activities and practices implemented for the prevention and/or minimization of pollutants in stormwater to the maximum extent practicable, and collection, storage, treatment, handling, transport, distribution, land application or disposal of construction stormwater and onsite management of construction waste generated by the land disturbing activity, and to comply with the requirements of the City of Daphne.

Erosion means the process by which land surface is worn away by the action of wind, water, ice and/or gravity.

Final stabilization means the application and establishment of the permanent ground cover (vegetative, erosion resistant hard or soft material or impervious structures) planned for the site to permanently eliminate soil erosion to the maximum extent practicable. Established vegetation will be considered final if one hundred (100) percent of the soil surface is uniformly covered in permanent vegetation with a density of eighty-five (85) percent or greater. Permanent vegetation shall consist of: permanent grasses, planted trees, shrubs, landscaped flower beds, perennial vines; an agricultural or a perennial crop of vegetation appropriate for the region. Final stabilization applies to each phase of construction.

Grading means excavation or fill of material, including the resulting conditions thereof.

Land disturbing activity means any and all activities which result in more than one thousand (1,000) square feet of land disturbance and/or change to the existing stormwater drainage characteristics of land.

Land disturbance means the disturbance of soils associated with clearing, grading, excavating, filling of land, or other similar activities which may result in soil erosion.

NPDES means National Pollutant Discharge Elimination System.

Permittee means any person who obtains a land disturbance permit from the City of Daphne Building Department.

Pollutant means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; sediment, solid wastes and other residues that result from constructing a building or structure; and/or noxious or offensive matter of any kind.

Priority construction site means any site that discharges to a waterbody which is listed on the most recently EPA approved 303(d) list of impaired waters for turbidity, siltation, or sedimentation, any waterbody for which a TMDL has been finalized or approved by EPA for turbidity, siltation, or sedimentation, any waterbody assigned the Outstanding Alabama Water use

classification in accordance with ADEM Admin. Code, 335-6-10-.09, and any waterbody assigned a special designation in accordance with ADEM Admin. Code, 335-6-10-.10.

Qualified credentialed professional or QCP means a professional engineer (PE), or a certified professional in erosion and sediment control (CPESC) as determined by CPESC, Inc. Other registered or certified professionals such as a registered landscape architect, registered land surveyor, registered geologist, registered forester, registered environmental manager as determined by the National Registry of Environmental Professionals (NREP), or certified professional and soil scientists (CPSS) as determined by ARCPACS, and other department accepted professional designations, certifications, and/or accredited university programs that can document requirements regarding proven training, relevant experience, and continuing education, that enable recognized individuals to prepare CBMPPs, to make sound professional judgments regarding Alabama NPDES rules, the requirements of this chapter, planning, design, implementation, maintenance, and inspection of construction sites, receiving waters, BMPs, remediation/cleanup of accumulated offsite pollutants from the regulated site, and reclamation or effective stormwater quality remediation of construction associated land disturbances, that meet or exceed recognized technical standards and guidelines, effective industry standard practices, and the requirements of this chapter. The QCP shall be in good standing with the authority granting the registration or designation. The design and implementation of certain structural BMPs may involve the practice of engineering and require the certification of a professional engineer pursuant to Alabama law.

Sedimentation means the process by which eroded material is transported and deposited by the action of wind, water, ice and/or gravity.

Silviculture means the care and cultivation of forest trees; forestry.

Site containment inspector means the city employee who under general supervision, performs technical review of CBMP plans, erosion and sediment control plans and land disturbance permit applications for completeness and general compliance to federal and state regulations, and local ordinances. The site containment inspector conducts field inspections of permitted land disturbance sites, during construction and at completion to assure compliance with approved plans and specifications.

Stabilize means the application and establishment of the ground cover (vegetative, erosion resistant hard or soft material or impervious structures) planned for the site to eliminate soil erosion to the maximum extent practicable.

Stormwater means runoff, accumulated precipitation, process water, and other wastewater generated directly or indirectly as a result of land disturbing activity, the operation of a construction material management site, including but not limited to, precipitation, upgradient or offsite water that cannot be diverted away from the site, and wash down water associated with normal construction activities. Stormwater does not mean discharges authorized by the department via other permits or regulations.

Stormwater management means all natural and manmade elements used to convey stormwater from the first point of impact within the construction site to a suitable outlet location.

Temporary stabilize means the application and establishment of temporary ground cover (vegetative, erosion resistant hard or soft materials or impervious structures) for the purpose of temporarily reducing raindrop impact and sheet erosion in areas where final stabilization cannot be established due to project phasing, seasonal limitations or other project related restrictions.

