

CHAPTER 157: FLOODPLAIN MANAGEMENT ORDINANCE

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GENERAL PROVISIONS

§ 157.01 PURPOSE.

The purpose of this chapter is to maximize the wise and safe use of the flood prone areas of Jefferson County and to ensure that flood levels are not increased and to minimize public and private losses from flooding by:

- (A) Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities;
- (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 are involved in the accommodation of flood waters;
- (D) Controlling filling, grading, dredging and other development which may increase flood damage or erosion; and
- (E) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

(1994 Jeff. Code, § 157.01) (Jeff. Ord. 30-1997, adopted and effective 11-11-1997; Lou. Metro Am. Ord. No. 125-2005, approved 8-29-2005)

§ 157.02 DEFINITIONS.

ACCESSORY STRUCTURE. A structure located on the same parcel of property as the principal structure, the use of which is incidental to the use of the principal structure. For purposes of this chapter, accessory structures shall constitute a minimal initial investment of no more than 10% of the market value of the principal structure, shall not be used for human occupancy, and shall be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds. (See definitions for *Principal Structure* and *Structure*.)

ADMINISTERING AGENCY. The Louisville and Jefferson County Metropolitan Sewer District.

BASE FLOOD. The flood having a 1% chance of being equaled or exceeded in any given year.

BASE FLOOD ELEVATION (BFE). The elevation shown on the Flood Insurance Rate Map (FIRM) issued by FEMA for

Zones AE, AH, A1-30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, and AR/AO that indicates the water surface elevation resulting from a flood that has a 1% or greater chance of being equaled or exceeded in any given year, also known as the 100-year flood. Any flood zone that begins with the letter A is subject to the 100-year flood.

BASEMENT. That portion of a building having its floor subgrade (below ground level) on all sides.

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

CRITICAL FACILITY. Any facility which if unusable or unreachable because of flooding would seriously and adversely affect the health and safety of the public. Critical facilities, to include, but not limited to schools, hospitals, nursing homes, and housing likely to contain occupants not sufficiently mobile to avoid injury or death unaided during a flood; police stations, fire stations, emergency vehicle and emergency equipment storage facilities, and emergency operations centers likely to be called upon before, during and after a flood; public and private utility facilities important to maintaining or restoring normal services before, during and after a flood; and those structures or facilities which produce, use, or store highly volatile, flammable, explosive, toxic, and/or water reactive materials.

DEVELOPMENT. Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials or equipment.

ELEVATED BUILDING. A non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), shear walls, or breakaway walls.

ENCLOSURE. That portion of a structure below base flood elevation (BFE) used solely for parking of vehicles, limited storage, or access to the structure.

EXISTING DEVELOPMENT. Any development or structure for which permitted construction commenced before the effective date of this chapter.

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads), which commenced before December 5, 2006.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads), which commences on or after December 5, 2006.

FEMA. The U.S. Federal Emergency Management Agency or any successor agency.

FLOOD or FLOODING. A general and temporary condition of partial or complete inundation of normally dry land areas from either the overflow of inland waters or the unusual and rapid accumulation or runoff of surface waters from any source.

FLOOD INSURANCE RATE MAP (FIRM). The official map of a community, on which the FEMA or FIA (Federal Insurance Administration) has delineated both the areas of special flood hazard area and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY. An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (such as mudflow) and/or flood-related erosion hazards.

FLOODPLAIN BOARD. The Board of the Louisville and Jefferson County Metropolitan Sewer District.

FLOODPLAIN PERMIT. The approval required by the administering agency for development under § 157.03(C) of this chapter.

FLOODPLAIN STORAGE COMPENSATION. An artificially excavated, hydraulically equivalent volume of floodplain storage sufficient to offset a reduction in floodplain storage resulting from filling or construction within the local regulatory floodplain as determined by the administering agency. Such floodplain storage compensation shall be within the same watershed and shall be provided on the same property or at an alternate site if the administering agency so approves.

FLOODPROOF or 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.

FLOODWAY. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

FLOOR. The top surface of an enclosed area in a building (including basement), such as the top of a slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a freestanding garage not connected to the main structure and used solely for parking vehicles.

FREEBOARD. A factor of safety, which is at least two feet for residential structures and one foot for non-residential

structures above the local regulatory base flood elevations, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood.

(1) Freeboard must be applied not just to the elevation of the lowest floor or floodproofing level, but also to the level of protection provided to all components of the building, such as building utilities, HVAC components, etc.

(2) All building utilities, including ductwork, must be elevated or protected to a two-foot freeboard level and all portions of the building below the freeboard level must be constructed using materials resistant to flood damage and must meet the opening requirements for enclosures.

FULLY DEVELOPED WATERSHED. A condition of a watershed which most accurately reflects the ultimate land use of the watershed and its potential to cause runoff.

FUNCTIONALLY DEPENDENT FACILITY. A facility which in the judgment of the administering agency cannot perform its essential project purpose unless it is located or carried out in close proximity to water. The term does not include long-term storage, manufacture, sales, service or residential facilities.

HISTORICAL STRUCTURE. Any structure which is:

(1) Listed individually in the National Register of Historic Places by the U. S. Department of Interior or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; or

(2) Certified or preliminarily determined by the U. S. 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; or

(3) Listed individually by the Commonwealth of Kentucky on its state inventory of historic structures or listed individually by the Louisville/Jefferson County Metro Government in its inventory of historic structures.

LOCAL REGULATORY BASE FLOOD ELEVATION. The height of the local regulatory flood expressed as feet above mean sea level (North American Vertical Datum 1988). This is determined by hydraulic calculations using the runoff from a fully developed watershed using as the basis for calculation a methodology approved by the administering agency which includes storm duration estimates and using zoning maps current as of the time of the calculation, provided that in calculating runoff potential for publicly owned property dedicated to public open space, for existing cemeteries, for existing 18 hole or larger regulation golf courses and for land prohibited from development by ordinance of Louisville/Jefferson County Metro Government or one of the municipalities within its boundaries, the actual use rather than the designated zoning category on the zoning maps shall be used.

LOCAL REGULATORY CONVEYANCE ZONE. The channel of a river or perennial stream or intermittent stream and the land adjacent to that river or stream which if unobstructed will discharge a local regulatory flood without cumulatively increasing the water surface elevation more than one-tenth of one foot. The conveyance zone is determined by an equal loss of conveyance (at higher elevation) occurring on each side of the channel.

LOCAL REGULATORY FLOOD. The flood having a 1% likelihood of being equaled or exceeded in any given year based on a fully developed watershed.

LOCAL REGULATORY FLOODPLAIN. Any stream course or normally dry land area susceptible to being partially or completely inundated by the overflow of water from sources of public water or by the unusual and rapid accumulation or runoff of public surface waters and subject to a local regulatory flood.

LOWEST ADJACENT GRADE. The lowest natural elevation of the ground surface, prior to construction, next to the proposed walls of a building.

LOWEST FLOOR. The lowest floor of the lowest enclosed area including the basement. An unfinished or flood resistant enclosure, useable solely for parking of vehicles, building access, or storage in an area other than a basement is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR 60.3 or this chapter.

