



Legislation Details (With Text)

**File #:** O-022-24      **Version:** 1      **Name:**

**Type:** Ordinance      **Status:** Approved

**File created:** 1/10/2024      **In control:** City Council

**On agenda:** 1/17/2024      **Final action:** 1/17/2024

**Title:** Amending Toledo Municipal Code (TMC), Part Eleven, Subsection 1110. Flood Control Regulations; and declaring an emergency.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Video: Agenda Review 1/10/2024, 2. Video: Zoning & Planning Committee 1/9/2024, 3. Video: City Council 1/17/2024

Date	Ver.	Action By	Action	Result
1/17/2024	1	City Council	Suspension	Pass
1/17/2024	1	City Council	Emergency	Pass
1/17/2024	1	City Council	Passage	Pass

FLOOD CONTROL REGULATIONS

**Amending Toledo Municipal Code (TMC), Part Eleven, Subsection 1110. Flood Control Regulations; and declaring an emergency.**

SUMMARY & BACKGROUND:

This is a referral from the Division of Building Inspection for a text amendment revising the Toledo Municipal Code, Chapter 1110 - Flood Control Regulations. The Federal Emergency Management Agency (FEMA) has issued a Letter of Final Determination for the City of Toledo, indicating that revised Flood Insurance Rate Maps (FIRM) and Flood Insurance Study (FIS) incorporating new flood hazard data will become effective on February 24, 2024. Communities are required to update their floodplain management regulations in coordination with the mapping update. The updated regulations must be in effect by the effective date of the of the flood maps and study to maintain eligibility in the National Flood Insurance Program.

The Ohio Department of Natural Resources (ODNR) Floodplain Management Program provides both model flood damage reduction regulations and assists communities with the update process. The model ordinance provides for the minimum standards required; however, communities may incorporate additional or higher standards. The Division of Building Inspection has been working with ODNR’s Floodplain Management Program to complete this process. The proposed language for the text amendment is the product of this coordination.

The current Flood Control Regulations were approved by the Toledo Plan Commission on June 9, 2011 and approved by the Toledo City Council on July 26, 2011 via Ord. 368-11. Exhibit B is the existing text as is

written in Chapter 1110 - Flood Control Regulations. Exhibit C is the proposed text that will become Chapter 1110 - Flood Damage Reduction Regulations. While there have been a number of notable changes to the regulations, there have also been a number of minor rewordings and a complete reorganization and renaming of the regulation's sections. To aid in the review, Exhibit A is attached that outlines the Table of Contents for both the existing and proposed regulations. Following is an overview of the notable changes (See Exhibit C for specific language):

- **Methods of Reducing Flood Loss (1110.0104)** - section added that lists five methods and provisions that the regulations will outline to accomplish its purpose.
- **Lands to Which This Chapter Applies (1110.0105)** - section added that defines the area for which the regulations apply both current and future through annexation.
- **Interpretation (1110.0108)** - section added that states that the interpretation and application of the regulations shall be considered minimum requirements, construed in favor of the City of Toledo, and not limit or repeal any other power granted under state statutes.
- **Severability (1110.0110)** - section added that states if any section of the Chapter is declared unconstitutional or invalid, the validity of the overall Chapter will not be affected.
- **Flood Insurance Risk Zones (1110.0217)** - definitions revised to make clearer by adding “in any given year” after “Special flood hazard areas inundated by the 100-year flood”.
- **Floodproofing (1110.0221)** - definition added that states that any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage.
- **Letter of Map Change (1110.0228)** - definition revised for a Conditional Letter of Map Revision to more accurately reflect its true meaning.
- **Mean Sea Level (1110.0232)** - definition added that states the datum to which the base flood elevations are referenced.
- **New Construction (1110.0234)** - definition revised to reflect text in the Code of Federal Regulations (CFR).
- **Substantial Improvement (1110.0249)** - definition revised to remove any improvement to a structure that is considered new construction as a term that is not included as a substantial improvement.
- **Large-Scale Development (Various Sections)** - “large-scale development” replaced with “new development” throughout the regulations.
- **Designation of the Floodplain Administrator (1110.0301)** - “or their Designee” added after the Chief Building Official to allow another person to act as Floodplain Administrator.
- **Approval (1110.0305B)** - a set time added of 30 days in which a Floodplain Development Permit Application shall be acted upon. In addition, both the commencement of work and expiration date of the permit changed from one year to 180 days to coincide with the with the “Start of Construction” definition.
- **Post-Construction Certification Required (1110.0307C)** - added that new substantially improved nonresidential structures that have been floodproofed in lieu of elevation will need to have a Floodproofing Certificate for Non-Residential Structures completed by a registered professional engineer.
- **Exemption for Filing a Development Permit (1110.0309)** - lowers the threshold from \$5000 to \$2500 for filing a permit per FEMA’s request. Also, previous language removed stating that “any proposed action exempt from filing for a Floodplain development permit is also exempt from the standards of these regulations”.
- **State and Federal Development (1110.0310)** - new section added to better organize and explain compliance requirements for State and Federal Development.
- **Requirement to Submit New Technical Data (1110.0311A3b)** - added the word “riverine”.
- **Data Use and Flood Map Interpretation (1110.0312D)** - standard added that states that the

most restrictive flood zone and the highest base flood elevation standards must be complied with if a development is affected by multiple flood zones and/or base flood elevations. Existing Flood Regulation Section 1110.0401E was subsequently removed.

- **Use of Preliminary Flood Insurance Rate Map and/or Flood Insurance Study Data (Section 1110.0313)** - section added to clarify National Flood Insurance Program minimum standard for use of preliminary Flood Insurance Rate Map and Flood Insurance Study data.
  - **Subdivision and Other New Developments (1110.0403)** - added “and all other proposed new development after “all subdivision proposals” in Section A, B and C.
  - **Residential Structures (1110.0404)** - descriptive paragraph added to beginning of section noting that it applies to new construction and to substantial improvements of residential structures in listed zones.
  - **Residential Structures (1110.0404E)** - replaced “openings sufficient to allow unimpeded movement of Flood waters” with “openings to allow the automatic equalization of hydrostatic pressure”.
  - **Non-Residential Structures (1110.0405)** - descriptive paragraph added to beginning of section noting that it applies to new construction and to substantial improvements of non-residential structures in listed zones.
  - **Recreational Vehicles (1110.0407)** - added Section C as a standard that states that the vehicles must be placed on the site per the issued floodplain development permit.
  - **Appeals Board Established (1110.0501)** - language added that states that City Council shall appoint and reappoint members to an Appeals Board and the members shall serve five-year terms. A chairperson shall be elected by the members. All meetings shall be open to the public and minutes of the proceedings shall be kept and filed at the Division of Building Inspection.
  - **Variiances (1110.0504)** - opening paragraph added indicating a person’s ability to apply for a variance and the Appeals Boards power to authorize such variances. A section was also added to allow for the collection of a variance application fee. In addition, the Notice for Public Hearing Section was updated to specify that a public hearing shall be held within 30 days of the receipt of a variance application.
  - **Notice of Violation (1110.0602)** - previously named a Stop Work Order, the Section now specifies that the written notice shall list the violations, specify a reasonable time for performance, and advise of the right to appeal.

Adoption of the revised Flood Control Regulations, as outlined in Exhibit “C,” will maintain the City’s eligibility in the National Flood Insurance Program, improve the City’s storm water management, and help property owners in the City qualify for greater discounts on flood insurance.

NOW THEREFORE, Be it ordained by the Council of the City of Toledo:

SECTION 1. That Toledo Municipal Code, Part Eleven, Subsection 1110.00 which read as follows;

## **Chapter 1110 | Flood Control Regulations**

### **1110.0100 | General**

#### **1110.0101 Statutory Authorization**

Article XVIII, Section 3 of the Ohio Constitution and Sections 8 (m) and (r) of the Charter of the City of Toledo grant the City of Toledo the legal authority to adopt land use and control measures for promoting the health, safety and general welfare of the citizens of the City.  
(Ord. 368-11. Passed 07-26-11.)

### **1110.0102 Findings of Fact**

The City of Toledo has special flood hazard areas that are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. Additionally, structures that are inadequately elevated, floodproofed, or otherwise protected from flood damage also contribute to the flood loss. In order to minimize the threat of such damages and to achieve the purposes hereinafter set forth, these regulations are adopted.

(Ord. 368-11. Passed 07-26-11.)

### **1110.0103 Warning and Disclaimer of Liability**

The degree of Flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man made or natural causes. These regulations do not imply that land outside the areas of Special Flood Hazard or uses permitted within such areas will be free from Flooding or Flood damage. These regulations shall not create liability on the part of the City of Toledo, any officer or employee thereof, or the Federal Emergency Management Agency for any Flood damage that results from reliance on these regulations or any administrative decision lawfully made hereunder.

(Ord. 368-11. Passed 07-26-11.)

### **1110.0104 Abrogation and Greater Restrictions**

These regulations are not intended to repeal any existing ordinances, codes, statutes or laws including but not limited to subdivision regulations and zoning or building codes.

In the event of a conflict between these regulations and any other ordinance, code, statute or law the more restrictive shall be followed. These regulations shall not impair any deed restriction covenant or easement but the land subject to such interests shall also be governed by the regulations.

In the interpretation and application of these regulations, all provisions shall be considered as minimum requirements, be liberally construed in favor of the City of Toledo and be deemed neither to limit nor repeal any other powers granted under state or federal law.

For the purposes of this Chapter, the following studies and / or maps are adopted:

- A. Flood Insurance Rate Map for Lucas County, Ohio and Incorporated Areas effective date August 16, 2011.
- B. Flood Insurance Study for Lucas County, Ohio and Incorporated Areas effective date August 16, 2011.
- C. Other studies and / or maps, which may be relied upon for establishment of the flood protection elevation, delineation of the 100-year Flood Plain, floodways or delineation of other areas of special flood hazard.
- D. Any hydrologic and hydraulic engineering analysis authored by a registered Professional Engineer in the State of Ohio, which has been approved by the City of Toledo as required by Section 1110.0600(C) Subdivisions and Large Developments.

Any revisions to the aforementioned maps and / or studies are hereby adopted by reference and declared to be a part of these regulations. Such maps and/or studies are on file at the Division of Engineering Services.

(Ord. 368-11. Passed 07-26-11.)

### **1110.0105 Statement of Purpose**

It is the purpose of these regulations to promote the public health, safety and general welfare, and to:

- A. Protect human life and health;
  - B. Minimize expenditure of public money for costly Flood control projects;
  - C. Minimize the need for rescue and relief efforts associated with Flooding and generally undertaken at the expense of the general public;
  - D. Minimize prolonged business interruptions;
  - E. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines and streets and bridges located in areas of Special Flood Hazard;
  - F. Help maintain a stable tax base by promoting the proper use and Development of areas of Special Flood Hazard so as to protect property and minimize future blight from Flood loss;
  - G. Ensure that those who occupy the areas of Special Flood Hazard assume responsibility for their actions;
  - H. Minimize the impact of Development on adjacent properties within and near Flood prone areas;
  - I. Ensure that the Flood storage and conveyance functions of the Floodplain are maintained;
  - J. Minimize the impact of development on the natural, beneficial values of the Floodplain;
  - K. Prevent Floodplain uses that are hazardous or environmentally incompatible with the Floodplain; and
  - L. Meet community participation requirements of the National Flood Insurance Program.
- (Ord. 368-11. Passed 07-26-11.)

## 1110.0200 | Definitions

**1110.0201** “Accessory Structure” means a Structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal Structure.  
(Ord. 368-11. Passed 07-26-11.)

**1110.0202** “Appeal” means a request for review of the Floodplain administrator’s interpretation of any provision of these regulations.  
(Ord. 368-11. Passed 07-26-11.)

**1110.0203** “Applicant” means a person or other legal entity who is responsible, per these regulations, for submittal of a Floodplain Development Permit to the Floodplain Administrator, the Toledo Plan Commission, or the Division of Inspection, as applicable, as specified herein.  
(Ord. 368-11. Passed 07-26-11.)

**1110.0204** “Base Flood” means a Flood having a one percent chance of being equaled or exceeded in any given year. The Base Flood may also be referred to as the 1% chance annual Flood or one hundred (100) year Flood.  
(Ord. 368-11. Passed 07-26-11.)

**1110.0205** “Base (100-Year) Flood Elevation (BFE)” means the water surface elevation of the Base Flood in relation to a specified datum, usually the National Geodetic Vertical Datum of 1929 or the North American Vertical Datum of 1988, and usually expressed in Feet Mean Sea Level (MSL). In

Zone AO areas, the Base Flood elevation is the natural grade elevation plus the depth number (from 1 to 3 feet).

(Ord. 368-11. Passed 07-26-11.)

**1110.0206** “Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

(Ord. 368-11. Passed 07-26-11.)

**1110.0207** “Building Permit” means a document issued by the Certified Building Official which approves the construction or alteration of residential and non-residential structures as being in compliance with the State and City building codes, based on the submission and successful plan review of construction documents detailing the construction or alterations.

(Ord. 368-11. Passed 07-26-11.)

**1110.0208** “Development” means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

(Ord. 368-11. Passed 07-26-11.)

**1110.0209** “Ditch” means a long trench or channel dug into the ground for permanent drainage purposes.

(Ord. 368-11. Passed 07-26-11.)

**1110.0210** “Enclosure Below the Lowest Floor” - see “Lowest Floor.” (Ord. 368-11. Passed 07-26-11.)

**1110.0211** “Executive Order 11988 (Floodplain Management)” means the order issued by President Carter in 1977 which requires that no federally assisted activities be conducted in or have the potential to affect identified Special Flood Hazard Areas, unless there is no practicable alternative.

(Ord. 368-11. Passed 07-26-11.)

**1110.0212** “Federal Emergency Management Agency (FEMA)” means the agency with the overall responsibility for administering the National Flood Insurance Program.

(Ord. 368-11. Passed 07-26-11.)

**1110.0213** “Fill,” means a deposit of earth material placed by artificial means. (Ord. 368-11. Passed 07-26-11.)

**1110.0214** “Flood” or “Flooding” means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

(Ord. 368-11. Passed 07-26-11.)

**1110.0215** “Flood Hazard Boundary Map (FHBM)” means the initial map produced by the Federal Emergency Management Agency, or U.S. Department of Housing and Urban Development, for a community depicting approximate Special Flood Hazard Areas. (Ord. 368-11. Passed 07-26-11.)

**1110.0216** “Flood Insurance Rate Map (FIRM)” means an official map on which the Federal Emergency Management Agency or the U.S. Department of Housing and Urban Development has delineated the areas of Special Flood Hazard.

(Ord. 368-11. Passed 07-26-11.)