Wetland means land where saturation with water is the dominant factor determining the nature of soil development and the types of plant and animal communities living in the soil and on its surface (Cowardin, December 1979).

Wetland delineation means the act of establishing the boundary between wetlands and uplands (or non-wetlands).

(Ord. No. 2014-14, § IV, 4-21-14)

Sec. 5-124. - Applicability and exceptions.

This article shall apply to residential dwellings and any other land disturbance activity which disturbs one thousand (1,000) square feet or greater within the City of Daphne; and, undertaken by any person on any land within the City of Daphne's city limits except for the following:

- (1) Any emergency activity that is immediately necessary for the protection of life, property, or natural resources.
- (2) Any land disturbance which requires a right-of-way permit from the public works department of the City of Daphne.
- (3) Any nursery, agricultural and silvicultural operations.
- (4) Any land disturbance activity which requires a site disturbance permit from the City of Daphne's Community Development Director or his or her designee.
- (5) Any landfills or mining operations permitted by ADEM.
- (6) Any land zoned as agricultural in the City of Daphne.

(Ord. No. 2014-14, § V, 4-21-14)

Sec. 5-125. - Permit application required.

- (a) A permit for residential dwellings and other land disturbance activity which disturbs one thousand (1,000) square feet or greater within the City of Daphne shall be required. No person, firm, business or corporation shall engage in any land disturbing activity prior to obtaining a land disturbance permit from the City of Daphne Building Department. Unless the land disturbance permit is issued prior to the building permit, for new construction and additions, the land disturbance permit is incorporated into the building permit and the building permit must be obtained prior to land disturbance.
- (b) All applications for land disturbance permits shall be accompanied by a construction best management practices plan. It is not required that the CBMP plan be prepared by a QCP, unless the site is required to have ADEM NPDES general permit coverage. The plan shall meet all minimum requirements set out in the most current edition of the Alabama Handbook.
- (c) A permit shall be issued to either the titled owner of the said real property or the permittee charged with the contractual obligation of the land disturbing activity. A fee of one hundred dollars (\$100.00) shall be charged and collected by the City of Daphne Building Department for the issuance of the land disturbance permit.

(Ord. No. 2014-14, § VI, 4-21-14)

Sec. 5-126. - Construction best management practices plan minimum requirements.

For the purposes of this article, the following are the minimum requirements for the construction best management practices plan:

- (1) Land disturbance that results in a total land disturbance of one (1) acre or greater and sites less than one (1) acre but are part of a common plan of development or sale shall have permit coverage under the ADEM NPDES construction general permit prior to the issuance of the City of Daphne land disturbance permit and/or building permit. At a minimum the site's CBMPP shall meet all conditions and qualifications of the general permit and BMP design should be based on the guidance in the Alabama Handbook.
- (2) Best management practices (BMPs) shall be required for all land disturbing activities. It shall be the sole responsibility of the contractor and/or permittee to promptly implement effective BMPs in accordance with the permittee's land disturbance permit and submitted construction best management practices plan prior to commencing the land disturbing activity. The permittee shall be solely responsible for ensuring that all BMPs are

implemented and maintained for the entire duration of the land disturbing activity. The permittee shall also be solely responsible for ensuring that the BMPs are in accordance with established industry standards, good engineering practices, and all standards as set out in the Alabama Handbook.

- (3) The permittee shall ensure proper onsite containment and disposal of all construction building materials, supplies, trash, debris, fertilizers, pesticides, herbicides, detergents, sanitary waste and any other solid waste.
- (4) The permittee shall ensure proper onsite containment and disposal of any pollutants resulting from equipment and vehicle washing, concrete, paint and other washout water.
- (5) The permittee shall minimize the discharge of any pollutants resulting from a spill or leak from, including but not limited to vehicles, mechanical equipment, and chemical or fuel storage.
- (6) The permittee shall stabilize all construction entrances and exits to minimize off-site tracking of sediment from vehicles.
- (7) The permittee shall minimize the generation of dust during construction.
- (8) The permittee shall minimize the disturbance of steep slopes, unless infeasible.
- (9) The permittee shall minimize the amount of soil exposure and compaction during construction activity.
- (10) The permittee shall temporarily stabilize disturbed areas immediately whenever work toward project completion and final stabilization of any portion of the site has temporarily ceased on any portion of the site and will not resume for a period exceeding thirteen (13) calendar days.
- (11) The permittee shall provide the necessary measures to ensure that drainage structures important to overall stormwater management and control are not adversely affected by clearing, grading, or any other land disturbing activities and shall permanently stabilize any right-of-ways disturbed by during construction.
- (12) All onsite areas disturbed during construction shall be permanently stabilized prior to issuance of a certificate of occupancy. Any offsite disturbances shall with land owner permission be permanently stabilized prior to issuance of certificate of occupancy.
- (13) The permittee shall, with property owner permission, remove any offsite sediments from adjacent properties and stabilize any areas disturbed during the removal. If the removal involves streams or wetlands, proper federal and state permits shall be required prior to removal.
- (14) Any permitted land disturbance site that has continued compliance issues and/or offsite impacts may be issued a stop work order; ceasing all activity except BMP installation and maintenance. At that time the permittee may be required to submit an updated CBMP plan prepared by a qualified credentialed professional.