MANUFACTURED HOME. A building, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property but does not include road ready vehicles not permanently attached to utilities.

MANUFACTURED HOME PARKS. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MARKET VALUE. The structure value, excluding the land (as agreed between a willing buyer and seller), as established by what the local real estate market will bear. **MARKET VALUE** of a structure for purposes of this chapter is: the appraised value of the structure determined by a certified general real property appraiser licensed and certified by the Kentucky Real Estate Appraisers Board or lacking that, the current assessment of the structure shown by the Property Valuation Administrator of Jefferson County, prior to the start of the addition, repair or improvement, or in the case of damage, prior to the damage's occurrence.

NATIONAL FLOOD INSURANCE PROGRAM or NFIP. The Federal program authorized by 42 U.S.C. §§ 4001 et seq.,

making available flood insurance protection to property owners, which availability is conditioned on the community's adoption and enforcement of floodplain management regulations meeting the minimum criteria set forth in the statute and the regulations.

NEW CONSTRUCTION. Any development which had not begun construction on the effective date of this chapter and includes any subsequent improvement to such structures. The first placement of permanent features of the development such as pouring of slabs or footings and installation of piles constitute beginning of construction, but land preparation, grading and filling or construction of accessory structures do not.

NEW MANUFACTURED HOME PARK OR SUBDIVISION. A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads), which is commenced on or after December 5, 2006.

OHIO RIVER CORRIDOR. Those areas adjacent to the Ohio River, which are in the local regulatory floodplain. These areas are set forth on a map that can be viewed at the office of the administering agency.

PRINCIPAL STRUCTURE. A walled and roofed structure built for uses other than those outlined in the definition of accessory structure. (See definitions for *Accessory Structure* and *Structure*.)

PUBLIC WATER. Water that flows from more than one property or from public lands or rights-of-way.

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.

RESIDENTIAL STRUCTURE. A non-commercial building designed for habitation by one or more families or a mixed-use building that qualifies as a single-family, two - four family, or other residential building, including without limitation, houses, condominiums and apartments.

SECTION 1316. The section of the National Flood Insurance Act of 1968, as amended, which states that no new or renewal flood insurance coverage shall be provided for any property that the administering agency finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that are intended to discourage or otherwise restrict land development or occupancy in local regulatory floodplain.

SPECIAL FLOOD HAZARD AREA. The land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the flood insurance rate map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/A1-30, AR/AE, AR/AO, AR/AH, or AR/A.

START OF CONSTRUCTION (includes **SUBSTANTIAL IMPROVEMENT**). The date the floodplain 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 the building.

STREAM, INTERMITTENT. A stream or part of a stream that has flowing water during certain times of the year when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water stream flow. All streams designated with a broken blue line on the U.S.G.S. 7.5 minute quadrangle topographic maps are considered to be intermittent, but may be determined in whole or part to be perennial or ephemeral based on information provided by a qualified professional, the Kentucky Division of Water or the U.S. Army Corps of Engineers. Additional intermittent stream determinations shall be made on a case-by-case basis by a qualified professional with a background in stream hydrology and/or wetland biology. Information concerning an additional designation shall be solicited from the Kentucky Division of Water and the U.S. Army Corps of Engineers.

STREAM, PERENNIAL. A stream that has flowing water year-round during a typical year. The water table is located above the streambed for most of the year. Groundwater is the primary source of water from stream flow. Runoff from rainfall is a supplemental source of water stream flow. All streams designated with a solid blue line on the U.S.G.S. 7.5 minute quadrangle topographic maps are considered to be perennial, but may be determined in whole or part to be intermittent based on information provided by a qualified professional, the Kentucky Division of Water or the U.S. Army Corps of

Engineers. Additional perennial stream determinations shall be made on a case-by-case basis by a qualified professional with a background in stream hydrology and/or wetland biology. Information concerning an additional designation shall be solicited from the Kentucky Division of Water and the U.S. Army Corps of Engineers.

STRUCTURE. A walled and roofed building built for occupancy, storage, support, shelter, or enclosure that is principally above ground, including but not limited to a manufactured home, a gas or liquid storage tank, or other man-made facility or infrastructure. (See definitions for *Accessory Structure* and *Principal Structure*.)

SUBDIVISION. Division of a parcel of land into two or more lots or parcels, for the purpose, whether immediate or future, of sale, lease, or building development; or if a new street is involved, any division of a parcel of land. The term includes resubdivision and when appropriate to the context, shall relate to the process of subdivision or to the land subdivided. The following shall not be considered a subdivision:

- (1) Consolidation of existing lots, parcels or tracts by deed or other recorded instrument; or
- (2) Creation of an easement other than an access easement (e.g. utility easement, etc.); or
- (3) A division of land into lots of five acres or larger for agricultural use and not involving a new street.

The term **SUBDIVISION** is further defined as follows:

(1) **MAJOR SUBDIVISION.** Any subdivision not defined as a minor subdivision.

(2) **MINOR SUBDIVISION.** A subdivision of land into no more than five tracts or lots, provided that such subdivision does not involve the creation of any new public street. Further division of an approved minor subdivision (exceeding the total of five lots in any 12 month period) shall require the subdivider to proceed under the provisions governing major subdivisions.

SUBSTANTIAL DAMAGE. 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% of the market value of the structure before the damage occurred, as determined by the administering agency and/or the Commonwealth of Kentucky.

SUBSTANTIAL IMPROVEMENT. Any combination of repairs, reconstruction, alteration, additions or improvements to existing development not related to damage taking place during a one-year rolling period in which the cumulative cost equals or exceeds 50% of the market value of the structure, excluding periodic maintenance and upkeep (including without limitation, windows, doors and roofing) that does not increase the value of the structure. (See definition for *Market Value*.) With regard to damage, Substantial Improvement shall mean any combination of repairs, reconstruction, rehabilitation or improvement to existing development taking place during a one-year rolling period in which the cumulative cost equals or exceeds 50% of the market value of the structure. The cost of repairs, reconstruction, alteration, additions or improvements shall reflect the value in the marketplace of the labor and materials to be used. The first alteration of any wall, ceiling, floor or other structural part of the structure constitutes beginning of construction of the substantial improvement whether or not that alteration affects the external dimensions of the structure. The term does not include the cost of flood proofing or elevating a structure or any portion thereof to the freeboard elevation.

This term does not apply to:

(1) Any project for improvement of a building required to comply with existing health, safety or sanitary code requirements which have been identified by the Code Enforcement Official and which are solely necessary to assure safe living conditions; or

(2) Any alternation of a "historic structure" as defined in this chapter, provided that the alteration will not preclude the structure's continued designation as a "historic structure" and provided that mitigation measures to minimize future flood damages are used to the maximum extent practicable when historic structures are renovated or when repaired following a floor or other hazard event.

REPETITIVE LOSS. A structure that has incurred flood-related damages on two or more occasions during a ten-year rolling period. When a structure covered by a Standard Flood Insurance Policy under the NFIP sustains a flood-related loss and the Commonwealth of Kentucky and/or the administering agency declares the structure to be substantially or repetitively damaged, increased cost of compliance coverage will help pay for a portion of the cost to elevate, floodproof, demolish, or remove the structure.