**1110.0217** “Flood Insurance Risk Zones” means the zone designations on FHBMs or FIRMs that

indicate the magnitude of the Flood hazard in specific areas of a community, and are as follows:

- A. “Zone A” means Special Flood Hazard Areas inundated by the 100-year Flood; Base Flood Elevations are not determined.
- B. “Zones A1-30 and Zone AE” means Special Flood Hazard Areas inundated by the 100-year Flood; Base Flood Elevations are determined.
- C. “Zone AO” means Special Flood Hazard Areas inundated by the 100-year Flood; with Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths are determined.
- D. “Zone AH” means Special Flood Hazard Areas inundated by the 100-year Flood; Flood depths of 1 to 3 feet (usually areas of ponding); Base Flood Elevations are determined.
- E. “Zone A99” means Special Flood Hazard Areas inundated by the 100-year Flood to be protected from the 100-year Flood by a Federal Flood protection system under construction; no Base Flood Elevations are determined.
- F. “Zone B and Zone X (shaded)” means Areas of 500-year Flood; areas subject to the 100-year Flood with average depths of less than 1 foot or with contributing drainage area less than 1 square mile; and areas protected by levees from the Base Flood.
- G. “Zone C and Zone X (unshaded)” means Areas determined to be outside the 500- year Floodplain.

(Ord. 368-11. Passed 07-26-11.)

**1110.0218** “Flood Insurance Study (FIS)” means the official report in which the Federal Emergency Management Agency or the U.S. Department of Housing and Urban Development has provided Flood profiles, Floodway boundaries (sometimes shown on Flood Boundary and Floodway Maps), and the water surface elevations of the Base Flood.

(Ord. 368-11. Passed 07-26-11.)

**1110.0219** “Flood Loss” means destruction and casualties caused by flooding. (Ord. 368-11. Passed 07-26-11.)

**1110.0220** “Floodplain” means any land area susceptible to being inundated by flood waters from any source.

(Ord. 368-11. Passed 07-26-11.)

**1110.0221** “Flood Protection Elevation (FPE)” means the Base Flood Elevation plus one (1) foot of 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 Flood Plain Administrator.

(Ord. 368-11. Passed 07-26-11.)

**1110.0222** “Floodway” means the channel of a river or other Watercourse and the adjacent land areas that have been reserved in order to pass the Base Flood discharge. A Floodway is typically determined through a hydraulic and hydrologic engineering analysis such that the cumulative increase in the water surface elevation of the Base Flood discharge is no more than a designated height. In no case shall the designated height be more than one foot at any point within the community. The Floodway is an extremely hazardous area, and is usually characterized by any of the following: Moderate to high velocity Flood waters, high potential for debris and projectile impacts, and moderate to high erosion forces.

(Ord. 368-11. Passed 07-26-11.)

**1110.0223** “Freeboard” means a factor of safety usually expressed in feet above a Flood level for the purposes of Floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to Flood heights greater than the height calculated for a selected size Flood and Floodway conditions, such as wave action, obstructed bridge openings, debris and ice jams, and the hydrologic effect of urbanization in a watershed.  
(Ord. 368-11. Passed 07-26-11.)

**1110.0224** “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 listings on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on the State of Ohio's inventory of historic places maintained by the Ohio Historic Preservation Office; or
- D. Individually listed on the inventory of historic places maintained by the City of Toledo whose historic preservation program has been certified by the Ohio Historic Preservation Office.

(Ord. 368-11. Passed 07-26-11.)

**1110.0225** “Hydrologic and Hydraulic Engineering Analysis” means an analysis performed by a professional engineer, registered in the State of Ohio, in accordance with standard engineering practices as accepted by FEMA, used to determine Flood elevations and/or Floodway boundaries.  
(Ord. 368-11. Passed 07-26-11.)

**1110.0226** “Impervious Cover” means any surface that cannot effectively absorb or infiltrate water. This may include roads, streets, parking lots, rooftops, sidewalks and other areas not covered by vegetation.  
(Ord. 368-11. Passed 07-26-11.)

**1110.0227** “Letter of Map Change (LOMC)” means 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): A revision based on technical data showing that a property was incorrectly included in a designated Special Flood Hazard Area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property is not located in a Special Flood Hazard Area.
- 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 common type of LOMR, a LOMR-F, is a determination concerning whether a Structure or parcel has been elevated by Fill above the Base Flood Elevation and is, therefore, excluded from the Special Flood Hazard Area.
- C. Conditional Letter of Map Revision (CLOMR): A formal review and comment by FEMA as to whether a proposed project complies with the minimum National Flood Insurance Program Floodplain management criteria. A CLOMR does not amend or revise effective

Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies.

(Ord. 368-11. Passed 07-26-11.)

**1110.0228** “Lowest Floor” means the floor of the lowest enclosed area (including a Basement) of a Structure. This definition excludes an “Enclosure Below the Lowest Floor” which is an unfinished or Flood resistant enclosure usable solely for parking of vehicles, building access or storage, in an area other than a Basement area, provided that such enclosure is built in accordance with the applicable design requirements specified in these regulations for enclosures below the Lowest Floor.

(Ord. 368-11. Passed 07-26-11.)

**1110.0229** “Manufactured Home” means a Structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "Manufactured Home" does not include a "Recreational Vehicle". For the purposes of these regulations, a Manufactured Home includes Manufactured Homes and mobile homes as defined in Chapter 3733 of the Ohio Revised Code.

(Ord. 368-11. Passed 07-26-11.)

**1110.0230** “Manufactured Home Park” means a Manufactured Home Park as specified in the Ohio Administrative Code 3701-27-01, which is defined as any tract of land upon which three or more Manufactured Homes, used for habitation are parked, either free of charge or for revenue purposes, and includes any roadway, building, Structure, vehicle, or enclosure used or intended for use as part of the facilities of the park. A tract of land that is subdivided and the individual lots are not for rent or rented, but are for sale or sold for the purpose of installation of Manufactured Homes on the lots, is not a Manufactured Home Park, even though three or more Manufactured Homes are parked thereon, if the roadways are dedicated to the local government authority.

(Ord. 368-11. Passed 07-26-11.)

**1110.0231** “National Flood Insurance Program (NFIP)” means the Federal program enabling property owners in participating communities to purchase insurance protection against losses from Flooding. This insurance is designed to provide an insurance alternative to disaster assistance to meet the escalating costs of repairing damage to buildings and their contents caused by Floods. Participation in the NFIP is based on an agreement between local communities and the Federal government that states if a community will adopt and enforce Floodplain management regulations to reduce future Flood risks to all Development in Special Flood Hazard Areas, the Federal government will make Flood insurance available within the community as a financial protection against Flood Loss.

(Ord. 368-11. Passed 07-26-11.)

**1110.0232** “New Construction” means Structures for which the "Start of Construction" commenced on or after the initial effective date of the City of Toledo’s Flood Insurance Rate Map, June 4, 1980, and includes any subsequent improvements to such Structures. (Ord. 368-11. Passed 07-26-11.)

**1110.0233** “Ordinary High Water Mark” means the point of the bank or shore to which the presence and action of surface water is so continuous as to leave a distinct mark by erosion, destruction or prevention of woody terrestrial vegetation, predominance of aquatic vegetation or other easily recognized characteristic. The Ordinary High Water Mark defines the channel of a Watercourse.

(Ord. 368-11. Passed 07-26-11.)

**1110.0234** “Person” means any individual or group of individuals, corporation, partnership,

association, or any other entity, including state and local governments and agencies. An agency is further defined in the Ohio Revised Code Section 111.15 as any governmental entity of the state and includes, but is not limited to, any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or state community college. “Agency” does not include the general assembly, the controlling board, the adjutant general’s department, or any court.

(Ord. 368-11. Passed 07-26-11.)

**1110.0235** “Plat” means a map of a tract or parcel of land. (Ord. 368-11. Passed 07-26-11.)

**1110.0236** “Preliminary Plan” means a drawing of a development for the purpose of Plan Commission or Board of Zoning of Appeals approval.

(Ord. 368-11. Passed 07-26-11.)

**1110.0237** “Recreational Vehicle” means a vehicle which is (1) built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, (3) designed to be self-propelled or permanently towable by a light duty truck, and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

(Ord. 368-11. Passed 07-26-11.)

**1110.0238** “Registered Professional Architect” means a person registered to engage in the practice of architecture under the provisions of sections 4703.01 to 4703.19 of the Revised Code.

(Ord. 368-11. Passed 07-26-11.)

**1110.0239** “Registered Professional Engineer” means a person registered as a professional engineer under Chapter 4733 of the Revised Code.

(Ord. 368-11. Passed 07-26-11.)

**1110.0240** “Registered Professional Surveyor” means a person registered as a professional surveyor under the Chapter 4733 of the Revised Code.

(Ord. 368-11. Passed 07-26-11.)

**1110.0241** “Special Flood Hazard Area” or “Areas of Special Flood Hazard” means the land in the Floodplain subject to a one percent or greater chance of Flooding in any given year. Special Flood Hazard Areas are designated by the Federal Emergency Management Agency on Flood Insurance Rate Maps, Flood Insurance Studies, Flood Boundary and Floodway Maps and Flood Hazard Boundary Maps as Zones A, AE, AH, AO, A1 30, and A99. Special Flood Hazard Areas may also refer to areas that are Flood prone and designated from other federal state or local sources of data including but not limited to historical Flood information reflecting high water marks, previous Flood inundation areas, and Flood prone soils associated with a Watercourse.

(Ord. 368-11. Passed 07-26-11.)

**1110.0242** “Start of Construction” means the date the Building Permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a Structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a Manufactured Home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a Basement, footings, piers, or foundations or

the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main Structure. 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 a building. (Ord. 368-11. Passed 07-26-11.)

**1110.0243** “Stream Bank” as used herein means the area adjacent to a Watercourse or Ditch with a slope greater than 25 percent. The Stream Bank is measured from the edge of the water outward to a point where the slope levels out to less than 25 percent for a distance of at least 12 feet measured laterally from the Watercourse or Ditch. (Ord. 368-11. Passed 07-26-11.)

**1110.0244** “Structure” means a walled and roofed building, Manufactured Home, or gas or liquid storage tank that is principally above ground. (Ord. 368-11. Passed 07-26-11.)

**1110.0245** “Subdivision” means either:

- A. The division of any parcel of land shown as a unit or as contiguous units on the last preceding general tax list and duplicate of real and public utility property, into two or more parcels, sites, or lots, any one of which is less than five acres provided, however, that the following are exempt: a division or partition of land into parcels of more than five acres not involving any new streets or easements of access; the sale or exchange of parcels between adjoining lot owners, where that sale or exchange does not create additional building sites; or parcels of land that are specifically and specially exempted out by Toledo City Council; or,
- B. The improvement of one or more parcels of land for residential, commercial, or industrial Structures or groups of Structures involving the division or allocation of land for the opening, widening, or extension of any public or private street or streets, except private streets serving industrial Structures, or involving the division or allocation of land as open spaces for common use by owners, occupants, or leaseholders or as easements for the extension and maintenance of public or private sewer, water, storm drainage, or other similar facilities.

(Ord. 368-11. Passed 07-26-11.)

**1110.0246** “Substantial Damage” means damage of any origin sustained by a Structure whereby the cost of restoring the Structure to its before damaged condition would equal or exceed 50 percent of the market value of the Structure before the damage occurred.

Substantial Damage also means Flood related damage sustained by a Structure on two (2) separate occasions during a 10-year period for which the cost of repairs at the time of each such Flood event, on the average, equals or exceeds 25 percent of the market value of the Structure before the damage occurred.

(Ord. 368-11. Passed 07-26-11.)

**1110.0247** “Substantial Improvement” means any reconstruction, rehabilitation, addition, or other improvement of a Structure, the cost of which equals or exceeds 50 percent of the market value of the Structure before the Start of Construction of the improvement. When the combined total of all previous improvements or repairs made during the life of the Structure equals or exceeds 50 percent of a Structure’s market value, that Structure is considered to have undergone Substantial Improvement. This term includes Structures that have incurred “Substantial Damage”, regardless of the actual repair work performed. The term does not, however, include:

- A. Any improvement to a Structure that is considered New Construction;

- B. 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 prior to the application for a Development permit by the Division of Building Inspection and which are the minimum necessary to assure safe living conditions; or
- C. Any alteration of a Historic Structure provided that the alteration would not preclude the Structure's continued designation as a Historic Structure.

(Ord. 368-11. Passed 07-26-11; Ord. 510-21. Passed 09-28-21.)

**1110.0248** “Variance” means a grant of relief from the standards of these regulations consistent with the Variance conditions herein.

(Ord. 368-11. Passed 07-26-11.)

**1110.0249** “Violation” means the failure of a Structure or other Development to be fully compliant with these regulations.

(Ord. 368-11. Passed 07-26-11.)

**1110.0250** “Watercourse” means a natural or artificial waterway, such as a stream or river, with a defined bed and channel and a definite direction of course that is contained within, flows through, or borders the community.

(Ord. 368-11. Passed 07-26-11.)

## **1110.0300 | Administration**

### **1110.0301 Floodplain Administrator**

The Certified Building Official is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator.

(Ord. 368-11. Passed 07-26-11.)

**1110.0302 Duties and Responsibilities of the Floodplain Administrator** The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

- A. Evaluating applications for permits to develop in Special Flood Hazard Areas.
- B. Interpreting Floodplain boundaries and providing Flood Hazard and Flood Protection Elevation information.
- C. Issuing permits to develop in Special Flood Hazard Areas when the provisions of these regulations have been met, or refuse to issue the same in the event of noncompliance.
- D. Inspecting buildings and lands to determine whether any Violations of these regulations have been committed.
- E. Making and permanently keeping all records for public inspection necessary for the administration of these regulations including Flood Insurance Rate Maps, Letters of Map Amendment and Revision, records of issuance and denial of permits to develop in Special Flood Hazard Areas, determinations of whether Development is in or out of Special Flood Hazard Areas for the purpose of issuing Floodplain Development permits, elevation certificates, Variances, and records of enforcement actions taken for Violations of these regulations.
- F. Enforcing the provisions of these regulations.
- G. Providing information, testimony, or other evidence as needed during Variance hearings.
- H. Coordinating map maintenance activities and FEMA follow-up.

- I. Conducting Substantial Damage determinations to determine whether existing Structures, damaged from any source and in Special Flood Hazard Areas identified by FEMA, must meet the Development standards of these regulations.
  - J. Making periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions.
- (Ord. 368-11. Passed 07-26-11.)

### **1110.0303 Floodplain Development Permits Required**

It shall be unlawful for any Person to begin construction or other Development activity including but not limited to Filling; grading; construction; alteration, remodeling, or expanding any Structure; or alteration of any Watercourse wholly within, partially within or in contact with any identified Special Flood Hazard Areas, or upon any property which contains any portion of a levee indicated on the currently effective Flood Insurance Rate Map for Lucas County, until a Floodplain Development permit is obtained from the Floodplain Administrator. Such Floodplain Development permit shall show that the proposed Development activity is in conformity with the provisions of these regulations. The Floodplain Administrator shall issue no such permit until the requirements of these regulations have been met.