(Ord. No. 2014-14, § VII, 4-21-14)

Sec. 5-127. - Inspection and maintenance requirements.

For the purposes of this article, the following are the minimum requirements for the CBMPP inspections:

- (1) The permittee shall ensure proper implementation, daily observation, regular inspection and continual maintenance of effective best management practices to prevent offsite impacts and impacts to downstream water quality.
- (2) In the event the best management practices are found to be in need of maintenance or improvements, the permittee shall commence and implement all necessary maintenance and corrective measures to the best management practices within forty-eight (48) hours of notice unless prevented by unsafe weather conditions.

(Ord. No. 2014-14, § VIII, 4-21-14)

Sec. 5-128. - Sensitive area protection.

Sensitive areas within the city that require enhanced environmental protection are listed below:

- (1) *Priority construction site:* Any priority construction site that is less than an acre with continued compliance issues and/or offsite impacts may be issued a stop work order; ceasing all activity except BMP maintenance. At that time, the permittee may be required to submit an updated CBMP plan prepared by a qualified credentialed professional.
- (2) *Streams and shorelines:* During CBMP plan review, if it is determined that the site may impact state waters or shore lines, the city may require that the permittee have the site evaluated by the state and federal permitting agency to determine whether a state or federal permit will be required to complete site work. If it is determined that a permit will be required, then the permit must be acquired by the prior to issuance of any city permit.
- (3) *Wetlands:* During CBMP plan review, if it is determined that the site may impact potential wetlands, the city may require that the permittee have a wetland delineation performed at his or her cost. If a determination is made that the site will impact wetlands then all state and federal permits must be acquired by the prior to issuance of the city's permit.

(Ord. No. 2014-14, § IX, 4-21-14)

Sec. 5-129. - Enforcement.

Failure to comply with any section of this article is hereby deemed a violation and shall be sufficient cause for the City of Daphne, through either a building inspector, site containment inspector or code enforcement officer, to issue an order suspending all work (a "stop work order") on the land disturbing site until satisfactory measures are taken to comply with this article.

(Ord. No. 2014-14, § X, 4-21-14)

Sec. 5-130. - Criminal prosecution.

- (a) Any person that has violated or continues to violate this article shall be liable to criminal prosecution to the fullest extent of the law, and be punished by a fine of not less than fifty dollars (\$50.00), but not more than five hundred dollars (\$500.00), or imprisonment not to exceed one-hundred eighty days (180), or both.
- (b) The city may recover all attorneys' fees, court costs and other expenses associated with enforcement of this article, including sampling and monitoring expenses.

(Ord. No. 2014-14, § XI, 4-21-14)

Sec. 5-131. - Minimum penalties.

- (a) *Penalty for violation—Fines.* The following schedule of fines is hereby established by the city pursuant to this article and the laws of the State of Alabama. In addition to the fines so established, the defendant shall pay, in addition to such fine amount, any court costs which are in effect at the time of such violation occurs. If the defendant elects to plead guilty before a magistrate to a violation of any of the municipal offenses contained herein for which there is a fine set forth in this section, the fine plus applicable court cost shall apply. In lieu of appearing before a magistrate, the defendant may sign a guilty plea and waiver of trial provision on the municipal offense citation, and deliver the amount of the fine plus applicable court costs to the clerk of the municipal court or mail such amount to the Clerk of the Municipal Court for the City of Daphne at 1502 Highway 98, Daphne, Alabama 36526.
- (b) *Schedule of fines.* Any person found guilty of the provisions of this article as referenced herein, the minimum fines shall apply as follows:
 - (1) First offense\$100.00

plus court cost

- (2) All subsequent offensesCourt
appearance, fines
and court cost

In addition to the other remedies so provided herein, the city retains the right to bring an action for injunctive relief to require the payment of damages to city properties, including but not limited to streets, and rights-of-way, resulting from the permittee's failure to implement and/or maintain construction site BMPs.

(Ord. No. 2014-014, § XII, 4-21-14)