UTILITIES. Includes electrical, heating, ventilating, plumbing, and air conditioning equipment be protected to at least freeboard elevation.

VIOLATION. The failure of a structure or other development to be fully compliant with the provisions of this chapter. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

WATERSHED. All the area within a geographic boundary from which water, sediments and other transportable materials, and dissolved materials drain or are carried by water to a common outlet, such as a point on a larger stream, lake, or underlying aquifer.

WATERSHED MASTER PLAN. The plan adopted by the Board of the administering agency which depicts the critical hydrologic and flood management elements of a watershed such as local regulatory floodplain and local regulatory conveyance zones and is supported by maps, graphics, text, models, and capital improvements planned by the

administering agency.

(1994 Jeff. Code, § 157.02) (Jeff. Ord. 30-1997, adopted and effective 11-11-1997; Jeff. Am. Ord. 15-2000, adopted and effective 5-23-2000; Lou. Metro Am. Ord. No. 125-2005, approved 8-29-2005; Lou. Metro Am. Ord. No. 202-2006, approved 11-13-2006; Lou. Metro Am. Ord. No. 89-2015, approved 6-2-2015; Lou. Metro Am. Ord. No. 199-2015, approved 11-24-2015; Lou. Metro Am. Ord. No. 157-2017, approved 8-25-2017)

§ 157.03 FLOOD HAZARD REDUCTION PROVISIONS.

(A) Local Regulatory Conveyance Zone.

(1) No development, shall occur in the local regulatory conveyance zone except as approved in a permit issued by the administering agency and are one of the following:

(a) Detention, retention, or other stormwater, flood control, or water quality facilities which are beneficial to the stream corridor and riparian environment, or

(b) Uses consisting of open space which are in conformance with the Zoning Regulations of the Louisville/Jefferson County Metro Government and are associated with bona fide agriculture, silviculture, recreation, parking, and storage that whether in place or dislodged would not contribute to an increase in the local regulatory base flood elevation, or

(c) Necessary for navigation and waterborne freight handling, or

(d) Necessary for transportation or utility crossings, or

(e) Structures related to those in (b) or (c) above so long as the structures are designed, constructed and sited so as to offer the minimum obstruction to flows during a local regulatory flood, or

(f) Functionally dependent facilities which considered alone or with development up and down stream and across the stream are not likely to contribute to an increase in the local regulatory base flood elevation.

(2) No permit shall be required for:

(a) Customary and incidental routine grounds maintenance, landscaping, and home gardening which does not require zoning approval, a zoning variance or a building permit and which does not affect stormwater drainage entering or leaving any public right-of-way, or

(b) Emergency repairs of a temporary nature made on public or private property which are necessary for the preservation of life, health or property, and which are made under such circumstances where it would be impossible or impracticable to obtain a floodplain permit, or

(c) Temporary excavation for the purpose of repairing or maintaining any public street, public utility facility or any service lines related thereto.

(3) No person shall store materials which are flammable, explosive, reactive, toxic, corrosive or because of their buoyancy or other properties may be injurious to human, animal or plant life in the local regulatory conveyance zone.

(B) Streams. For “perennial stream” and “intermittent streams”.

(1) Notwithstanding anything in this section to the contrary, no relocation, channelization, or stripping of the stream, stream banks, or channel shall occur except for projects benefitting the general public such as road crossings, installation of utilities, flood control measures, drainage and outfall pipes, detention basins, retention basins or water impoundments and for projects with benefit to the public in preventing flooding provided such projects are essential to protect the health, safety, and welfare of local residents. Such projects must be the only alternative which is viable, and all exceptions must be approved by the administering agency, the Louisville Metro Planning Commission, the Kentucky Division of Water, and if applicable, the U.S. Army Corps of Engineers.

(2) A natural vegetation buffer strip shall be preserved at least 25 feet on each side of the stream bank from the top of the bank. In areas not already disturbed by urban, suburban, or agricultural land uses prior to the effective date of this chapter, existing natural vegetation over story and under story trees shall be preserved and shrubs and ground covers shall be maintained along the stream bank sufficient to naturally maintain the integrity of the channel.

(3) When removal of vegetation within the buffer strip specified in subsection (B)(2) above is necessary for the location and construction of a public project or project with benefit to the public in preventing flooding described in subsection (B)(1) above, native vegetation which thrives in riparian environments shall be replanted prior to completion of construction sufficient to naturally maintain the integrity of the channel.

(4) Stream crossings for existing lots or tracts may be permitted where there is no alternative for access to the property.

(C) Local Regulatory Floodplain.

(1) *Floodplain Permit.* No person shall begin development in the local regulatory floodplain unless and until a floodplain permit has been issued by the administering agency.

(a) The administering agency shall review subdivision proposals and other proposed new development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a local regulatory floodplain, any such proposals shall be

reviewed to assure that:

1. All such proposals are consistent with the need to minimize flood damage within the local regulatory floodplain;
2. All public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage;
3. Adequate drainage is provided to reduce exposure to flood hazards;
4. New and replacement water supply systems are designed to minimize or eliminate infiltration of flood waters into the systems;
5. New and replacement sanitary sewage systems are designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters; and
6. Onsite waste disposal systems are located to avoid impairment to them or contamination from them during flooding.

(b) When FEMA has designated areas of special flood hazards (A zones) by the publication of a community's FIRM, but has neither produced water surface elevation data nor identified a floodway, the administering agency shall require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or five acres, whichever is less, include within such proposals base flood elevation data.

(2) *Required Issuance.* The administering agency shall issue a floodplain permit for:

(a) Development, not including critical facilities, for use as a residence:

1. Consisting of new construction or substantial improvement or repair of substantial damage where the lowest floor including the basement, if any, mechanical and utility equipment and ductwork is elevated at least to freeboard elevation, or
2. Consisting of existing development other than substantial improvement or repair of substantial damage which:
 - a. Floodproofs any addition or elevates it to at least freeboard elevation and either,
 - b. Replaces or repairs the pre-existing condition of development or constructs additions or remodeling which do not constitute substantial improvement or repair of substantial damage without diminishing the storage capacity or the amount and velocity of the transmission of flood waters through the local regulatory floodplain from what was present prior to the replacement or repair, or
 - c. Floodproofs the existing development below freeboard elevation so that those areas including all mechanical and utility equipment and ductwork below the required elevation are watertight with walls substantially impermeable to the passage of water and structural components are used which have the capability to resist hydrostatic and hydrodynamic loads and the effects of buoyancy which capabilities shall be certified by a licensed professional engineer or architect and provided to the administering agency.
3. Consisting of emplacing a manufactured home:
 - a. In an existing manufactured home park which:
 - (i) Elevates the lowest floor, including mechanical and utility equipment, and ductwork of the manufactured home at least to freeboard elevation, or
 - (ii) Supports the manufactured home chassis by reinforced piers or other foundation elements of at least an equivalent strength of no less than 36 inches in height above grade,
 - (iii) And in either (i) or (ii) above, firmly anchors the manufactured home to the securely anchored foundation so as to resist flotation, collapse and lateral movement.
 - b. In a newly constructed or substantially improved or expanded manufactured home park or the new construction or substantial improvement or repair of substantial damage or expansion of such a manufactured home park which:
 - (i) Emplaces the manufactured home on a building pad which is raised at least to freeboard elevation, and
 - (ii) Firmly anchors the manufactured home to the securely anchored foundation so as to resist flotation, collapse and lateral movement.
 - c. In an existing, new or expanded manufactured home park where the owner notifies all owners or lessees of manufactured homes to be located in the manufactured home park of the requirements of this subsection (C)(2)(a)3. and insures their compliance with those requirements.