(Ord. 368-11. Passed 07-26-11.)

### **1110.0304 Application**

An application for a Floodplain Development permit shall be required for all Development activities located wholly within, partially within, or in contact with an identified Special Flood Hazard Area. The owner of the property or his/her agent, herein referred to as the Applicant, shall make such application prior to the actual commencement of such construction on a form furnished for that purpose. Where it is unclear whether a Development site is in a Special Flood Hazard Area, the Floodplain Administrator may require an application for a Floodplain Development permit to determine the Development's location. Such applications shall include, but not be limited to:

- A. Site plans drawn to scale showing the nature, location, dimensions, and topography of the area in question; the location of existing or proposed Structures, fill, storage of materials, drainage facilities, and the location of the foregoing.
- B. Elevation of the existing, natural ground where Structures are proposed.
- C. Elevation of the Lowest Floor, including Basement, of all proposed Structures.
- D. Such other material and information as may be requested by the Floodplain Administrator to determine conformance with, and provide enforcement of these regulations.
- E. Technical analyses conducted by the appropriate design professional registered in the State of Ohio and submitted with an application for a Floodplain Development permit when applicable.
- F. Floodproofing certification for non-residential Floodproofed Structure.
- G. Certification that fully enclosed areas below the Lowest Floor of a Structure not meeting the design requirements within this Chapter are designed to automatically equalize hydrostatic Flood forces.
- H. Description of any Watercourse alteration or relocation that the Flood carrying capacity of the Watercourse will not be diminished, and maintenance assurances.
- I. A Hydrologic and Hydraulic Engineering Analysis demonstrating that the cumulative effect of proposed Development, when combined with all other existing and anticipated

Development will not increase the water surface elevation of the Base Flood by more than one foot in Special Flood Hazard Areas where the Federal Emergency Management Agency has provided Base Flood Elevations but no Floodway.

- J. A Hydrologic and Hydraulic Engineering Analysis showing impact of any Development on Flood heights in an identified Floodway.
- K. Generation of Base Flood Elevation(s) for subdivision and large-scale Developments.
- L. Volumetric calculations demonstrating compensatory storage have been provided.
- M. Generation of the 500-year Flood elevation for critical Development.
- N. A Floodplain Development Permit application fee by the schedule of fees adopted by the City of Toledo shall be charged for each Floodplain Development.  
(Ord. 368-11. Passed 07-26-11.)

#### **1110.0305 Review of Floodplain Development Permit Application**

After receipt of a completed application that includes all information required in these regulations, the Floodplain Administrator shall review the application to ensure that the standards of these regulations have been met and assure that all necessary permits have been received from those federal, state, or local government agencies from which prior approval is required. It shall be the responsibility of the Applicant to obtain all external permits required, including but not limited to permits issued by the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act and the Ohio Environmental Protection Agency under Section 401 of the Clean Water Act.

(Ord. 368-11. Passed 07-26-11.)

#### **1110.0306 Approval of Floodplain Development Permit Application**

Upon receipt of a completed Floodplain Development permit application, the Floodplain Administrator shall either approve or disapprove the application. The City of Toledo's permit approval process is dependent upon the review of the Division of Engineering Services and other agencies. No approval will be granted until all necessary reviews have been completed. If an application is approved, a Floodplain Development permit shall then be issued. All Floodplain Development permits shall be conditional upon the commencement of work within one (1) year. A Floodplain Development permit will expire one (1) year after issuance unless the permitted activity has been substantially begun and is thereafter pursued to completion.

(Ord. 368-11. Passed 07-26-11.)

#### **1110.0307 Post-Construction Certifications Required**

As-built certifications are required after a Floodplain Development permit has been issued for new or substantially improved residential Structures or nonresidential Structures that have been elevated. The Applicant shall have a Federal Emergency Management Agency Elevation Certificate completed by a registered surveyor to record as-built elevation data. For elevated Structures in Zone A and Zone AO areas without a Base Flood Elevation, the property owner or owner's representative may complete the elevation certificate.

For all development activities subject to the standards of Section 1110.0400(A), a Letter of Map Revision is required after a Floodplain Development permit has been issued.

(Ord. 368-11. Passed 07-26-11.)

#### **1110.0308 Revoking a Floodplain Development Permit**

A Floodplain Development permit is revocable in certain circumstances, including but not limited

to, failure of the actual Development activity to conform to the terms of the application and permit granted thereon. In the event of the revocation of a permit, an Appeal may be taken to the Appeals Board in accordance with this Chapter.  
(Ord. 368-11. Passed 07-26-11.)

### **1110.0309 Exemption From Filing a Development Permit**

An application for a Floodplain Development permit shall not be required for:

- A.** Maintenance work such as roofing, painting, and Basement sealing, or for small nonstructural Development activities (except for Filling and grading) valued at less than \$5,000, indexed to the Engineering News Record's Building Cost Index at the time of passage of this regulation.
- B.** Development activities in an existing or proposed Manufactured Home Park that are under the authority of the Ohio Department of Health and subject to the Flood damage reduction provisions of the Ohio Administrative Code Section 3701.
- C.** Major utility facilities permitted by the Ohio Power Siting Board under Section 4906 of the Ohio Revised Code.
- D.** Hazardous waste disposal facilities permitted by the Hazardous Waste Siting Board under Section 3734 of the Ohio Revised Code.
- E.** Development activities undertaken by a federal agency and which are subject to Federal Executive Order 11988 - Floodplain Management.

Any proposed action exempt from filing for a Floodplain development permit is also exempt from the standards of these regulations.  
(Ord. 368-11. Passed 07-26-11.)

### **1110.0400 | Map Maintenance Activities**

To meet National Flood Insurance Program minimum requirements to have Flood data reviewed and approved by FEMA, and to ensure that the City of Toledo Flood maps, studies and other data identified in Section 1110.0104(D) accurately represent Flooding conditions so appropriate Flood Plain management criteria are based on current data, the following map maintenance activities are identified:

- A.** For all Development proposals that impact Floodway delineations or Base Flood Elevations, the City shall ensure that technical data reflecting such changes be submitted to FEMA within six months of the date such information becomes available. These Development proposals include:
  - 1.** Floodway encroachments that increase or decrease Base Flood Elevations or alter Floodway boundaries;
  - 2.** Fill sites to be used for the placement of proposed Structures where the Applicant desires to remove the site from the Special Flood Hazard Area;
  - 3.** Alteration of Watercourses that result in a relocation or elimination of the Special Flood Hazard Area, including the placement of culverts; and
  - 4.** Subdivision or large-scale Development proposals requiring the establishment of Base Flood Elevations.
- B.** It is the responsibility of the Applicant to have technical data, required in this Chapter, prepared in a format required for a Conditional Letter of Map Revision or Letter of Map Revision, and submitted to FEMA. Submittal and processing fees for these map revisions

shall be the responsibility of the Applicant.

- C. The Floodplain Administrator shall require a Conditional Letter of Map Revision prior to the issuance of a Floodplain Development permit for a proposed Floodway encroachment that increases the Base Flood Elevation or a proposed Development that increases the Base Flood Elevation by more than one foot in areas where FEMA has provided Base Flood Elevations but no Floodway.
  - D. Floodplain Development permits issued by the Floodplain Administrator shall be conditioned upon the Applicant obtaining a Letter of Map Revision from FEMA for any Development proposal subject to this Chapter.
  - E. The Floodplain Administrator may request changes to any of the information shown on an effective map that does not impact Floodplain or Floodway delineations or Base Flood Elevations, such as labeling or planimetric details. Such a submission shall include appropriate supporting documentation made in writing by the Mayor of the City of Toledo, and may be submitted at any time.
  - F. Upon occurrence, the Floodplain Administrator shall notify FEMA in writing whenever the boundaries of the City of Toledo have been modified by annexation or agreement, or if the City of Toledo no longer has authority to adopt and enforce Floodplain management regulations for a particular area. Included within such notification should be a copy of a map of the City of Toledo suitable for reproduction, clearly showing the new corporate limits or the new area for which the City of Toledo has assumed or relinquished Floodplain management regulatory authority.
- (Ord. 368-11. Passed 07-26-11.)

#### **1110.0401 Data Use and Flood Map Interpretation**

The following guidelines shall apply to the use and interpretation of maps and other data showing areas of special flood hazard:

- A. In areas where FEMA has not identified special flood hazard areas, or in FEMA identified special flood hazard areas where base flood elevation and floodway data have not been identified, the Floodplain Administrator shall review and reasonably utilize any other flood hazard data available from a federal, state, or other source.
- B. Base flood elevations and floodway boundaries produced on FEMA flood maps and studies shall take precedence over base flood elevations and floodway boundaries by any other source that reflect a reduced floodway width and/or lower base flood elevations. Other sources of data, showing increased base flood elevations and/or larger floodway areas than are shown on FEMA flood maps and studies, shall be reasonably used by the Floodplain Administrator.
- C. When Preliminary Flood Insurance Rate Maps and / or Flood Insurance Study have been provided by FEMA:
  - 1. Upon the issuance of a Letter of Final Determination by the FEMA, the preliminary flood hazard data shall be used and replace all previously existing flood hazard data provided from FEMA for the purposes of administering these regulations.
  - 2. Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall only be required where no base flood elevations and /or floodway areas exist or where the preliminary base flood elevations or floodway area exceed the base flood elevations and/or floodway widths in existing flood hazard data provided from FEMA. Such preliminary data may be subject to change and / or appeal to FEMA.

- D. The Floodplain Administrator shall make interpretations, where needed, as to the exact location of the flood boundaries and areas of special flood hazard. A person contesting the determination of the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Chapter.
  - E. Where a map boundary showing an area of special flood hazard and field elevations disagree, the base flood elevations or flood protection elevations (as found on an elevation profile, floodway data table, established high water marks, etc.) shall prevail.
- (Ord. 368-11. Passed 07-26-11.)

### **1110.0500 | Substantial Damage Determinations**

Damages to Structures may result from a variety of causes including Flood, tornado, wind, heavy snow, fire, etc. After such a damage event, the Floodplain Administrator shall:

- A. Determine whether damaged Structures are located in Special Flood Hazard Areas;
- B. Conduct Substantial Damage determinations for damaged Structures located in Special Flood Hazard Areas; and
- C. Make reasonable attempt to notify owners of substantially damaged Structures of the need to obtain a Floodplain Development permit prior to repair, rehabilitation, or reconstruction.

Additionally, the Floodplain Administrator may implement other measures to assist with the substantial damage determination and subsequent repair process. These measures include issuing press releases, public service announcements, and other public information materials related to the Floodplain development permits and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures materials and other information related to the proper repair of damaged structures in Special Flood Hazard Areas; and assisting owners of substantially damaged structures with Increased Cost of Compliance insurance claims.

(Ord. 368-11. Passed 07-26-11.)

### **1110.0600 | Use Standards Within Special Flood Hazard Areas**

The following use and development standards apply to development wholly within, partially within, or in contact with any Special Flood Hazard area:

All uses not otherwise prohibited in this section or any other applicable land use regulation adopted by City of Toledo are allowed provided they meet and do not conflict with the provisions of these regulations.

- A. Prohibited Uses
  - 1. Private water supply systems in all Special Flood Hazard Areas that would be otherwise permitted under Section 3701 of the Ohio Revised Code.
  - 2. Infectious waste treatment facilities in all Special Flood Hazard Areas that would be otherwise permitted under Section 3734 of the Ohio Revised Code.
  - 3. New construction of any residential or nonresidential structures in Floodway areas.
  - 4. Storage or processing of materials that are hazardous, pollutants, flammable, poisonous, explosive, or could be injurious to human, animal or plant life in time of flooding or that have a high flood damage potential in the identified Special Flood Hazard Area.
  - 5. Storage or use of material or equipment that, in time of Flooding, could become buoyant and pose an obstruction to flow in identified Floodway areas, unless however, the material or equipment is firmly anchored to prevent flotation.

**B. Water, Sanitary Sewer and Waste Systems not otherwise regulated by the Ohio Revised Code**

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of Floodwaters;
2. New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into Floodwaters; and,
3. On-site waste disposal systems shall be located to avoid impairment to or contamination from them during Flooding.

**C. Subdivisions and Large Developments**

1. All Subdivision proposals shall be consistent with the need to minimize Flood damage and are subject to all applicable standards in these regulations.
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 Subdivision proposals shall have adequate drainage provided to reduce exposure to Flood damage.
4. In all Special Flood Hazard Areas where Base Flood Elevation data are not available, the Applicant shall provide a Hydrologic and Hydraulic Engineering Analysis that generates Base Flood Elevations for all major (Platted) Subdivision proposals, and other proposed Developments at least 5 acres or 50 lots in size, whichever is less.
5. The applicant shall meet the requirement to submit technical data to FEMA when a Hydrologic and Hydraulic Engineering Analysis is completed that generates Base Flood Elevations.
6. All preliminary plans for Platted subdivisions shall identify the Flood hazard area and the elevation of the Base Flood, where published Base Flood Elevation data are available.
7. All final subdivision Plats shall provide the boundary of the Special Flood Hazard Area, the Floodway boundary, and Base Flood Elevations.
8. 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) 1% chance annual Floodplain. The buildable area shall be 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, if applicable.

**D. Residential Structures**

1. New Construction and Substantial Improvements shall be anchored to prevent flotation, collapse, or lateral movement of the Structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Where a Structure, including its foundation members, is elevated on Fill to or above the Base Flood Elevation, the requirements for anchoring and construction materials resistant to Flood damage are satisfied.
2. New Construction and Substantial Improvements shall be constructed with methods and materials resistant to Flood damage.
3. New Construction and Substantial Improvements shall be constructed with electrical,

heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of Flooding.