4. All new public or private roads must be constructed at or above the local regulatory base flood elevation.

(b) Development, other than a critical facility, for all other uses:

1. Where the lowest floor including basement, if any, and all mechanical and utility equipment and ductwork are elevated at least to freeboard elevation, or

2. Where development consists of new construction or substantial improvement or repair of substantial damage where the portion of the new construction or substantial improvement or repair of substantial damage below freeboard elevation is floodproofed so that those areas including all mechanical and utility equipment and ductwork below the required elevation are watertight with walls substantially impermeable to the passage of water and structural components are used which have the capability to resist hydrostatic and hydrodynamic loads and the effects of buoyancy which capabilities shall be certified by a licensed professional engineer or architect and provided to the administering agency.

3. Existing development not consisting of substantial improvement or repair of substantial damage which:

a. Floodproofs any addition or elevates it to at least freeboard elevation and either,

b. Replaces or repairs the pre-existing condition of development without diminishing the storage capacity or the amount and velocity of the transmission of flood waters through the local regulatory floodplain from what was present prior to the replacement or repair, or

c. Floodproofs the existing development as repaired or replaced in accordance with the standard provided in subsection (C)(2)(b)2.

4. For accessory structures in special flood hazard areas designated in 'A' Zone, except in the local regulatory conveyance zone or floodway, the following provisions shall apply:

a. The elevation requirements of subsection (C)(5) of this section do not apply to accessory structures. The administering agency shall have permissive issuance over this requirement.

b. Accessory structures shall only be used for storage or parking, and

c. Accessory structures shall be designed to have low flood damage potential, and

d. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters, and

e. Accessory structures shall be securely anchored to prevent flotation so as to minimize any damage that may be caused to other structures, and

f. All mechanical and utility equipment and ductwork of accessory structures shall be elevated or floodproofed at least to freeboard elevation, and

g. Accessory structures shall have automated openings on any enclosure below base flood elevation to equalize hydrostatic pressure during a flood. Flood openings/vents shall be no more than one foot above grade, total openings shall be one square inch per one square foot of floor area, and the accessory structure shall have at least two openings required on opposite walls; and

h. Accessory structures shall not be modified for a different use after permitting.

(c) Development for critical facilities.

1. A critical facility consisting of substantial improvement or repair of substantial damage so long as it meets the other requirements of subsections (C)(2)(b)1. and (C)(2)(b)2., above, provided that the lowest floor, including the basement, if any, mechanical and utility equipment and ductwork, is elevated at least to freeboard elevation and it has at least one access road capable of supporting a vehicle weighing 12,500 pounds which road is connected to land outside the local regulatory floodplain and the top of which road is no lower than freeboard elevation.

2. A critical facility not consisting of new construction or substantial improvement or repair of substantial damage which:

a. Floodproofs any addition or elevates it to at least freeboard elevation and either,

b. Replaces or repairs the pre-existing condition of development without diminishing the storage capacity or the amount and velocity of the transmission of flood waters through the local regulatory floodplain from what was present prior to the replacement or repair, or

c. Floodproofs the existing development as repaired or replaced in accordance with the standard provided in subsection (C)(2)(b)2.

(3) *Permissive Issuance.* The administering agency may issue a floodplain permit if the proposed development is consistent with the purposes of this chapter and the factors listed below have been considered and either avoided or mitigated:

(a) The danger to life and property presented by a local regulatory flood;

(b) The susceptibility of the proposed facility and its contents to damage from a local regulatory flood and the effect of such damage on the individual owner;

(c) The danger that in a local regulatory flood materials may be swept onto other lands to the injury of others;

(d) The safety of access to the property in times of a local regulatory flood for ordinary and emergency vehicles;

(e) The costs and feasibility of providing governmental services during and after a local regulatory flood, including fire

protection, emergency medical services, police protection, maintenance and repair of streets and bridges and of providing safely operating public utilities and facilities such as sewer, gas, electrical and water systems;

(f) The expected heights, velocity, duration, rate of rise and sediment transport of the waters from a local regulatory flood expected at the site.

(4) *General Provisions.*

(a) For a floodplain permit issued under either subsection (C)(2) or (C)(3), above, any part of the development which is elevated above the adjacent grade:

1. If solid foundation perimeter walls are to be used to elevate the structure to at least freeboard elevation,

a. There shall be provided openings sufficient to facilitate the unimpeded movement of flood waters and equalize hydrostatic flood forces on exterior walls which capabilities shall be certified to the administering agency by a licensed professional engineer or architect or which designs shall provide openings in each wall having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding, and the bottom of all openings shall be no higher than one foot above grade; and openings equipped with screens, louvers, valves or other coverings or devices shall permit the automatic flow of flood waters in both directions, and

b. All space within the area created by the solid perimeter walls shall be designated undevelopable space with a restriction recorded with the deed of such designation evidence of which recorded restriction shall be provided to the administering agency before approval of the floodplain permit, and

c. The interior portion of the area shall not be partitioned or finished into separate rooms.

2. If piers, posts or columns are to be used to achieve the elevation, the area encompassed by the piers, posts or columns shall not be designated living space, but shall be designated undevelopable space and shall be so restricted on the deed to the property filed in the Office of the Clerk of Jefferson County, the pile or column foundation and structure attached thereto shall be anchored to resist flotation, collapse and lateral movement due to effects of water load which values shall be those associated with a local regulatory base flood, and the design shall be certified by a licensed professional engineer as meeting accepted standards of practice for such structures. Breakaway walls shall be non-supporting and designed to collapse without causing collapse or displacement or other structural damage of the elevated building.

(b) For a floodplain permit issued under subsections (C)(2) or (C)(3), above, any development which displaces any storage capacity for floodwaters in the local regulatory floodplain shall provide floodplain storage compensation 1.5 times the displaced storage capacity. In the Ohio River Corridor, a floodplain compensation fee in an amount established by the administering agency may be assessed and paid to the administering agency in lieu of floodplain storage compensation or compensation elsewhere may be provided if approved by the administering agency. (See Editor's Note following this section.)

(c) No floodplain permit shall be issued under subsections (C)(2) or (C)(3), above, for development constituting substantial improvement or repairs or replacement of substantial damage on existing development to be used for storage of materials which are flammable, explosive, reactive, toxic, corrosive or because of their buoyancy or other properties may be injurious to human, animal or plant life unless plans have been presented by the permit applicant acceptable to the administering agency to keep the materials secure, to anchor the containers so they do not float away and to prevent spillage or leakage in the event of flooding and such plans have been attached to the floodplain permit as conditions, provided that occupants of properties zoned for residential use may store de minimis quantities of these materials sufficient for the occupants personal use on the property.

(d) Containers described in subsection (C)(4)(c), above, shall be securely anchored where necessary to prevent flotation due to possible high flood waters around aboveground or mounded containers, or due to high water table for those containers underground or partially underground. Underground, partially underground, and aboveground tanks shall conform to the most recent editions of the NFPA Flammable and Combustible Liquids Code and the NFPA Installation of LP-Gas Systems Code.

(e) No new construction of critical facilities shall occur in the local regulatory floodplain and no elevation shall be permitted for new construction of critical facilities to raise them to at least freeboard elevation.

(5) *Elevation / Floodproofing Certificate.*

(a) No person shall allow or permit construction to proceed beyond the lowest floor, including a basement, if any, and installation of mechanical and utility equipment and ductwork until a licensed land surveyor or licensed professional engineer has submitted to the administering agency an Elevation Certificate on a form approved by FEMA stating the elevation of the lowest floor and that it conforms to the requirements of the floodplain permit regarding the elevation of the lowest floor.

(b) No person shall use or occupy a structure which by terms of the floodplain permit is to be floodproofed until a licensed professional engineer or licensed architect in the Commonwealth has completed and filed with the administering agency a Floodproofing Certificate on a form approved by FEMA.

(6) *Expiration of Floodplain Permit.* If the holder of a floodplain permit has not commenced construction within one year from the date of its issuance by the administering agency, the floodplain permit shall expire and no development shall be permitted on the subject property unless and until a new floodplain permit is issued, provided that the term of an approved floodplain permit may be extended if the assumptions under which the permit was issued remain valid and the extension is

approved in writing by the administering agency before the floodplain permit expires with no more than two one-year extensions to be approved. Demolition, site clearing, and site preparation do not constitute commencing construction for the purpose of this section.

(7) *Conformance with floodplain permit.* No person who has obtained a floodplain permit shall construct development except in accordance with its terms. Upon completion of construction, the permittee shall provide a finished elevation certificate to MSD within 30 days of construction completion.

(8) *Nonconforming Use.* An existing development which was lawful on the effective date of this chapter but which is not in conformity with the provisions of this chapter may be continued so long as:

(a) The existing development is not expanded or enlarged except in conformity with the provisions of this chapter, and

(b) Any substantial improvement or repair of substantial damage is made only in conformity with the provisions of this chapter.

(9) *Parking lots.* An owner, lessor, manager, or lessee of a parking lot which is intended for public use, which resides in the local regulatory floodplain, shall erect a sign, in accordance with standards and appropriate language established by the administering agency, warning occupants that such parking lot is in a flood prone area. The maximum depth of flooding allowed in any new parking facility (except those devoted exclusively to tractor trailer parking) shall be six inches below the local regulatory base flood elevation for all areas except the Ohio River Corridor. Parking facilities in the Ohio River Corridor may be permitted due to longer warning times available.

(10) Any development that causes an increase or decrease to the base floor elevations shown on the effective FIRMS or Flood Insurance Study must apply for a Letter of Map Change (LOMC) from FEMA as soon as practicable, but not later than six months after the date of the Site Disturbance Permit release. Any such alterations must be reviewed and approved by FEMA through the LOMC process.

(11) *Signage.* For any new major residential subdivision that is not served by at least one access road which is at or above the local regulatory base floor elevation, signage shall be erected at the nearest floodplain location on the access roads to the new subdivision prior to record plat approval to warn residents that the road is flood prone. Signage shall be in accordance with standards and appropriate language established by the administering agency. All installation costs of signage shall be borne by the developer of the proposed subdivision.

(D) *Consent to public construction.* Notwithstanding any provision in this chapter to the contrary, no structure or improvement shall be constructed nor change in topography imposed nor shall any other development be carried out by any public entity without specific consent having been granted by the property owner or its designee or agent or by a Court in a legal proceeding separate and apart from this chapter nor shall any use be made of the property by any public entity without specific consent for such use having been granted by the property owner or its designee or agent or by a Court in a separate legal proceeding. This section applies only to this chapter and the activities and facilities provided for by the terms of this chapter.

(1994 Jeff. Code, § 157.03) (Jeff. Ord. 30-1997, adopted and effective 11-11-1997; Jeff. Am. Ord. 15-2000, adopted and effective 5-23-2000; Lou. Metro Am. Ord. No. 125-2005, approved 8-29-2005; Lou. Metro Am. Ord. No. 202-2006, approved 11-13-2006; Lou. Metro Am. Ord. No. 157-2017, approved 8-25- 2017; Lou. Metro Am. Ord. No. 114-2022, approved 8- 31-2022)

Editor's Note:

Section 157.03(C)(4)(b) shall not apply to detailed district development plans or subdivisions plans that have received preliminary MSD approval required for docketing for Louisville Metro Planning Commission review prior to the effective date.

§ 157.04 ADMINISTRATION.

(A) *Administering Agency.* The Louisville and Jefferson County Metropolitan Sewer District shall be the administering agency for this chapter. As administering agency it shall:

(1) Keep on file and make available to the public for its inspection up-to-date copies of the Flood Insurance Study (FIS) and accompanying Flood Insurance Rate Maps (FIRM), which are in digital format, published by the Federal Insurance Administration (FIA) or FEMA for the geographic boundaries of the Louisville/Jefferson County Metro Government and any cities within such geographic boundaries, dated December 5, 2006 and any amendments made by FEMA to such maps from time to time. Effective December 5, 2006, the Flood Insurance Study (FIS) and accompanying Flood Insurance Rate Maps (FIRM), dated December 5, 2006 and any subsequent amendments thereto, are hereby adopted and incorporated by reference. Prior to December 5, 2006, the Flood Insurance Study (FIS) and accompanying Flood Insurance Rate Maps (FIRM), published by the Federal Insurance Administration (FIA) or FEMA for the geographic boundaries of the Louisville/Jefferson County Metro Government and any cities within such geographic boundaries, dated February 2, 1994 and any amendments that have been made thereto, shall be kept on file and made available to the public for inspection.

(2) Accept data from third parties or use data of which it may become aware such as construction of any flood control protective works, evaluate it and, when the administering agency deems it accurate and otherwise acceptable, submit it to the Administrator of the Federal Insurance Administration or FEMA as the basis for amending the Flood Insurance Rate Maps for Jefferson County, and work with FEMA to amend the Flood Insurance Rate Maps for Jefferson County.

(3) Engage in a program of education to promote public awareness of the location of local regulatory floodplain, the risks of undertaking development in those areas without appropriate floodproofing and floodplain storage compensation measures, the availability and advantages of flood insurance, and protections which may be provided by floodproofing and floodplain storage compensation.