4. New Construction and Substantial Improvement of any residential Structure, including Manufactured Homes, shall have the Lowest Floor, including crawl space or Basement, elevated to or above the Flood Protection Elevation. In Zone AO areas with no elevations specified, the Structure should have the Lowest Floor, including crawl space or Basement, elevated at least two feet above the highest adjacent natural grade. Where Flood protection data are not available the Structure shall have the Lowest Floor, including crawl space or Basement, elevated at least two feet above the highest adjacent natural grade. Support Structures and other foundation members shall be certified by a registered professional engineer or architect as designed in accordance with ASCE 24, Flood Resistant Design and Construction.
5. New Construction and Substantial Improvements, including Manufactured Homes, that do not have Basements and that are elevated to the Flood Protection Elevation using pilings, columns, posts, or solid foundation perimeter walls with openings sufficient to allow unimpeded movement of Flood waters may have an Enclosure Below the Lowest Floor provided the enclosure meets the following standards:
  - a. Be used only for the parking of vehicles, building access, or storage; and
  - b. Be designed and certified by a registered professional engineer or architect to automatically equalize hydrostatic Flood forces on exterior walls by allowing for the entry and exit of Floodwaters; or
  - c. Have a minimum of two openings on different walls having a total net area not less than one square inch for every square foot of enclosed area, and the bottom of all such openings being no higher than one foot above grade. The openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of Floodwaters.
6. Manufactured Homes shall be affixed to a permanent foundation and anchored to prevent flotation, collapse or lateral movement of the Structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Methods of anchoring may include, but are not limited to, use of over the top or frame ties to ground anchors.
7. 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 is the minimum necessary to preserve the historic character and design of the Structure shall be exempt from the development standards for residential Structures.
8. In AO Zones, New Construction and Substantial Improvement shall have adequate drainage paths around Structures on slopes to guide Floodwaters around and away from the Structure.
9. Each new residential site adjacent to a roadway which is above the Base Flood Elevation, shall have direct access from each structure to a walkway, driveway, or roadway whose surface elevation is not less than the Flood Protection Elevation and such escape route shall lead directly out of the 1% chance annual Floodplain area.

#### E. Nonresidential Structures

1. New Construction and Substantial Improvement of any commercial, industrial or other nonresidential Structure shall meet the requirements identified in Section 1110.0600(D)(1) through (3), and (5) through (7).
  2. New Construction and Substantial Improvement of any commercial, industrial or other non-residential Structure shall either have the Lowest Floor, including crawl space or Basement, elevated to or above the level of the Flood Protection Elevation; or, together with attendant utility and sanitary facilities, shall meet all of the following standards:
    - a. Be dry Floodproofed so that the Structure is watertight with walls substantially impermeable to the passage of water to the level of the Flood Protection Elevation;
    - b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,
    - c. Be certified by a registered professional engineer or architect, through the use of a Federal Emergency Management Agency Floodproofing Certificate, that the design and methods of construction satisfy this Chapter.
  3. Where Flood protection data are not available the Structure shall have the Lowest Floor, including Basement, elevated at least two feet above the highest adjacent natural grade.
  4. Each new nonresidential site adjacent to a roadway which is above the Base Flood Elevation, shall have direct access from each structure to a walkway, driveway, or roadway whose surface elevation is not less than the Flood Protection Elevation and such escape route shall lead directly out of the 1% chance annual Floodplain area.
- F. Accessory Structures**  
Relief to the elevation or dry Floodproofing standards may be granted for Accessory Structures containing no more than 600 square feet. Such Structures: must not be used for human habitation; shall be constructed of Flood resistant materials; shall be constructed and placed on the lot to offer the minimum resistance to the flow of Floodwaters; shall be firmly anchored to prevent flotation; and shall meet the opening requirements of Section 1110.0600 (D)(5)(c). Moreover, service facilities such as electrical and heating equipment shall be elevated or Floodproofed to or above the level of the Flood Protection Elevation.
- G. Recreational Vehicles** shall not be located on sites in Special Flood Hazard Areas for more than 180 days, or they must be fully licensed and ready for highway use, or else they must meet all standards for residential Structures.
- H. Above Ground Gas or Liquid Storage Tanks** shall be anchored to prevent flotation or lateral movement resulting from hydrodynamic and hydrostatic loads.
- I. The following standards apply to all Fill activities in Special Flood Hazard areas:**
1. Fill sites, upon which Structures will be constructed or placed, must be compacted to 95 percent of the maximum density obtainable with the Standard Proctor Test method or an acceptable equivalent method.
  2. Fill slopes shall not be steeper than one foot vertical to two feet horizontal.
  3. Adequate protection against erosion and scour is provided for Fill slopes. When expected velocities during the occurrence of the Base Flood of five feet per second armoring with stone or rock protection shall be provided. When expected velocities

during the Base Flood are five feet per second or less protection shall be provided by vegetative cover.

4. Fill shall be composed of clean granular or earthen material.
5. Fill shall not be placed in the designated Floodway.
6. Fill shall not be placed in wetland areas without approvals from Ohio EPA and the US Army Corps of Engineers, as required by law.

(Ord. 368-11. Passed 07-26-11.)

### **1110.0700 | Assurance of Flood Carrying Capacity**

Pursuant to the purpose and methods of reducing Flood damage stated in these regulations, the following additional standards are adopted to assure that the reduction of the Flood carrying capacity of Watercourses is minimized:

#### **A. Development in Floodways**

1. In Floodway areas, Development shall cause no increase in Flood levels during the occurrence of the Base Flood discharge. Prior to issuance of a Floodplain Development permit, the Applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that the proposed Development would not result in any increase in the Base Flood Elevation; or
2. Development in Floodway areas causing increases in the Base Flood Elevation may be permitted provided the Applicant completes all of the following:
  - a. Meets the requirements to submit technical data in Section 1110.0400 (A);
  - b. An evaluation of alternatives that would not result in increased Base Flood Elevations and an explanation why these alternatives are not feasible;
  - c. Certification that no Structures are located in areas that would be impacted by the increased Base Flood Elevation;
  - d. Documentation of individual legal notices to all impacted property owners within and outside the community, explaining the impact of the proposed action on their property; and
  - e. Concurrence of the Mayor of City of Toledo and the Chief Executive Officer of any other communities impacted by the proposed actions.

#### **B. Development in Riverine Areas with Base Flood Elevations but without Floodways**

1. In Riverine Special Flood Hazard Areas identified by FEMA where Base Flood Elevation data are provided but no Floodways have been designated, the cumulative effect of any proposed Development, when combined with all other existing and anticipated Development, shall not increase the Base Flood Elevation more than 1.0 (one) foot at any point. Prior to issuance of a Floodplain Development permit, the Applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that this standard has been met; or,
2. Development in Riverine Special Flood Hazard Areas identified by FEMA where Base Flood Elevation data are provided but no Floodways have been designated causing more than one foot increase in the Base Flood Elevation may be permitted provided the following is completed by the Applicant: an evaluation of alternatives which would

result in an increase of one foot or less of the Base Flood Elevation and an explanation why these alternatives are not feasible and the criteria listed in Section 1110.0700(A)(2) (a), and (c) through (e) are met.

**C. Alterations of a Watercourse**

For the purpose of these regulations, a Watercourse is altered when any change occurs within its banks. The extent of the banks shall be established by a field determination of the “bankfull stage.” The field determination of “bankfull stage” shall be based on the USDA Forest Service General Technical Report RM-245, or other applicable publication available from a Federal, State, or other authoritative source. For all proposed Developments that alter a Watercourse, the following standards apply:

1. The bankfull Flood carrying capacity of the altered or relocated portion of the Watercourse shall not be diminished. Prior to the issuance of a Floodplain Development permit, the Applicant must submit a description of the extent to which any Watercourse will be altered or relocated as a result of the proposed Development, and certification by a registered professional engineer that the bankfull Flood carrying capacity of the Watercourse will not be diminished.
2. Adjacent communities, the U.S. Army Corps of Engineers, and the Ohio Department of Natural Resources, Division of Water, must be notified prior to any alteration or relocation of a Watercourse. Evidence of such notification must be submitted to the Federal Emergency Management Agency.
3. The Applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of said Watercourse so that the Flood carrying capacity will not be diminished. The Floodplain Administrator may require the permit holder to enter into an agreement with City of Toledo specifying the maintenance responsibilities. If an agreement is required, it shall be made a condition of the Floodplain Development permit.
4. The Applicant shall meet the requirements to submit technical data in Section 1110.0400 (A)(3) when an alteration of a Watercourse results in the relocation or elimination of the Special Flood Hazard Area, including the placement of culverts.

**D. Compensatory Storage**

Fill within the area of Special Flood Hazard shall result in no net loss of natural Floodplain storage. Providing an equal volume of Flood storage by excavation or other compensatory measures shall offset the volume of the loss of Floodplain storage due to Filling in the Special Flood Hazard Area. For the purpose of satisfying this provision, compensating cut may be from any properties within the watershed, along the same watercourse or hydraulically connected, where the Base Flood Elevation is within one foot of the Base Flood Elevation of the fill area, and where the compensating cut and fill are at the same range of elevations. Fill of less than 10 cubic yards per residential lot, cumulative from the time of passage of this regulation, will not require compensating cut, providing that the fill does not adversely affect adjoining properties.

(Ord. 368-11. Passed 07-26-11.)

**1110.0800 | Critical Development**

Critical Development is that which is critical to the community’s public health and safety, are essential to the orderly functioning of a community, store or produce highly volatile, toxic or water-reactive materials, or house occupants that may be insufficiently mobile to avoid loss of life or injury. Examples of

critical Development include jails, hospitals, schools, fire stations, nursing homes, wastewater treatment facilities, water plants, and gas/oil/propane storage facilities. Critical Developments shall be elevated to the 500-year Flood elevation or be elevated to the highest known historical Flood elevation (where records are available), whichever is greater. If no data exists establishing the 500-year Flood elevation or the highest known historical Flood elevation, the critical development shall be elevated to one foot above the Flood Protection Elevation. Critical developments shall have direct access to a walkway, driveway, or roadway whose surface elevation is not less than the Flood Protection Elevation and such escape route shall lead directly out of the 1% chance annual Floodplain area.  
(Ord. 368-11. Passed 07-26-11.)

### **1110.0900 | Ditch Maintenance Access**

#### **A. General**

Development should not restrict the City's ability to access Ditches and Watercourses for maintenance.

#### **B. Clear Zone**

A clear zone shall be maintained adjacent to Ditches and Watercourses, which shall be free of structures, permanent fences, walls, or other obstructions that would restrict maintenance access. The clear zone shall be measured from the top of Stream Bank, as defined herein, a horizontal distance of twelve feet away from the Ditch or Watercourse. If there is no defined Stream Bank, the clear zone shall be measured from the Ordinary High Water Mark. If the Floodway extends further than twelve feet from the top of bank, then the clear zone shall extend to the edge of the Floodway. The required clear zone shall not exceed 25 feet from the Ordinary High Water Mark, or to the edge of Floodway, whichever is larger.

#### **C. Exemptions**

Exemption to this clear zone requirement may be granted if site constraints exist which would render an otherwise developable property undevelopable due to the requirement, and there is adequate clear zone on the opposite side of the Ditch or Watercourse.

#### **D. Prior Uses**

This Section 1110.0900 applies only to new development and not structures or uses existing at the time of the passage of these regulations.

(Ord. 368-11. Passed 07-26-11.)

### **1110.1000 | Variances**

#### **1110.1001 Appeals Board**

The Board of Zoning Appeals has authority to hear and decide Appeals and requests for Variances from the requirements of this chapter. The Appeals Board shall meet as needed, shall hear and decide Appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Floodplain Administrator and shall authorize Variances. Records of the Appeals Board shall be kept and filed in the offices of Building Inspection at One Government Center, Toledo, Ohio 43604.

(Ord. 368-11. Passed 07-26-11.)

#### **1110.1002 Appeals**

Any Person affected by any notice and order, or other official action of the Floodplain Administrator may request and shall be granted a hearing on the matter before the Appeals Board provided that such Person shall file, within twenty (20) days of the date of such notice and order, or other official action, a brief statement of the grounds for such hearing or for the mitigation of any item appearing on any order of the Floodplain Administrator's decision. Such Appeal shall be in writing, signed by

the Applicant and be filed with the Floodplain Administrator. Upon receipt of the Appeal, Floodplain Administrator shall transmit said notice and all pertinent information on which the Floodplain Administrator's decision was made to the Appeals Board. Upon receipt of the notice of Appeal, the Appeals Board shall fix a reasonable time for the Appeal, give notice in writing to parties in interest, and decide the Appeal within a reasonable time after it is submitted.  
(Ord. 368-11. Passed 07-26-11.)

### **1110.1003 Conditions of Variances**

#### **A. Application**

1. Any owner, or agent thereof, of property for which a Variance is sought shall make an application for a Variance by filing it with the Floodplain Administrator, who upon receipt of the Variance shall transmit it to the Appeals Board.
2. Such application at a minimum shall contain the following information: Name, address, and telephone number of the Applicant; legal description of the property; parcel map; description of the existing use; description of the proposed use; location of the Floodplain; description of the Variance sought; and reason for the Variance request.
3. Upon receipt of the application for Variance, the Appeals Board shall fix a reasonable time for a public hearing of the Appeal, give notice, in writing, to parties in interest, and decide the Appeal within a reasonable time after it is submitted.

#### **B. Public Hearing**

At such hearing the Applicant shall present such statements and evidence, as the Appeals Board requires. In considering such Variance applications, the Appeals Board shall consider and make findings of fact on all evaluations, all relevant factors, standards specified in other sections of these regulations and the following factors:

1. The danger that materials may be swept onto other lands to the injury of others.
2. The danger to life and property due to flooding or erosion damage.
3. The susceptibility of the proposed facility, and its contents to flood damage, and the effect of such damage on the individual owner.
4. The importance of the services provided by the proposed facility to the community.
5. The availability of alternative locations for the proposed use, which are not subject to Flooding or erosion damage.
6. The necessity to the facility of a waterfront location, where applicable.
7. The compatibility of the proposed use with existing and anticipated Development.
8. The relationship of the proposed use to the comprehensive plan and Floodplain management program for that area.
9. The safety of access to the property in times of Flood for ordinary and emergency vehicles.
10. The expected heights, velocity, duration, rate of rise, and sediment transport of the Floodwaters and the effects of wave action, if applicable, expected at the site.
11. The costs of providing governmental services during and after Flood conditions,

including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

**C. Granting Variances shall only occur upon:**

1. A showing of good and sufficient cause.
2. A determination that failure to grant the Variance would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the Applicant.
3. A determination that the granting of a Variance will not result in increased Flood heights beyond that which is allowed in these regulations; additional threats to public safety; extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws.
4. A determination that the Structure or other Development is protected by methods to minimize Flood damages.
5. A determination that the Variance is the minimum necessary, considering the Flood hazard, to afford relief.
6. A determination that the purposes and intent of these regulations are not affected or are mitigated to a reasonable degree.

**D. Other conditions for Variances**

1. The Appeals Board may attach such conditions to the granting of Variances, as it deems necessary, to further the purposes of these regulations.
2. Variances shall not be issued within any designated Floodway if any increase in Flood levels during the Base Flood discharge would result.
3. Generally, Variances may be issued for New Construction and Substantial Improvements to be erected on a lot of one half acre or less in size contiguous to and surrounded by lots with existing Structures constructed below the Base Flood level, providing all items of this Section have been fully considered. As the lot size increases beyond one half acre, the technical justification required for issuing the Variance increases.
4. Any Applicant to whom a Variance is granted shall be given written notice that the Structure will be permitted to be built with a Lowest Floor elevation below the Base Flood Elevation and the cost of Flood insurance will be commensurate with the increased risk resulting from the reduced Lowest Floor elevation.

**E. Procedure at Hearings**

1. All testimony shall be given under oath.
2. A complete record of the proceedings shall be kept, except confidential deliberations of the Board, but including all documents presented and a verbatim record of the testimony of all witnesses.
3. The Applicant shall proceed first to present evidence and testimony in support of the Appeal or Variance.
4. The Floodplain Administrator may present evidence or testimony in opposition to the Appeal or Variance.

5. All witnesses shall be subject to cross-examination by the adverse party or their counsel.
6. Evidence that is not admitted may be proffered and shall become part of the record for Appeal.
7. The Board shall issue subpoenas upon written request for the attendance of witnesses. A reasonable deposit to cover the cost of issuance and service shall be collected in advance.
8. The Board shall prepare conclusions of fact supporting its decision. The decision may be announced at the conclusion of the hearing and thereafter issued in writing or the decision may be issued in writing within a reasonable time after the hearing.

F. Those aggrieved by the decision of the Appeals Board may Appeal such decision to the Lucas County Court of Common Pleas, as provided in Chapter 2506 of the Ohio Revised Code.

(Ord. 368-11. Passed 07-26-11.)

## **1110.1100 | Enforcement**

### **1110.1101 Compliance Required**

No Structure or land shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged or altered without full compliance with the terms of these regulations and all other applicable regulations which apply to uses within the jurisdiction of these regulations, unless specifically exempted from filing for a Development permit.

Failure to obtain a Floodplain Development permit is a Violation of these regulations.

Floodplain Development permits issued on the basis of plans and application approved by the Floodplain Administrator authorize only the use, and arrangement, set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction contrary to that authorized shall be deemed a Violation of these regulations.

(Ord. 368-11. Passed 07-26-11.)

### **1110.1102 Stop Work Order**

Whenever the Floodplain Administrator determines that there has been a Violation of any provision of these regulations, he shall serve a written notice of adjudication, also known as a stop work order, upon the property owner, the owner's agent, or the person responsible for the violation. The notice of adjudication shall direct that person to stop such illegal action and suspend such unauthorized work until the condition in violation has been remedied. Such notice may be either provided in Person or by registered or certified mail, or by copy posted in a conspicuous place in or on the dwelling affected, if necessary.

(Ord. 368-11. Passed 07-26-11.)

### **1110.1103 Abatement**

In cases where such notices or orders are not promptly complied with, the Floodplain Administrator shall request the Director of Law to institute an appropriate action or proceeding at law or in equity to prevent an unlawful construction, reconstruction, alteration, repair, conversion, maintenance or use; or to restrain, correct or abate a violation; or to prevent the occupancy of a building, structure or premises; or to prevent an illegal act, conduct, business or use in or about any premises upon which the violation has occurred or is occurring. The penalties prescribed in Section 1110.1104 shall not preclude the Director of Law from instituting appropriate legal actions or proceedings to

prevent such illegal or unauthorized work from continuing.  
(Ord. 368-11. Passed 07-26-11.)

**1110.1104 Penalties**

Violation of the provisions of these regulations or failure to comply with any of its requirements shall be deemed to be a strict liability offense, and shall constitute a first- degree misdemeanor and the violator shall also be subject to the penalties and fines shown in Section 1110.1104(A). Each day such Violation continues shall be considered a separate offense. Additionally, the City of Toledo may in its sole discretion, pursue all other lawful actions including but not limited to the implementation of civil penalties, filing civil actions, and seeking reimbursement for expenses.

- A. The penalty for illegal and unauthorized work identified prior to issuing the required permit shall be in addition to the required permit fee and shall be double the permit fee specifically required in Chapter 1307 of this Code plus a fine in accordance with the schedule of fines shown in Section 1110.1104(A)(1) of this code. With the exception of court costs deposited as required by law, all fines for citations issued in accordance with this section shall be deposited in the Building Inspection Trust Fund designated for and to be exclusively used in the investigation, administration, enforcement and prosecution of violations and violators of Chapter Eleven - Planning and Zoning Code and Chapter Thirteen - Building Code, as well as the continuing education and certification of the staff of the Division of Building Inspection.

- 1. Schedule of fines. The fines imposed on violators of this Chapter 1110 Floodplain Regulations for the investigation and prosecution of violations shall be as shown below. If three (3) years occurs between offenses, the violation shall be reduced to the previous fine but shall never be less than a first offense.

a. First offense	\$250.00
b. Second offense	\$500.00
c. Third offense	\$1,000.00
d. Fourth offense	\$2,000.00
e. Fifth offense, any offense thereafter	\$3,000.00

- B. The payment of the aforementioned charges shall not relieve any person, firm or corporation from full compliance with the requirements of the Floodplain Regulations in the execution of the work nor from any penalty prescribed therein.

- C. The owner of any building, structure or premises where anything in violation of this Chapter 1110 Floodplain Regulations shall be placed or shall exist, and an architect, builder, contractor, agent, person or corporation employed in connection therewith and who may have assisted in the commission of such violation shall each be guilty of a separate offense and upon conviction thereof shall be fined as herein provided. Each day's continued violation of any provision of this Chapter 1110 Floodplain Regulations shall constitute a separate offense.

(Ord. 368-11. Passed 07-26-11.)

Is hereby repealed;

SECTION 2. That a new Toledo Municipal Code, Part Eleven, Subsection 1110. is created to read as follows;

**Chapter 1110 | Flood Damage Reduction Regulations**  
**1110.0100 | General Provisions**

### **1110.0101 Statutory Authorization**

ARTICLE XVIII, Section 3, of the Ohio Constitution and Sections 8 (m) and (r) of the Charter of the City of Toledo grants municipalities the legal authority to adopt land use and control measures for promoting the health, safety, and general welfare of its citizens.

### **1110.0102 Findings of Fact**

The City of Toledo has special flood hazard areas that are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. Additionally, structures that are inadequately elevated, floodproofed, or otherwise protected from flood damage also contribute to the flood loss. In order to minimize the threat of such damages and to achieve the purposes hereinafter set forth, these regulations are adopted.

### **1110.0103 Statement of Purpose**

It is the purpose of these regulations to promote the public health, safety and general welfare, and to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;
- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- F. Help maintain a stable tax base by providing for the proper use and development of areas of special flood hazard so as to protect property and minimize future flood blight areas;
- G. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions;
- H. Minimize the impact of development on adjacent properties within and near flood prone areas;
- I. Ensure that the flood storage and conveyance functions of the floodplain are maintained;
- J. Minimize the impact of development on the natural, beneficial values of the floodplain;
- K. Prevent floodplain uses that are either hazardous or environmentally incompatible; and
- L. Meet community participation requirements of the National Flood Insurance Program.

### **1110.0104 Methods of Reducing Flood Loss**

In order to accomplish its purposes, these regulations include methods and provisions for:

- A. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water hazards, or which result in damaging increases in flood heights or velocities;
- B. Requiring that uses vulnerable to floods, including facilities, which serve such uses, be protected against flood damage at the time of initial construction;
- C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

- D. Controlling filling, grading, dredging, excavating, and other development which may increase flood damage; and,
- E. Preventing or regulating the construction of flood barriers, which will unnaturally divert flood, waters or which may increase flood hazards in other areas.

#### **1110.0105 Lands to Which This Chapter Applies**

These regulations shall apply to all areas of special flood hazard within the jurisdiction of the City of Toledo as identified in Section 1110.0106, including any additional areas of special flood hazard annexed by the City of Toledo.

#### **1110.0106 Basis for Establishing the Areas of Special Flood Hazard**

For the purposes of this Chapter, the following studies and/or maps are adopted:

- A. Flood Insurance Rate Map (FIRM) and Flood Insurance Study (FIS) for Lucas County, Ohio and Incorporated Areas, both effective February 24, 2024.
- B. Other studies and/or maps, which may be relied upon for establishment of the flood protection elevation, delineation of the 100-year floodplain, floodways or delineation of other areas of special flood hazard.
- C. Any hydrologic and hydraulic engineering analysis authored by a registered Professional Engineer in the State of Ohio which has been approved by the City of Toledo as required by Section 1110.0403 Subdivisions and Other New Developments.

Any revisions to the aforementioned maps and/or studies are hereby adopted by reference and declared to be a part of this Chapter. Such maps and/or studies are on file at Building Inspection, One Government Center, Suite 1600, Toledo, Ohio 43604.

#### **1110.0107 Abrogation and Greater Restrictions**

These regulations are not intended to repeal any existing ordinances including subdivision regulations, zoning or building codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall be followed. These regulations are not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this Chapter and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

#### **1110.0108 Interpretation**

In the interpretation and application of these regulations, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and,
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

Where a provision of these regulations may be in conflict with a state or Federal law, such state or Federal law shall take precedence over this Chapter.

#### **1110.0109 Warning and Disclaimer of Liability**

The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. These regulations do

not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damage. These regulations shall not create liability on the part of the City of Toledo, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made thereunder.

#### **1110.0110 Severability**

Should any section or provision of this Chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Chapter as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

#### **1110.0200 | Definitions**

Unless specifically defined below, words or phrases used in this Chapter shall be interpreted so as to give them the meaning they have in common usage and to give this Chapter the most reasonable application.

##### **1110.0201 Accessory Structure**

A structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure.

##### **1110.0202 Appeal**

A request for review of the floodplain administrator's interpretation of any provision of these regulations or a request for a variance.

##### **1110.0203 Applicant**

A person or other legal entity who is responsible, per these regulations, for submittal of a Floodplain Development Permit to the Floodplain Administrator, the Toledo Plan Commission, or the Division of Inspection, as applicable, as specified herein.

##### **1110.0204 Base Flood**

The flood having a one percent chance of being equaled or exceeded in any given year. The base flood may also be referred to as the 1% chance annual flood or one-hundred (100) year flood.

##### **1110.0205 Base (100-Year) Flood Elevation (BFE)**

The water surface elevation of the base flood in relation to a specified datum, usually the National Geodetic Vertical Datum of 1929 or the North American Vertical Datum of 1988, and usually expressed in Feet Mean Sea Level (MSL). In Zone AO areas, the base flood elevation is the lowest adjacent natural grade elevation plus the depth number (from 1 to 3 feet).

##### **1110.0206 Basement**

Any area of the building having its floor subgrade (below ground level) on all sides.

##### **1110.0207 Building Permit**

A document issued by the Certified Building Official which approves the construction or alteration of residential and non-residential structures as being in compliance with the State and City building codes, based on the submission and successful plan review of construction documents detailing the construction or alterations.

##### **1110.0208 Development**

Any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage

of equipment or materials.

**1110.0209 Ditch**

A long trench or channel dug into the ground for permanent drainage purposes.

**1110.0210 Enclosure Below the Lowest Floor**

See “Lowest Floor.”

**1110.0211 Executive Order 11988 (Floodplain Management)**

Issued by President Carter in 1977, this order requires that no federally assisted activities be conducted in or have the potential to affect identified special flood hazard areas, unless there is no practicable alternative.

**1110.0212 Federal Emergency Management Agency (FEMA)**

The agency with the overall responsibility for administering the National Flood Insurance Program.

**1110.0213 Fill**

A deposit of earth material placed by artificial means.

**1110.0214 Flood or Flooding**

A general and temporary condition of partial or complete inundation or normally dry land areas from:

- A. The overflow of inland or tidal waters, and/or
- B. The unusual and rapid accumulation or runoff of surface waters from any source.

**1110.0215 Flood Hazard Boundary Map (FHBM)**

Usually the initial map, produced by the Federal Emergency Management Agency, or U.S. Department of Housing and Urban Development, for a community depicting approximate special flood hazard areas.

**1110.0216 Flood Insurance Rate Map (FIRM)**

An official map on which the Federal Emergency Management Agency or the U.S. Department of Housing and Urban Development has delineated the areas of special flood hazard.

**1110.0217 Flood Insurance Risk Zones**

Zone designations on FHBMs and FIRMs that indicate the magnitude of the flood hazard in specific areas of a community. Following are the zone definitions:

- A. Zone A: Special flood hazard areas inundated by the 100-year flood in any given year; base flood elevations are not determined.
- B. Zones A1-30 and Zone AE: Special flood hazard areas inundated by the 100-year flood in any given year; base flood elevations are determined.
- C. Zone AO: Special flood hazard areas inundated by the 100-year flood in any given year; with flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths are determined.
- D. Zone AH: Special flood hazard areas inundated by the 100-year flood in any given year; flood depths of 1 to 3 feet (usually areas of ponding); base flood elevations are determined.
- E. Zone A99: Special flood hazard areas inundated by the 100-year flood to be protected

from the 100-year flood by a Federal flood protection system under construction; no base flood elevations are determined.

F. Zone B and Zone X (shaded): Areas of 500-year flood; areas subject to the 100-year flood with average depths of less than 1 foot or with contributing drainage area less than 1 square mile; and areas protected by levees from the base flood.

G. Zone C and Zone X (unshaded): Areas determined to be outside the 500-year floodplain.

### **1110.0218 Flood Insurance Study (FIS)**

The official report in which the Federal Emergency Management Agency or the U.S. Department of Housing and Urban Development has provided flood profiles, floodway boundaries (sometimes shown on Flood Boundary and Floodway Maps), and the water surface elevations of the base flood.

### **1110.0219 Flood Loss**

Destruction and casualties caused by flooding.

### **1110.0220 Floodplain**

Any land area susceptible to being inundated by flood waters from any source.

### **1110.0221 Floodproofing**

Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

### **1110.0222 Flood Protection Elevation**

The Flood Protection Elevation, or FPE, is the base flood elevation plus one [1] foot of 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.

### **1110.0223 Floodway**

A floodway is the channel of a river or other watercourse and the adjacent land areas that have been reserved in order to pass the base flood discharge. A floodway is typically determined through a hydraulic and hydrologic engineering analysis such that the cumulative increase in the water surface elevation of the base flood discharge is no more than a designated height. In no case shall the designated height be more than one foot at any point within the community. The floodway is an extremely hazardous area, and is usually characterized by any of the following: Moderate to high velocity flood waters, high potential for debris and projectile impacts, and moderate to high erosion forces.

### **1110.0224 Freeboard**

A factor of safety usually expressed in feet above a flood level for the purposes of floodplain management. Freeboard tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, obstructed bridge openings, debris and ice jams, and the hydrologic effect of urbanization in a watershed.

### **1110.0225 Historic structure**

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 listings on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
  - C. Individually listed on the State of Ohio's inventory of historic places maintained by the Ohio Historic Preservation Office; or
  - D. Individually listed on the inventory of historic places maintained by the City of Toledo's historic preservation program, which program is certified by the Ohio Historic Preservation Office.

### **1110.0226 Hydrologic and hydraulic engineering analysis**

An analysis performed by a professional engineer, registered in the State of Ohio, in accordance with standard engineering practices as accepted by FEMA, used to determine flood elevations and/or floodway boundaries.