(4) On a time schedule as staffing and budget permit in the discretion of the administering agency prepare or cause to be prepared watershed master plans for all watersheds in Jefferson County identifying thereon the local regulatory base flood elevation, the local regulatory floodplain, the local regulatory conveyance zone, and other relevant hydraulic and geologic information.

(5) Develop an application for the floodplain permit listing items and information to be submitted for review and the form of those submittals and establish fees to be paid to the administering agency to cover the cost of its review. Information to be submitted shall include but not be limited to the following: site plan, lower floor construction drawings, grading and drainage plans, base flood elevation, conveyance zone limits, elevation of lowest floor, floodproofing elevation if applicable, floodproofing certification if applicable, description of the extent to which a watercourse will be altered, description of access, state permit, deed of restriction if applicable, certificate by a licensed professional engineer in the Commonwealth of Kentucky as to floodproofing adequacies and base flood elevation data for proposed new development.

(6) Review all floodplain permit applications for development or construction of structures in the local regulatory floodplain and so long as the application as it may be revised and any conditions attached to it are consistent with the requirements of this chapter, issue floodplain permits therefor and assure that all necessary permits have been obtained from those federal, state or local government agencies from which prior approval is required.

(7) Inspect as necessary development permitted by the floodplain permit or local regulatory conveyance zone permit to assure its conformance with the permit issued and obtain from the permit holder certificates of elevation in accordance with the provisions of this chapter.

(8) When the development is not in conformance with this chapter or with the floodplain permit or the local regulatory conveyance zone permit issued by the administering agency, either take appropriate enforcement action or recommend enforcement action to the Floodplain Board.

(9) Notify adjacent communities and the State prior to any alteration or relocation of a watercourse and submit evidence of such notification to FEMA.

(10) Assure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.

(11) Develop regulations as necessary implementing the provisions of this chapter including application forms and required submittals of technical information and maps and drawings to provide the administering agency adequate information for its review.

(12) Provide to the Floodplain Board the information and assistance required and necessary for its proceedings and actions.

(13) At its sole discretion, in an emergency, if other appropriate information designating local regulatory base flood elevation, local regulatory conveyance zone and local regulatory floodplain is not available, use maps issued by FEMA designating the FEMA base flood elevation, floodway and floodplain instead.

(14) Provide a flood determination letter. The flood determination letter shall include, at a minimum, whether any flood permits have been issued for repairs, reconstruction, alteration, additions and/or improvements within a ten-year rolling period for properties located in the floodplain.

(15) Maintain a database of all approved floodplain permits for properties located in the floodplain. This database shall include dates and amounts of the approved permits. This information shall be made available to the public upon request.

(B) *Variances.* The Floodplain Board, upon application, after public hearing, and subject to the procedural and substantive standards hereinafter set forth, may grant such specific variance from the individual provisions of § 157.03 above as will not cause detriment to the public good, safety or welfare nor be contrary to the spirit, purposes or intent of this chapter where by reason of unique and exceptional physical circumstances or condition of the particular property owned by the applicant (including all adjacent or contiguous or nearby property under the same ownership) the literal enforcement of the requirements of this chapter will result in an unreasonable hardship on the owner of the property adversely affected by the provisions of § 157.03.

(1) The following additional prerequisites are required for the granting of a variance from §157.03:

(a) The property is a historic structure, and the development proposed will not preclude the structure's continued designation as a historic structure, and the variance requested from the provisions of § 157.03 is the minimum required to preserve the historic character of the structure; or

(b) The variance is the minimum necessary to afford relief, considering the flood hazard; and

(c) A showing has been made of good and sufficient cause, a finding has been made that failure to grant the variance would result in exceptional hardship to the applicant, and a finding has been made that the granting of a variance would not result in an increase in the local regulatory base flood elevation, additional threats to public safety, or public expense, nor create nuisances, cause fraud on or victimization of the public, nor conflict with existing local laws or ordinances; and

(d) A variance shall not be granted within the local regulatory conveyance zone if any increase in the local regulatory base flood elevation during a local regulatory flood would result.

(2) Conditions.

(a) Upon consideration of the factors noted above and the intent and policies of this chapter, the Floodplain Board may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives herein.

(b) If an applicant is granted a variance which allows the permitted structure to be built with a lowest floor elevation no more than a specified number of feet below freeboard elevation then the applicant shall be notified that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(3) Additional information. The Floodplain Board may require the applicant to submit such additional information as it may deem necessary in order for it to evaluate the variance request.

(4) Process. Upon receipt of the written request of an applicant for a variance stating the reason therefor, the written decision of the administering agency disapproving the requested development and receipt of any additional information requested by the Floodplain Board, the Floodplain Board shall schedule a public hearing date, notify adjacent property owners and hear all interested parties at the hearing before rendering its decision to grant or deny the variance or to grant it with conditions.

(C) *Appeals.*

(1) Any person aggrieved by a final written decision of the administering agency under this chapter may appeal that decision to the Jefferson Circuit Court.

(2) All appeals shall be taken in the appropriate Circuit Court within 30 days after the final action or decision of the administering agency and all decisions which have not been appealed within 30 days shall become final.

(3) When an appeal has been filed, the clerk of the Circuit Court shall issue a summons to all parties, including the administering agency in all cases, and shall cause to be delivered for service as in any other law action.

(1994 Jeff. Code, § 157.04) (Jeff. Ord. 30-1997, adopted and effective 11-11-1997; Lou. Metro Am. Ord. No. 125-2005, approved 8-29-2005; Lou. Metro Am. Ord. No. 202-2006, approved 11-13-2006; Lou. Metro Am. Ord. No. 199-2015, approved 11-24-2015; Lou. Metro Am. Ord. No. 157-2017, approved 8-25-2017)

§ 157.05 ENFORCEMENT.

(A) *Civil Offense.* If, at any time development occurs which is not in accordance with the provisions of this chapter including obtaining or complying with the terms of a floodplain permit or a local regulatory conveyance zone permit and conditions and any approved modifications thereof, such violation of this chapter is a civil offense.

(B) *Notice of Violation.* If, at any time, a duly authorized employee or agent of the administering agency has reasonable cause to believe that a person has caused development to occur which is not in accordance with the provisions of this chapter including obtaining or complying with the terms of a floodplain permit and the conditions and any approved modifications thereof, a duly authorized employee or agent of the administering agency shall issue a notice to the person responsible for the violation and/or the owner of the property, stating the facts of the offense or violation, the section of this chapter and/or the permit violated, when it occurred, how the violation is to be remedied to bring the development into conformity with this chapter or with the approved permit, and within what period of time the remedy is to occur, which period of time shall be reasonable and shall be determined by the nature of the violation and whether or not it creates a nuisance or hazard. The remedy may include an order to stop work on the development. The notice shall also state that a citation may be forthcoming in the event that the requested remedies and corrective actions are not taken which citation will request a civil monetary fine and shall state the maximum fine which could be imposed.