### **1110.0227 Impervious cover**

Any surface that cannot effectively absorb or infiltrate water. This may include roads, streets, parking lots, rooftops, sidewalks and other areas not covered by vegetation.

### **1110.0228 Letter of Map Change (LOMC)**

A Letter of Map Change 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. LOMCs are broken down into the following categories:

- A. Letter of Map Amendment (LOMA): A revision based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property is not located in a special flood hazard area.
- 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 common type of LOMR, a LOMR-F, is a determination concerning whether a structure or parcel has been elevated by fill above the base flood elevation and is, therefore, excluded from the special flood hazard area.
- C. Conditional Letter of Map Revision (CLOMR): A comment by FEMA regarding a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the special flood hazard area. A CLOMR does not amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies.

### **1110.0229 Lowest floor**

The lowest floor of the lowest enclosed area (including basement) of a structure. This definition excludes an "enclosure below the lowest floor" which is an unfinished or flood resistant enclosure usable solely for parking of vehicles, building access or storage, in an area other than a basement area, provided that such enclosure is built in accordance with the applicable design requirements specified in

these regulations for enclosures below the lowest floor.

#### **1110.0230 Manufactured home**

A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle". For the purposes of these regulations, a manufactured home includes manufactured homes and mobile homes as defined in Chapter 4781 of the Ohio Revised Code.

#### **1110.0231 Manufactured home park**

As specified in the Ohio Adm. Code 4781-12-01(K), a manufactured home park means any tract of land upon which three or more manufactured homes, used for habitation are parked, either free of charge or for revenue purposes, and includes any roadway, building, structure, vehicle, or enclosure used or intended for use as part of the facilities of the park. A tract of land that is subdivided and the individual lots are not for rent or rented, but are for sale or sold for the purpose of installation of manufactured homes on the lots, is not a manufactured home park, even though three or more manufactured homes are parked thereon, if the roadways are dedicated to the local government authority. Manufactured home park does not include any tract of land used solely for the storage or display for sale of manufactured homes.

#### **1110.0232 Mean sea level**

For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

#### **1110.0233 National Flood Insurance Program (NFIP)**

The NFIP is a Federal program enabling property owners in participating communities to purchase insurance protection against losses from flooding. This insurance is designed to provide an insurance alternative to disaster assistance to meet the escalating costs of repairing damage to buildings and their contents caused by floods. Participation in the NFIP is based on an agreement between local communities and the Federal government that states if a community will adopt and enforce floodplain management regulations to reduce future flood risks to all development in special flood hazard areas, the Federal government will make flood insurance available within the community as a financial protection against flood loss.

#### **1110.0234 New construction**

Structures for which the "start of construction" commenced on or after the effective date of a floodplain regulation adopted by the City of Toledo and includes any subsequent improvements to such structures.

For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM [June 4, 1980] and includes any subsequent improvements to such structures.

#### **1110.0235 Ordinary High Water Mark**

The point of the bank or shore to which the presence and action of surface water is so continuous as to leave a distinct mark by erosion, destruction or prevention of woody terrestrial vegetation, predominance of aquatic vegetation or other easily recognized characteristic. The Ordinary High Water Mark defines the channel of a Watercourse.

**1110.0236 Person**

Includes any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies. An agency is further defined in the Ohio Rev. Code §111.15(A)(2) as any governmental entity of the state and includes, but is not limited to, any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or state community college. “Agency” does not include the general assembly, the controlling board, the adjutant general’s department, or any court.

**1110.0237 Plat**

A map of a tract or parcel of land.

**1110.0238 Preliminary Plan**

A drawing of a development for the purpose of Plan Commission or Board of Zoning of Appeals approval.

**1110.0239 Recreational vehicle**

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

**1110.0240 Registered Professional Architect**

A person registered to engage in the practice of architecture pursuant to Ohio Rev. Code §4703.01 and 4703.19.

**1110.0241 Registered Professional Engineer**

A person registered as a professional engineer pursuant to Ohio Rev. Code Chapter 4733.

**1110.0242 Registered Professional Surveyor**

A person registered as a professional surveyor pursuant to Ohio Rev. Code Chapter 4733.

**1110.0243 Special Flood Hazard Area**

Also known as “Areas of Special Flood Hazard”, it is the land in the floodplain subject to a one percent or greater chance of flooding in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency on Flood Insurance Rate Maps, Flood Insurance Studies, Flood Boundary and Floodway Maps and Flood Hazard Boundary Maps as Zones A, AE, AH, AO, A1-30, or A99. Special flood hazard areas may also refer to areas that are flood prone and designated from other federal state or local sources of data including but not limited to historical flood information reflecting high water marks, previous flood inundation areas, and flood prone soils associated with a watercourse.

**1110.0244 Start of Construction**

The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the

property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. 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 a building.

#### **1110.0245 Stream bank**

The area adjacent to a Watercourse or Ditch with a slope greater than 25 percent. The Stream Bank is measured from the edge of the water outward to a point where the slope levels out to less than 25 percent for a distance of at least 12 feet measured laterally from the Watercourse or Ditch.

#### **1110.0246 Structure**

A walled and roofed building, manufactured home, or gas or liquid storage tank that is principally above ground.

#### **1110.0247 Subdivision**

Either:

- A. The division of any parcel of land shown as a unit or as contiguous units on the last preceding general tax list and duplicate of real and public utility property, into two or more parcels, sites, or lots, any one of which is less than five acres provided, however, that the following are exempt: a division or partition of land into parcels of more than five acres not involving any new streets or easements of access; the sale or exchange of parcels between adjoining lot owners, where that sale or exchange does not create additional building sites; or parcels of land that are specifically and specially exempted out by Toledo City Council; or,
- B. The improvement of one or more parcels of land for residential, commercial, or industrial Structures or groups of Structures involving the division or allocation of land for the opening, widening, or extension of any public or private street or streets, except private streets serving industrial Structures, or involving the division or allocation of land as open spaces for common use by owners, occupants, or leaseholders or as easements for the extension and maintenance of public or private sewer, water, storm drainage, or other similar facilities.

#### **1110.0248 Substantial Damage**

Damage of any origin sustained by a structure whereby the cost of restoring the structure to the 'before damaged' condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Substantial damage also means flood related damage sustained by a structure on two (2) separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

#### **1110.0249 Substantial Improvement**

Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. When the combined total of all previous improvements or repairs made during the life of the Structure equals or exceeds 50 percent of a Structure's market value, that Structure is considered to have undergone Substantial Improvement. This term includes structures, which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include:

- A. 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 prior to the application for a Development permit by the Division of Building Inspection and which are the minimum necessary to assure safe living conditions; or
- B. Any alteration of a "historic structure," provided that the alteration would not preclude the structure's continued designation as a "historic structure".

#### **1110.0250 Variance**

A grant of relief from the standards of these regulations.

#### **1110.0251 Violation**

The failure of a structure or other development to be fully compliant with these regulations.

#### **1110.0252 Watercourse**

The means a natural or artificial waterway, such as a stream or river, with a defined bed and channel and a definite direction of course that is contained within, flows through, or borders the community.

### **1110.0300 | Administration**

#### **1110.0301 Designation of the Floodplain Administrator**

The Chief Building Official, or their Designee, is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator.

#### **1110.0302 Duties and Responsibilities of the Floodplain Administrator**

The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

- A. Evaluate applications for permits to develop in special flood hazard areas.
- B. Interpret floodplain boundaries and provide flood hazard and flood protection elevation information.
- C. Issue permits to develop in special flood hazard areas when the provisions of these regulations have been met, or refuse to issue the same in the event of noncompliance.
- D. Inspect buildings and lands to determine whether any violations of these regulations have been committed.
- E. Make and permanently keep all records for public inspection necessary for the administration of these regulations including Flood Insurance Rate Maps, Letters of Map Amendment and Revision, records of issuance and denial of permits to develop in special flood hazard areas, determinations of whether development is in or out of special flood hazard areas for the purpose of issuing floodplain development permits, elevation certificates, floodproofing certificates, variances, and records of enforcement actions taken for violations of these regulations.
- F. Enforce the provisions of these regulations.
- G. Provide information, testimony, or other evidence as needed during variance hearings.
- H. Coordinate map maintenance activities and FEMA follow-up.
- I. Conduct substantial damage determinations to determine whether existing structures, damaged from any source and in special flood hazard areas identified by FEMA, must meet the development standards of this Chapter.

### **1110.0303 Floodplain Development Permits**

It shall be unlawful for any person to begin construction or other development activity including but not limited to filling, grading, construction, alteration, remodeling, or expanding any structure; or alteration of any watercourse wholly within, partially within or in contact with any identified special flood hazard area, as established in Section 1110.0106, until a floodplain development permit is obtained from the Floodplain Administrator. Such floodplain development permit shall show that the proposed development activity is in conformity with the provisions of these regulations. No such permit shall be issued by the Floodplain Administrator until the requirements of these regulations have been met.

### **1110.0304 Application Required**

An application for a floodplain development permit shall be required for all development activities located wholly within, partially within, or in contact with an identified special flood hazard area. Such application shall be made by the owner of the property or his/her authorized agent, herein referred to as the applicant, prior to the actual commencement of such construction on a form furnished for that purpose. Where it is unclear whether a development site is in a special flood hazard area, the Floodplain Administrator may require an application for a floodplain development permit to determine the development's location. Such applications shall include, but not be limited to:

- A.** Site plans drawn to scale showing the nature, location, dimensions, and topography of the area in question; the location of existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.
- B.** Elevation of the existing, natural ground where structures are proposed.
- C.** Elevation of the lowest floor, including basement, of all proposed structures.
- D.** Such other material and information as may be requested by the Floodplain Administrator to determine conformance with, and provide enforcement of these regulations.
- E.** Technical analyses conducted by the appropriate design professional registered in the State of Ohio and submitted with an application for a floodplain development permit when applicable:
  - 1.** Floodproofing certification for non-residential floodproofed structure as required in Section 1110.0405.
  - 2.** Certification that fully enclosed areas below the lowest floor of a structure not meeting the design requirements of Section 1110.0404(E) are designed to automatically equalize hydrostatic flood forces.
  - 3.** Description of any watercourse alteration or relocation that the flood carrying capacity of the watercourse will not be diminished, and maintenance assurances as required in Section 1110.0410(C).
  - 4.** A hydrologic and hydraulic analysis demonstrating that the cumulative effect of proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood by more than one foot in special flood hazard areas where the Federal Emergency Management Agency has provided base flood elevations but no floodway as required by Section 1110.0410(B).
  - 5.** A hydrologic and hydraulic engineering analysis showing impact of any

development on flood heights in an identified floodway as required by Section 1110.0410(A).

6. Generation of base flood elevation(s) for subdivision and other new developments as required by Section 1110.0403.
  7. Volumetric calculations demonstrating compensatory storage has been provided as required by Section 1110.0413.
  8. Generation of the 500-year flood elevation for Critical Development
- F. A Floodplain Development Permit Application Fee set by the Schedule of Fees adopted by the City of Toledo.

### **1110.0305 Review and Approval of a Floodplain Development Permit Application**

#### **A. Review**

1. After receipt of a complete application, the Floodplain Administrator shall review the application to ensure that the standards of these regulations have been met. No floodplain development permit application shall be reviewed until all information required in Section 1110.0304 has been received by the Floodplain Administrator.
2. The Floodplain Administrator shall review all floodplain development permit applications to assure that all necessary permits have been received from those federal, state or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits as required including permits issued by the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, and the Ohio Environmental Protection Agency under Section 401 of the Clean Water Act.

#### **B. Approval**

Within forty-five (45) days after the receipt of a complete application, the Floodplain Administrator shall either approve or disapprove the application. If the Floodplain Administrator is satisfied that the development proposed in the floodplain development application conforms to the requirements of this ordinance, the Floodplain Administrator shall issue the permit. All floodplain development permits shall be conditional upon the commencement of work within 180 days. A floodplain development permit shall expire 180 days after issuance unless the permitted activity has been substantially begun and is thereafter pursued to completion.

### **1110.0306 Inspections**

The Floodplain Administrator shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions.

### **1110.0307 Post-Construction Certifications Required**

The following as-built certifications are required after a floodplain development permit has been issued:

- A. For new or substantially improved residential structures, or nonresidential structures that have been elevated, the applicant shall have a *Federal Emergency Management Agency Elevation Certificate* completed by a registered professional surveyor to record as-built elevation data. For elevated structures in Zone A and Zone AO areas without a base flood elevation, the elevation certificate may be completed by the property owner or owner's

representative.

- B. For all development activities subject to the standards of Section 1110.0311(A), a Letter of Map Revision.
- C. For new or substantially improved nonresidential structures that have been floodproofed in lieu of elevation, where allowed, the applicant shall supply a completed *Floodproofing Certificate for Non-Residential Structures* completed by a registered professional engineer or architect together with associated documentation.

### **1110.0308 Revoking a Floodplain Development Permit**

A floodplain development permit shall be revocable, if among other things, the actual development activity does not conform to the terms of the application and permit granted thereon. In the event of the revocation of a permit, an appeal may be taken to the Appeals Board in accordance with Chapter 1110.0500 of these regulations.

### **1110.0309 Exemption from Filing a Development Permit**

An application for a floodplain development permit shall not be required for maintenance work such as roofing, painting, and basement sealing, or for small nonstructural development activities (except for filling and grading) valued at less than \$2500.

### **1110.0310 State and Federal Development**

- A. Development that is funded, financed, undertaken, or preempted by state agencies shall comply with minimum NFIP criteria.
- B. Before awarding funding or financing or granting a license, permit, or other authorization for a development that is or is to be located within a 100-year floodplain, a state agency shall require the applicant to demonstrate to the satisfaction of the agency that the development will comply with minimum NFIP criteria and any applicable local floodplain management resolution or ordinance as required by Ohio Revised Code Section 1521.13. This includes, but is not limited to:
  - 1. Development activities in an existing or proposed manufactured home park that are under the authority of the Ohio Department of Commerce and subject to the flood damage reduction provisions of the Ohio Administrative Code Section 4781-12.
  - 2. Major utility facilities permitted by the Ohio Power Siting Board under Section 4906 of the Ohio Revised Code.
  - 3. Hazardous waste disposal facilities permitted by the Hazardous Waste Siting Board under Section 3734 of the Ohio Revised Code.
- C. Development activities undertaken by a federal agency and which are subject to Federal Executive Order 11988 - Floodplain Management.
  - 1. Each federal agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget request reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of EO 11988.