(C) *Notice of citation.* If, at any time, a duly authorized employee or agent of the administering agency has reasonable cause to believe that a person has caused development to occur which is not in accordance with the provisions of this chapter including obtaining or complying with the terms of a floodplain permit or a local regulatory conveyance zone permit and the conditions and any approved modifications thereof, a duly authorized employee or agent of the administering agency may issue a citation to the offender stating the violation, prior notices of violation issued, how the violation is to be remedied to bring the development into conformity with this chapter or with the approved permit and within what period of time the remedy is to occur and what penalty or penalties are recommended. When a citation is issued, the person to whom the citation is issued shall respond to the citation within seven days of the date the citation is issued by either carrying out the remedies and corrections set forth in the citation, paying the civil fine set forth in the citation or requesting a hearing before the Floodplain Board. If the person to whom the citation is issued does not respond to the citation within seven days, that person shall be deemed to have waived the right to a hearing and the determination that a violation occurred shall be considered final. In that event, the citation shall be presented to the Floodplain Board and it shall enter its decision without a hearing.

(D) *Floodplain Board proceedings.*

(1) If the person to whom the citation is issued requests a hearing before the Floodplain Board, the Floodplain Board shall schedule the hearing within 14 days unless all parties mutually agree to a continuance.

(2) Evidence against the person charged with the violation shall be presented by an attorney at law and the

proceedings shall be recorded; the person cited may be represented by counsel. The Floodplain Board shall take all testimony under oath and may subpoena alleged violators, witnesses and evidence to its hearing.

(3) Any person not appearing at a duly scheduled hearing shall be deemed to have waived the right to a hearing and the Floodplain Board may enter its final decision.

(4) The Floodplain Board shall hear the evidence presented and based thereon shall render its decision and final order, which may uphold the citation, dismiss it, order remedies and corrective action or a penalty or some combination thereof. Its final order shall be rendered in writing.

(5) The final order of the Floodplain Board may be appealed to the Circuit Court of Jefferson County within 30 days of the date that it is issued. It shall be initiated by the filing of a complaint by the aggrieved party and the action shall be tried de novo. If the final order is not appealed within 30 days of its issuance, it shall be deemed final and unappealable.

(E) *Remedies.* At the conclusion of the hearing and after due deliberation of the evidence presented, the Floodplain Board may:

(1) Revoke or suspend a floodplain permit or a permit issued to perform work in a local regulatory conveyance zone if:

(a) A violation of any condition of the permit occurs; or

(b) A violation of any provision of this chapter or any other applicable law, ordinance, rule or regulation pertaining to the permit occurs; or

(c) Any condition exists or any act is done constituting fraud or creating a nuisance or hazard or endangering human life or the property of others.

(2) Issue a stop work order on all construction activity on the subject property which may be directly or indirectly related to site drainage and which is being performed pursuant to any permits, licenses, franchises or contracts issued or approved by the administering agency, the Louisville/Jefferson County Metro Government or other municipality.

(3) Order the owner of the property and/or the holder of the permit issued under this chapter to take such steps as are necessary to protect the public health and safety through an order to stop work or to take corrective or remedial action on the property where work constituting a violation of this chapter has occurred or is in progress. If the action ordered by the Floodplain Board is not taken within the period of time set by the Floodplain Board, the Floodplain Board may authorize the administering agency or its designee to cause the action to be taken, charging the violator all costs of such remedial mitigating or corrective action plus legal costs which costs shall become a lien against the property of the person cited, shall be recorded in the office of the County Clerk, and shall bear interest until paid in full and may be enforced by legal action.

(4) Assess a civil monetary penalty in accordance with subsection (F), below.

(F) *Penalties.*

(1) Any person who violates this chapter or fails to comply with any of its requirements shall be guilty of a civil offense and upon a finding of the Floodplain Board that such violation has occurred may be fined by the Floodplain Board a civil monetary penalty of not more than \$500 for each day the violation has occurred with a maximum not to exceed \$50,000 for each violation if the person who committed the offense contests the citation or a civil monetary fine of not more than \$300 for each day the violation has occurred with a maximum not to exceed \$30,000 for each violation if the person who committed the violation does not contest the citation.

(2) No penalty authorized in this chapter may be imposed after the expiration of five years beginning on the date of the issuance of the citation by the administering agency.

(G) *Notice to parties of record and insurers.* When a violation of any provision of this chapter has occurred and a nonappealable order of the Floodplain Board or a court of law has been entered, the administering agency shall notify any party having a legal interest in the property which is filed of record in the Office of the Clerk of Jefferson County or any party which has insured or could insure against flood damage to the property of the existence of the violation.

(H) *Public nuisance.* Every development placed or maintained in the local regulatory conveyance zone or in the local regulatory floodplain in violation of this chapter and which is further found to be a public nuisance may be enjoined and maintenance thereof may be abated by legal or equitable action of the administering agency or the Louisville/Jefferson County Metro Government or the municipality in which it is located. Nothing contained herein shall prevent the administering agency, any municipality or Louisville/Jefferson County Metro Government from taking such other immediate lawful actions as are necessary to prevent, correct, or remedy any such violation when there is reason to believe that the existence of the violation presents a serious threat to the public health, safety, welfare, or in the absence of immediate action, the effects of the violation may be irreparable or irreversible. Any such matters assessed or actions taken shall be in addition to, not instead of, the remedies and penalties provided herein.

(I) When the Floodplain Board, the Commonwealth of Kentucky, and/or the administering agency ascertains the property owner to be in persistent violation of Kentucky statutes and/or this chapter, then the administering agency shall submit a Section 1316 request to FEMA.

(1994 Jeff. Code, § 157.05) (Jeff. Ord. 30-1997, adopted and effective 11-11-1997; Jeff. Am. Ord. 15-2000, adopted and effective 5-23-2000; Lou. Metro Am. Ord. No. 125-2005, approved 8-29-2005)

§ 157.06 CONCURRENT ACTION BY PLANNING COMMISSION.

This chapter does not preclude the Louisville Metro Planning Commission from including land proposed for development as well as land designated as being within the local regulatory floodplain in its calculation of gross density. Wherever feasible, practicable and appropriate, the Louisville Metro Planning Commission may allow the same gross density on the land to be developed as would have been allowed on the total parcel were the local regulatory floodplain not present.

(1994 Jeff. Code, § 157.06) (Jeff. Ord. 30-1997, adopted and effective 11-11-1997; Lou. Metro Am. Ord. No. 125-2005, approved 8-29-2005)

§ 157.07 DISCLAIMER OF LIABILITY.

The Louisville/Jefferson County Metro Government recognizes that although the degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations, on rare occasions greater floods can and will occur and flood heights may be increased by man-made or natural causes. These provisions do not imply that land outside the flood plain areas or that uses permitted within such areas will be free issue from flooding or flood damages. These provisions shall not create liability on the part of the Louisville/Jefferson County Metro Government or the administering agency or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

(1994 Jeff. Code, § 157.07) (Jeff. Ord. 30-1997, adopted and effective 11-11-1997; Lou. Metro Am. Ord. No. 125-2005, approved 8-29-2005)

FLOOD PROTECTION

§ 157.20 FLOOD PROTECTION SYSTEM.