### **1110.0311 Map Maintenance Activities**

To meet National Flood Insurance Program minimum requirements to have flood data reviewed and approved by FEMA, and to ensure that the City of Toledo's flood maps, studies and other data identified

in Section 1110.0106 accurately represent flooding conditions so appropriate floodplain management criteria are based on current data, the following map maintenance activities are identified:

#### **A. Requirement to Submit New Technical Data**

1. For all development proposals that impact floodway delineations or base flood elevations, the community shall ensure that technical data reflecting such changes be submitted to FEMA within six months of the date such information becomes available. These development proposals include:
  - a. Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries;
  - b. Fill sites to be used for the placement of proposed structures where the applicant desires to remove the site from the special flood hazard area;
  - c. Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts; and
  - d. Subdivision or other new development proposals requiring the establishment of base flood elevations in accordance with Section 1110.0403.
2. It is the responsibility of the applicant to have technical data, required in accordance with Section 1110.0311(A), prepared in a format required for a Conditional Letter of Map Revision or Letter of Map Revision, and submitted to FEMA. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.
3. The Floodplain Administrator shall require a Conditional Letter of Map Revision prior to the issuance of a floodplain development permit for:
  - a. Proposed floodway encroachments that increase the base flood elevation; and
  - b. Proposed development which increases the base flood elevation by more than one foot in riverine areas where FEMA has provided base flood elevations but no floodway.
4. Floodplain development permits issued by the Floodplain Administrator shall be conditioned upon the applicant obtaining a Letter of Map Revision from FEMA for any development proposal subject to Section 1110.0311(A)(1).

#### **B. Right to Submit New Technical Data**

The Floodplain Administrator may request changes to any of the information shown on an effective map that does not impact floodplain or floodway delineations or base flood elevations, such as labeling or planimetric details. Such a submission shall include appropriate supporting documentation made in writing by the Mayor of the City of Toledo, and may be submitted at any time.

#### **C. Annexation / Detachment**

Upon occurrence, the Floodplain Administrator shall notify FEMA in writing whenever the boundaries of the City of Toledo have been modified by annexation or the city has assumed authority over an area, or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order that the City of Toledo's Flood Insurance Rate Map accurately represent the City of Toledo boundaries, include within such notification a copy of a map of the City of Toledo suitable for reproduction, clearly showing the new corporate limits or the new area for which the City of Toledo has

assumed or relinquished floodplain management regulatory authority.

### **1110.0312 Data Use and Flood Map Interpretation**

The following guidelines shall apply to the use and interpretation of maps and other data showing areas of special flood hazard:

- A.** In areas where FEMA has not identified special flood hazard areas, or in FEMA identified special flood hazard areas where base flood elevation and floodway data have not been identified, the Floodplain Administrator shall review and reasonably utilize any other flood hazard data available from a federal, state, or other source.
- B.** Base flood elevations and floodway boundaries produced on FEMA flood maps and studies shall take precedence over base flood elevations and floodway boundaries by any other source that reflect a reduced floodway width and/or lower base flood elevations. Other sources of data, showing increased base flood elevations and/or larger floodway areas than are shown on FEMA flood maps and studies, shall be reasonably used by the Floodplain Administrator.
- C.** The Floodplain Administrator shall make interpretations, where needed, as to the exact location of the flood boundaries and areas of special flood hazard. A person contesting the determination of the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 1110.0500, Appeals and Variances.
- D.** Where an existing or proposed structure or other development is affected by multiple flood zones, by multiple base flood elevations, or both, the development activity must comply with the provisions of this ordinance applicable to the most restrictive flood zone and the highest base flood elevation affecting any part of the existing or proposed structure; or for other developments, affecting any part of the area of the development.

### **1110.0313 Use of Preliminary Flood Insurance Rate Map and/or Flood Insurance Study Data**

- A. Zone A:**
  - 1. Within Zone A areas designated on an effective FIRM, data from the preliminary FIRM and/or FIS shall be reasonably utilized as best available data.
  - 2. When all appeals have been resolved and a notice of final flood elevation determination has been provided in a Letter of Final Determination (LFD), BFE and floodway data from the preliminary FIRM and/or FIS shall be used for regulating development.
- B. Zones AE, A1-30, AH, and AO:**
  - 1. BFE and floodway data from a preliminary FIS or FIRM restudy are not required to be used in lieu of BFE and floodway data contained in an existing effective FIS and FIRM. However,
    - a. Where BFEs increase in a restudied area, communities have the responsibility to ensure that new or substantially improved structures are protected. Communities are encouraged to reasonably utilize preliminary FIS or FIRM data in instances where BFEs increase and floodways are revised to ensure that the health, safety, and property of their citizens are protected.
    - b. Where BFEs decrease, preliminary FIS or FIRM data should not be used to

regulate floodplain development until the LFD has been issued or until all appeals have been resolved.

2. If a preliminary FIRM or FIS has designated floodways where none had previously existed, communities should reasonably utilize this data in lieu of applying the encroachment performance standard of Section 4.9(B) since the data in the draft or preliminary FIS represents the best data available.

**C. Zones B, C, and X:**

Use of BFE and floodway data from a preliminary FIRM or FIS are not required for areas designated as Zone B, C, or X on the effective FIRM which are being revised to Zone AE, A1-30, AH, or AO. Communities are encouraged to reasonably utilize preliminary FIS or FIRM data to ensure that the health, safety, and property of their citizens are protected.

**1110.0314 Substantial Damage Determinations**

Damages to structures may result from a variety of causes including flood, tornado, wind, heavy snow, fire, *etc.* After such a damage event, the Floodplain Administrator shall:

- A. Determine whether damaged structures are located in special flood hazard areas;
- B. Conduct substantial damage determinations for damaged structures located in special flood hazard areas; and
- C. Require owners of substantially damaged structures to obtain a floodplain development permit prior to repair, rehabilitation, or reconstruction.

Additionally, the Floodplain Administrator may implement other measures to assist with the substantial damage determination and subsequent repair process. These measures include issuing press releases, public service announcements, and other public information materials related to the floodplain development permits and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures materials and other information related to the proper repair of damaged structures in special flood hazard areas; and assist owners of substantially damaged structures with Increased Cost of Compliance insurance claims.

**1110.0400 | Use and Development Standards for Flood Hazard Reduction**

The following use and development standards apply to development wholly within, partially within, or in contact with any special flood hazard area as established in Section 1110.0106, 1110.0312(A), or 1110.0313:

**1110.0401 Use Regulations**

**A. Permitted Uses**

All uses not otherwise prohibited in this section or any other applicable land use regulation adopted by the City of Toledo are allowed provided they meet the provisions of these regulations.

**B. Prohibited Uses**

1. New construction of any residential or nonresidential structures in floodway areas.
2. Storage or processing of materials that are hazardous, pollutants, flammable, poisonous, explosive, or could be injurious to human, animal, or plant life in time of flooding or that have a high flood damage potential in the identified in the identified Special Flood Hazard Areas.

3. Storage of material or equipment that, in time of flooding, could become buoyant and pose an obstruction to flow in identified floodway areas, unless however, the material or equipment is firmly anchored to prevent flotation.

#### **1110.0402 Water and Wastewater Systems**

The following standards apply to all water supply, sanitary sewerage and waste disposal systems in the absence of any more restrictive standard provided under the Ohio Revised Code or applicable state rules:

- A. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems;
- B. New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,
- C. On-site waste disposal systems shall be located to avoid impairment to or contamination from them during flooding.

#### **1110.0403 Subdivisions and Other New Developments**

- A. All subdivision proposals and all other proposed new development shall be consistent with the need to minimize flood damage and are subject to all applicable standards in this Chapter;
- B. All subdivision proposals and all other proposed new development shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;
- C. All subdivision proposals and all other proposed new development shall have adequate drainage provided to reduce exposure to flood damage; and
- D. In all areas of special flood hazard where base flood elevation data are not available, the applicant shall provide a hydrologic and hydraulic engineering analysis that generates base flood elevations for all subdivision proposals and other proposed developments containing at least 50 lots or 5 acres, whichever is less.
- E. The applicant shall meet the requirement to submit technical data to FEMA in Section 1110.0311(A)(1)(d) when a hydrologic and hydraulic analysis is completed that generates base flood elevations as required by Section 1110.0403(D).
- F. All preliminary plats for platted subdivisions shall identify the Flood hazard area and the elevation of the Base Flood, where published Based Flood Elevation data are available.
- G. All final subdivision plats shall provide the boundary of the Special Flood Hazard Area, the Floodway boundary, and the Base Flood Elevations.
- H. 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) 1% annual chance Floodplain. The buildable area shall be 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, if applicable.

#### **1110.0404 Residential Structures**

The requirements of Section 1110.0404 apply to new construction of residential structures and to

substantial improvements of residential structures in zones A, A1-30, AE, AO, and AH, when designated on the community's effective FIRM, and when designated on a preliminary or final FIRM issued by FEMA under the circumstances provided in Section 1110.0313.

- A.** New construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Where a structure, including its foundation members, is elevated on fill to or above the base flood elevation, the requirements for anchoring (1110.0404(A)) and construction materials resistant to flood damage (1110.0404(B)) are satisfied.
- B.** New construction and substantial improvements shall be constructed with methods and materials resistant to flood damage.
- C.** New construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.
- D.** New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including crawl space or basement, elevated to or above the flood protection elevation. In Zone AO areas with no elevations specified, the structure shall have the lowest floor, including crawl space or basement, elevated at least two feet above the highest adjacent grade. Where flood protection elevation data are not available, the structure shall have the lowest floor, including crawl space or basement, elevated at least two feet above the highest natural adjacent grade. Support Structures and other foundation members shall be certified by a registered professional engineer or architect as designed in accordance with ASCE 24, Flood Resistant Design and Construction.
- E.** New construction and substantial improvements, including manufactured homes, that do not have basements and that are elevated to the flood protection elevation using pilings, columns, posts, or solid foundation perimeter walls with openings to allow the automatic equalization of hydrostatic pressure may have an enclosure below the lowest floor provided the enclosure meets the following standards:
  - 1.** Be used only for the parking of vehicles, building access, or storage; and
  - 2.** Be designed and certified by a registered professional engineer or architect to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters; or
  - 3.** Have a minimum of two openings on different walls having a total net area not less than one square inch for every square foot of enclosed area, and the bottom of all such openings being no higher than one foot above grade. The openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- F.** Manufactured homes shall be affixed to a permanent foundation and anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
- G.** 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 is the minimum necessary to preserve the historic character and design of the structure, shall be exempt from the development standards of Section 1110.0404.

- H. Each new residential site adjacent to a roadway which is above the Base Flood Elevation shall have direct access from each structure to a walkway, driveway, or roadway whose surface elevation is not less than the flood protection elevation and such escape route shall lead directly out of the 1% annual chance floodplain area.

### **1110.0405 Nonresidential Structures**

The requirements of Section 1110.0405 apply to new construction and to substantial improvements of nonresidential structures in zones A, A1-30, AE, AO, and AH, when designated on the community's effective FIRM, and when designated on a preliminary or final FIRM issued by FEMA under the circumstances provided in Section 1110.0313.

- A. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet the requirements of Section 1110.0404 (A) - (C) and (E) -(G).
- B. New construction and substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated to or above the level of the flood protection elevation; or, together with attendant utility and sanitary facilities, shall meet all of the following standards:
  - 1. Be dry floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water to the level of the flood protection elevation;
  - 2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,
  - 3. Be certified by a registered professional engineer or architect, through the use of a *Federal Emergency Management Agency Floodproofing Certificate*, that the design and methods of construction are in accordance with Section 1110.0405(B)(1) and (2).
- C. Where flood protection elevation data are not available, the structure shall have the lowest floor, including basement, elevated at least two feet above the highest natural adjacent grade.
- D. Each new nonresidential structure site shall have direct access to a walkway, driveway, or roadway whose surface elevation is not less than the flood protection elevation and such escape route shall lead directly out of the floodplain area.

### **1110.0406 Accessory Structures**

Structures that are 600 square feet or less which are used for parking and storage only are exempt from elevation or dry floodproofing standards within zones A, A1-30, AE, AO, and AH designated on the community's FIRM. Such structures must meet the following standards:

- A. They shall not be used for human habitation;
- B. They shall be constructed of flood resistant materials;
- C. They shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters;
- D. They shall be firmly anchored to prevent flotation;

- E. Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or above the level of the flood protection elevation; and
- F. They shall meet the opening requirements of Section 1110.0404(E)(3);

#### **1110.0407 Recreational Vehicles**

Recreational vehicles on sites within zones A, A1-A30, AE, AO, or AH must meet at least one of the following standards.

- A. They shall not be located on sites in special flood hazard areas for more than 180 days, or
- B. They must be fully licensed and ready for highway use, or
- C. They must be placed on the site pursuant to a floodplain development permit issued under Sections 3.3 and 3.4, and meet all standards of Section 4.4.

#### **1110.0408 Gas or Liquid Storage Tanks**

Within zone A, A1-A30, AE, AO, or AH, new or substantially improved above ground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement resulting from hydrodynamic and hydrostatic loads.

#### **1110.0409 Fill Activities**

1. Fill sites, upon which Structures will be constructed or placed, must be compacted to 95 percent of the maximum density obtainable with the Standard Proctor Test method or an acceptable equivalent method.
2. Fill slopes shall not be steeper than one foot vertical to two feet horizontal.
3. Adequate protection against erosion and scour is provided for Fill slopes. When expected velocities during the occurrence of the Base Flood of five feet per second armoring with stone or rock protection shall be provided. When expected velocities during the Base Flood are five feet per second or less protection shall be provided by vegetative cover.
4. Fill shall be composed of clean granular or earthen material.
5. Fill shall not be placed in the designated Floodway.
6. Fill shall not be placed in wetland areas without approvals from Ohio EPA and the US Army Corps of Engineers, as required by law.

#### **1110.0410 Assurance of Flood Carrying Capacity**

Pursuant to the purpose and methods of reducing flood damage stated in these regulations, the following additional standards are adopted to assure that the reduction of the flood carrying capacity of watercourses is minimized:

- A. Development in Floodways
  1. In floodway areas, development shall cause no increase in flood levels during the occurrence of the base flood discharge. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that the proposed development would not result in any increase in the base flood elevation; or
  2. Development in floodway areas causing increases in the base flood elevation may

be permitted provided all of the following are completed by the applicant:

- a. Meet the requirements to submit technical data in Section 1110.0311(A);
- b. An evaluation of alternatives, which would not result in increased base flood elevations and an explanation why these alternatives are not feasible;
- c. Certification that no structures are located in areas that would be impacted by the increased base flood elevation;
- d. Documentation of individual legal notices to all impacted property owners within and outside the community, explaining the impact of the proposed action on their property; and
- e. Concurrence of the Mayor of City of Toledo and the Chief Executive Officer of any other communities impacted by the proposed actions.

**B. Development in Riverine Areas with Base Flood Elevations but No Floodways**

1. In riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the base flood elevation more than 1.0 (one) foot at any point. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that this standard has been met; or,
2. Development in riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated causing more than one foot increase in the base flood elevation may be permitted provided all of the following are completed by the applicant:
  - a. An evaluation of alternatives which would result in an increase of one foot or less of the base flood elevation and an explanation why these alternatives are not feasible;
  - b. Section 1110.0410(A)(2), items (a) and (c)-(e).

**A. Alterations of a Watercourse**

For the purpose of these regulations, a watercourse is altered when any change occurs within its banks. The extent of the banks shall be established by a field determination of the “bankfull stage.” The field determination of “bankfull stage” shall be based on methods presented in Chapter 7 of the *USDA Forest Service General Technical Report RM-245, Stream Channel Reference Sites: An Illustrated Guide to Field Technique* or other applicable publication available from a Federal, State, or other authoritative source. For all proposed developments that alter a watercourse, the following standards apply:

1. The bankfull flood carrying capacity of the altered or relocated portion of the watercourse shall not be diminished. Prior to the issuance of a floodplain development permit, the applicant must submit a description of the extent to which any watercourse will be altered or relocated as a result of the proposed development, and certification by a registered professional engineer that the bankfull flood carrying capacity of the watercourse will not be diminished.
2. Adjacent communities, the U.S. Army Corps of Engineers, and the Ohio Department of Natural Resources, Division of Water, must be notified prior to any alteration or relocation of a watercourse. Evidence of such notification must be

submitted to the Federal Emergency Management Agency.

3. The applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of said watercourse so that the flood carrying capacity will not be diminished. The Floodplain Administrator may require the permit holder to enter into an agreement with the City of Toledo specifying the maintenance responsibilities. If an agreement is required, it shall be made a condition of the floodplain development permit.
4. The applicant shall meet the requirements to submit technical data in Section 3.11 (A)(1)(c) when an alteration of a watercourse results in the relocation or elimination of the special flood hazard area, including the placement of culverts.

### **1110.0411 Critical Development**

Critical Development is that which is critical to the community's public health and safety, are essential to the orderly functioning of a community, store or produce highly volatile, toxic or water- reactive materials, or house occupants that may be insufficiently mobile to avoid loss of life or injury. Examples of critical Development include jails, hospitals, schools, fire stations, nursing homes, wastewater treatment facilities, water plants, and gas/oil/propane storage facilities. Critical Developments shall be elevated to the 500-year Flood elevation or be elevated to the highest known historical Flood elevation (where records are available), whichever is greater. If no data exists establishing the 500-year Flood elevation or the highest known historical Flood elevation, the critical development shall be elevated to one foot above the Flood Protection Elevation. Critical developments shall have direct access to a walkway, driveway, or roadway whose surface elevation is not less than the Flood Protection Elevation and such escape route shall lead directly out of the 1% chance annual Floodplain area.

### **1110.0412 Ditch Maintenance Access**

#### **A. General**

Development should not restrict the City's ability to access Ditches and Watercourses for maintenance.

#### **B. Clear Zone**

A clear zone shall be maintained adjacent to Ditches and Watercourses, which shall be free of structures, permanent fences, walls, or other obstructions that would restrict maintenance access. The clear zone shall be measured from the top of Stream Bank, as defined herein, a horizontal distance of twelve feet away from the Ditch or Watercourse. If there is no defined Stream Bank, the clear zone shall be measured from the Ordinary High Water Mark. If the Floodway extends further than twelve feet from the top of bank, then the clear zone shall extend to the edge of the Floodway. The required clear zone shall not exceed 25 feet from the Ordinary High Water Mark, or to the edge of Floodway, whichever is larger.

#### **C. Exemptions**

Exemption to this clear zone requirement may be granted if site constraints exist which would render an otherwise developable property undevelopable due to the requirement, and there is adequate clear zone on the opposite side of the Ditch or Watercourse.

#### **D. Prior Uses**

This Section 1110.0412 applies only to new development and not structures or uses existing at the time of the passage of these regulations.

### **1110.0413 Compensatory Storage**

Fill within the area of Special Flood Hazard shall result in no net loss of natural Floodplain storage. Providing an equal volume of Flood storage by excavation or other compensatory measures shall offset the volume of the loss of Floodplain storage due to Filling in the Special Flood Hazard Area. For the purpose of satisfying this provision, compensating cut may be from any properties within the watershed, along the same watercourse or hydraulically connected, where the Base Flood Elevation is within one foot of the Base Flood Elevation of the fill area, and where the compensating cut and fill are at the same range of elevations. Fill of less than 10 cubic yards per residential lot, cumulative from the time of passage of this regulation, will not require compensating cut, providing that the fill does not adversely affect adjoining properties.

## **1110.0500 | Appeals and Variances**

### **1110.0501 Appeals Board Established**

- A.** The City Council shall appoint an Appeals Board consisting of the Board of Zoning Appeals. The members shall serve [5] year terms after which time they shall be reappointed or replaced by the City Council. Each member shall serve until his/her successor is appointed.
- B.** A chairperson shall be elected by the members of the Appeals Board. Meetings of the Appeals Board shall be held as needed and shall be held at the call of the Chairperson, or in his absence, the Acting Chairperson. All meetings of the Appeals Board shall be open to the public except that the Board may deliberate in executive sessions as part of quasi-judicial hearings in accordance with law. The Appeals Board shall keep minutes of its proceedings showing the vote of each member upon each question and shall keep records of all official actions. Records of the Appeals Board shall be kept and filed at Division of Building Inspection, One Government Center, Suite 1600, Toledo, OH 43604.

### **1110.0502 Powers and Duties**

- A.** The Appeals Board shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Floodplain Administrator in the administration or enforcement of these regulations.
- B.** Authorize variances in accordance with Section 1110.0504 of these regulations.

### **1110.0503 Appeals**

Any person affected by any notice and order, or other official action of the Floodplain Administrator may request and shall be granted a hearing on the matter before the Appeals Board provided that such person shall file, within [20] days of the date of such notice and order, or other official action, a brief statement of the grounds for such hearing or for the mitigation of any item appearing on any order of the Floodplain Administrator's decision. Such appeal shall be in writing, signed by the applicant, and be filed with the Floodplain Administrator. Upon receipt of the appeal, the Floodplain Administrator shall transmit said notice and all pertinent information on which the Floodplain Administrator's decision was made to the Appeals Board.

Upon receipt of the notice of appeal, the Appeals Board shall fix a reasonable time for the appeal, give notice in writing to parties in interest, and decide the appeal within a reasonable time after it is submitted.

### **1110.0504 Variances**

Any person believing that the use and development standards of this Chapter would result in unnecessary hardship may file an application for a variance. The Appeals Board shall have the power to authorize, in specific cases, such variances from the standards of these regulations, not inconsistent with Federal regulations, as will not be contrary to the public interest where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations would result in unnecessary hardship.

**A. Application for a Variance**

1. Any owner, or agent thereof, of property for which a variance is sought shall make an application for a variance by filing it with the Floodplain Administrator, who upon receipt of the variance shall transmit it to the Appeals Board.
2. Such application at a minimum shall contain the following information: Name, address, and telephone number of the applicant; legal description of the property; parcel map; description of the existing use; description of the proposed use; location of the floodplain; description of the variance sought; and reason for the variance request.
3. All applications for a variance shall be accompanied by a variance application fee set in the schedule of fees adopted by the City of Toledo.

**B. Notice for Public Hearing**

The Appeals Board shall schedule and hold a public hearing within thirty (30) days after the receipt of an application for a variance from the Floodplain Administrator. Prior to the hearing, a notice of such hearing shall be given in one (1) or more newspapers of general circulation in the community at least ten (10) days before the date of the hearing.

**C. Public Hearing**

At such hearing the applicant shall present such statements and evidence as the Appeals Board requires. In considering such variance applications, the Appeals Board shall consider and make findings of fact on all evaluations, all relevant factors, standards specified in other sections of these regulations and the following factors:

1. The danger that materials may be swept onto other lands to the injury of others.
2. The danger to life and property due to flooding or erosion damage.
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
4. The importance of the services provided by the proposed facility to the community.
5. The availability of alternative locations for the proposed use that are not subject to flooding or erosion damage.
6. The necessity to the facility of a waterfront location, where applicable.
7. The compatibility of the proposed use with existing and anticipated development.
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
9. The safety of access to the property in times of flood for ordinary and emergency vehicles.

10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

Variations shall only be issued upon:

1. A showing of good and sufficient cause.
2. A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of this Chapter does not constitute an exceptional hardship to the applicant.
3. A determination that the granting of a variance will not result in increased flood heights beyond that which is allowed in this Chapter; additional threats to public safety; extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws.
4. A determination that the structure or other development is protected by methods to minimize flood damages.
5. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Upon consideration of the above factors and the purposes of these regulations, the Appeals Board may attach such conditions to the granting of variations, as it deems necessary to further the purposes of this Chapter.

**A. Other Conditions for Variations**

1. Variations shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
2. Generally, variations 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, providing items in Section 1110.0504(C)(1) to (11) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
3. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

**1110.0505 Procedure at Hearings**

- A. All testimony shall be given under oath.
- B. A complete record of the proceedings shall be kept, except confidential deliberations of the Board, but including all documents presented and a verbatim record of the testimony of all witnesses.
- C. The applicant shall proceed first to present evidence and testimony in support of the

appeal or variance.

- D. The administrator may present evidence or testimony in opposition to the appeal or variance.
- E. All witnesses shall be subject to cross-examination by the adverse party or their counsel.
- F. Evidence that is not admitted may be proffered and shall become part of the record for appeal.
- G. The Board shall issue subpoenas upon written request for the attendance of witnesses. A reasonable deposit to cover the cost of issuance and service shall be collected in advance.
- H. The Board shall prepare conclusions of fact supporting its decision. The decision may be announced at the conclusion of the hearing and thereafter issued in writing or the decision may be issued in writing within a reasonable time after the hearing.

### **1110.0506 Appeal to the Court**

Those aggrieved by the decision of the Appeals Board may appeal such decision to the Lucas County Court of Common Pleas, pursuant to Ohio Rev. Code Chapter 2506.

## **1110.0600 | Enforcement**

### **1110.0601 Compliance Required**

- A. No structure or land shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged or altered without full compliance with the terms of these regulations and all other applicable regulations which apply to uses within the jurisdiction of these regulations, unless specifically exempted from filing for a development permit as stated in Section 1110.0309.
- B. Failure to obtain a floodplain development permit shall be a violation of these regulations and shall be punishable in accordance with Section 1110.0604.
- C. Floodplain development permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the use, and arrangement, set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction contrary to that authorized shall be deemed a violation of these regulations and punishable in accordance with Section 1110.0604.

### **1110.0602 Notice of Violation**

Whenever the Floodplain Administrator determines that there has been a violation of any provision of these regulations, they shall give notice of such violation to the person responsible therefore and order compliance with this Chapter as hereinafter provided. Such notice and order shall:

- A. Be put in writing on an appropriate form;
- B. Include a list of violations, referring to the section or sections of this Chapter that have been violated, and order remedial action, which, if taken, will affect compliance with the provisions of these regulations;
- C. Specify a reasonable time for performance;
- D. Advise the owner, operator, or occupant of the right to appeal;
- E. Be served on the owner, occupant, or agent in person. However, this notice and order shall be deemed to be properly served upon the owner, occupant, or agent if a copy

thereof is sent by registered or certified mail to the person's last known mailing address, residence, or place of business, and/or a copy is posted in a conspicuous place in or on the dwelling affected.

**1110.0603 Abatement**

In cases where such notices or orders are not promptly complied with, the Floodplain Administrator shall request the Director of Law to institute an appropriate action or proceeding at law or in equity to prevent an unlawful construction, reconstruction, alteration, repair, conversion, maintenance or use; or to restrain, correct or abate a violation; or to prevent the occupancy of a building, structure or premises; or to prevent an illegal act, conduct, business or use in or about any premises upon which the violation has occurred or is occurring. The Penalties prescribed in Section 1110.0604.

**1110.0604 Violations and Penalties**

Violation of the provisions of these regulations or failure to comply with any of its requirements shall be deemed to be a strict liability offense, and shall constitute a first degree misdemeanor. Any person who violates these regulations or fails to comply with any of its requirements shall upon conviction thereof be fined or imprisoned as provided by the laws of the City of Toledo. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Toledo from taking such other lawful action as is necessary to prevent or remedy any violation. The City of Toledo shall prosecute any violation of these regulations in accordance with the penalties stated herein.

**A.** The penalty for illegal and unauthorized work identified prior to issuing the required permit shall be in addition to the required permit fee and shall be double the permit fee specifically required in Chapter 1307 of this Code plus a fine in accordance with the schedule of fines shown in Section 1110.0604(A)(1) of this code. With the exception of court costs deposited as required by law, all fines for citations issued in accordance with this section shall be deposited in the Building Inspection Trust Fund designated for and to be exclusively used in the investigation, administration, enforcement and prosecution of violations and violators of Chapter Eleven - Planning and Zoning Code and Chapter Thirteen - Building Code, as well as the continuing education and certification of the staff of the Division of Building Inspection.

- 1. Schedule of fines. The fines imposed on violators of this Chapter 1110 Flood Damage Reduction Regulations for the investigation and prosecution of violations shall be as shown below. If three (3) years occurs between offenses, the violation shall be reduced to the previous fine but shall never be less than a first offense.
  - a. First offense \$250.00
  - b. Second offense \$500.00
  - c. Third offense \$1,000.00
  - d. Fourth offense \$2,000.00
  - e. Fifth offense, any offense thereafter \$3,000.00

**B.** The payment of the aforementioned charges shall not relieve any person, firm or corporation from full compliance with the requirements of the Floodplain Regulations in the execution of the work nor from any penalty prescribed therein.

**C.** The owner of any building, structure or premises where anything in violation of this Chapter 1110 Flood Damage Reduction Regulations shall be placed or shall exist, and an architect, builder, contractor, agent, person or corporation employed in connection

therewith and who may have assisted in the commission of such violation shall each be guilty of a separate offense and upon conviction thereof shall be fined as herein provided. Each day's continued violation of any provision of this Chapter 1110 Flood Damage Reduction Regulations shall constitute a separate offense.

SECTION 3. That this Ordinance hereby is declared to be an emergency measure and shall be in force and effect from and after its passage. The reason for the emergency lies in the fact that same is necessary for the immediate preservation of the public peace, health, safety and property, and that this Ordinance must be immediately effective in order to provide for the orderly development of the area and to protect the land values in the area.

Vote on emergency clause: yeas 10, nays 0.

Passed: January 17, 2024, as an emergency measure: yeas 10, nays 0.

Attest:

Julie Gibbons  
Clerk of Council

Carrie Hartman  
President of Council

Approved:

January 22, 2024  
Wade Kapszukiewicz  
Mayor