The operation and maintenance of any flood protection system, or any additions thereto, over which the authority of the Metro Council now extends or may extend by virtue of any additions thereto, shall be under the supervision and control of the Metropolitan Sewer District (MSD), pursuant to an agreement between the City, Fiscal Court of Jefferson County, and MSD, which is recorded at Deed Book 5643, Page 766 et seq., in the office of the County Clerk, and a Lease and Maintenance Agreement between the former City of Louisville and MSD that is recorded at Deed Book 5643, Page 823 et seq., in the office of the County Clerk.

(1999 Lou. Code, § 152.01) (Lou. Ord. No. 0039-2002, § 1, approved 3-15-2002; Lou. Metro Am. Ord. No. 125-2005, approved 8-29-2005)

§ 157.21 UNLAWFUL TRESPASS; EXCEPTIONS.

(A) It shall be unlawful for any person to trespass over, along, on, or through any real estate which the Louisville/Jefferson County Metro Government has acquired or may hereafter acquire as a right-of-way and easement for flood protection purposes and on which there has been constructed or may hereafter be constructed a floodwall or levee, or appurtenance thereto, except for where a path has been constructed for a Greenway Trail. Under no circumstances are there to be any unauthorized motor vehicles. The right of ingress and egress over, on, and through any such easement is confined to the privilege of using any established gate or opening in the floodwall or levee and other crossing officially provided for crossing, for the sole purpose of access to and from the outside of or riverward side thereof.

(B) The privilege herein given may be had and enjoyed subject to the following express reservations and restrictions:

(1) The Louisville/Jefferson County Metro Government reserves the right, without notice, to cancel and annul or to suspend such privilege whenever in its discretion the public interest may so require.

(2) The privilege shall always be subject and subservient to the public use and enjoyment of the flood protection system and of all the parts hereof and subject and subservient to maintenance, operation, control, and use of the rights-of-way, easements, floodwall, levee, gates, and openings, in the public interest, and for the uses and purposes for which these are intended.

(3) The privilege shall be limited to the use thereof for access to and from property lying outside of and riverward from the floodwall or levee, and shall not be used as a means of trespass on the rights-of-way, easements, floodwall, levee, gates, or openings or on the lands or property of others.

(1999 Lou. Code, § 152.02) (Lou. Ord. No. 0039-2002, § 1, approved 3-15-2002; Lou. Metro Am. Ord. No. 125-2005, approved 8-29-2005) Penalty, see § 157.99

§ 157.22 PROHIBITIONS ON LAND USED FOR FLOODWALL PURPOSES.

(A) *Buildings prohibited.* It shall be unlawful for any person to place or construct any building, house, shed, pen, or other structure, paving, or construction of any kind or character, whether it is of combustible or noncombustible material, on the land or rights-of-way or easements acquired by the Louisville/Jefferson County Metro Government for floodwall purposes, or at any place on the floodwall, levees, gates, or openings, unless this right was specifically reserved by the grantor in the document transferring the land by deed or easement to the Louisville/Jefferson County Metro Government.

(B) *Fences and obstructions.* It shall be unlawful for any person to place or construct any fences, enclosures, walkways, or other obstructions, or to place or dump rubbish, waste material, or other matter on the land or rights-of-way acquired by

deed or easement by the Louisville/Jefferson County Metro Government for floodwalls, or on, over, or against the floodwalls or levees or appurtenant works.

(C) *Burning of trash.* It shall be unlawful for any person to burn rubbish, trash, or any other material or to kindle any fires of any kind on the land or rights-of-way acquired by the Louisville/Jefferson County Metro Government for floodwall purposes, or to burn or cause to burn any grass or other growth thereon.

(D) *Stock and other animals.* It shall be unlawful for any person to tether, hitch, lead on or over, or permit to run at large any horses, mules, goats, sheep, chickens, ducks, geese, or other animals or fowl on the lands or rights-of-way acquired by the Louisville/Jefferson County Metro Government floodwall purposes, or at any place on the floodwall, levees, gates, or openings.

(1999 Lou. Code, § 152.03) (Lou. Ord. No. 0039-2002, § 1, approved 3-15-2002; Lou. Metro Am. Ord. No. 125-2005, approved 8-29-2005) Penalty, see § 157.99

§ 157.23 PERMIT FOR SPECIFICALLY PERMITTED USE.

On written application to MSD, any person may request permission to place or construct structures or to perform other activities on the lands or rights-of-way acquired by the Louisville/Jefferson County Metro Government for flood protection. MSD shall thereupon determine whether the proposed structures or performances of other activities will endanger the safety or efficiency of the flood protection works or will impede or obstruct the inspection or maintenance of them. In the event MSD approves the application it shall then submit the approved application to the District Engineer of the United States Corps of Engineers in charge of the locality for approval. On receipt of written approval by the District Engineer, MSD may issue written permission to the applicant to place or construct the structures or perform other activities, subject to the condition, in the manner, and at the locations therein stated. These terms and conditions shall provide among other things that permission may be withdrawn at any time subsequent to the granting thereto either with or without cause and shall further provide that the applicant will, on being notified to do so, remove such structures or cease to perform such activities, forthwith, and on the further condition that the person so authorized shall be responsible for and will promptly pay to the Louisville/Jefferson County Metro Government all damages which may have been occasioned to the lands, rights-of-way, floodwalls, levees, gates, or any parts thereof by virtue of the exercise of the permission.

(1999 Lou. Code, § 152.04) (Lou. Ord. No. 0039-2002, § 1, approved 3-15-2002; Lou. Metro Am. Ord. No. 125-2005, approved 8-29-2005; Lou. Metro Am. Ord. No. 157-2017, approved 8-25-2017)

§ 157.24 FLOODPLAIN MANAGEMENT PLAN.

The most recently adopted Floodplain Management Plan for Louisville and Jefferson County shall be applicable for all purposes relating to this chapter.

(1999 Lou. Code, § 152.05) (Lou. Ord. No. 90-1996, approved 6-4-1996; Lou. Am. Ord. 0015-2001, approved 2-16-2001; Lou. Am. Ord. No. 0039-2002, § 1, approved 3-15-2002; Lou. Metro Am. Ord. No. 125-2005, approved 8-29-2005; Lou. Metro Am. Ord. No. 157-2017, approved 8-25-2017)

§ 157.98 SEVERABILITY.

If any provision of this chapter as now or later amended or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

(1994 Jeff. Code, § 10.07) (Jeff. Ord. 36-1994, adopted and effective 12-20-1994; Lou. Metro Am. Ord. No. 125-2005, approved 8-29-2005)

§ 157.99 PENALTY.

Any person who violates any of the provisions of §§157.20 through 157.24 shall be fined not less than \$10 nor more than \$100 and may be further sentenced to jail for a period not exceeding 30 days for each offense, and shall be liable to the Louisville/Jefferson County Metro Government in a civil action for damages. Each day such violation continues shall constitute a separate offense.

(1999 Lou. Code, § 152.99) (Lou. Ord. No. 0039-2002, § 1, approved 3-15-2002; Lou. Metro Am. Ord. No. 125-2005, approved 8-29-2005)