

# CHAPTER 151: FLOOD DAMAGE PREVENTION

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## GENERAL PROVISIONS

### § 151.01 STATUTORY AUTHORIZATION.

The Legislature of the State of Oregon has in O.R.S. Chapter 197 delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the people of the City of Prineville do ordain the following chapter.  
(Ord. 1070, passed 10-26-99)

### § 151.02 FINDINGS OF FACT.

(A) The flood hazard areas of the city of Prineville are subject to periodic inundation which results in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for

flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare of the city.

(B) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards, which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately flood proofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.

(Ord. 1070, passed 10-26-99)

### **§ 151.03 STATEMENT OF PURPOSE.**

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

(A) To protect human life and health;

(B) To minimize expenditure of public money and costly flood control projects;

(C) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(D) To minimize prolonged business interruptions;

(E) To 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) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

(G) To ensure that potential buyers are notified that property is in an area of special flood hazard; and,

(H) To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

(Ord. 1070, passed 10-26-99)

### **§ 151.04 METHODS OF REDUCING FLOOD LOSSES.**

In order to accomplish its purposes, this chapter includes methods and provisions for:

(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 flood plains, stream channels, and natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

(D) Controlling filling, grading, dredging, 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 may increase flood hazards in other areas.

(Ord. 1070, passed 10-26-99)

## **§ 151.05 DEFINITIONS.**

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**ADDITION.** An alteration to an existing structure that results in any increase in its ground floor area.

**APPEAL.** A request for a review of the interpretation of any provision of this chapter or a request for a variance.

**AREA OF SHALLOW FLOODING.** A designated AO, X, or AH Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO or X is characterized as sheet flow and AH indicates ponding.

**AREA OF SPECIAL FLOOD HAZARD.** the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A, AE or V.

**BASE FLOOD.** The flood having a 1% chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood." Designation on maps always includes the letters A, AE or V.

**BASEMENT.** Any area of the 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 supporting foundation system.

**CRITICAL FACILITY.** A facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

**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, excavation or drilling operations located within the area of special flood hazard.

**ELEVATED BUILDING.** For insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

**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) is completed before the effective date of this chapter.

**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 manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

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

- (1) The overflow of inland or tidal waters and/or
- (2) The unusual and rapid accumulation of runoff of surface waters

from any source.

**FLOOD INSURANCE RATE MAP (FIRM).** The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY.** The official report provided by the Federal Insurance Administration that includes flood profiles, the flood boundary-floodway map, and the water surface elevation of the base flood.

**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 one foot.

**LOWEST FLOOR.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, 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 this chapter found at § 151.21(A)(2).

**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 attached to the required utilities. The term **MANUFACTURED HOME** does not include a “recreational vehicle.”

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

**NEW CONSTRUCTION.** Structures for which the “start of construction” commenced on or after the effective date of this chapter.

**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) is completed on or after the effective date of this chapter.

**RECONSTRUCTION.** The repair of a structure damaged by any cause (not just flooding) without increasing the floor area of the structure.

**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.

**REHABILITATION.** Any improvement and repairs that are made to the interior and exterior of an existing structure that do not result in any increase in the ground floor area of the structure. This is perhaps the most common category and includes activities like remodeling a kitchen, gutting the building and redoing the interior, and adding a second story.

**START OF CONSTRUCTION.** Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, 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 of the property or 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.

**STRUCTURE.** A walled and roofed building including a gas or liquid storage tank that is principally above ground.

**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.

**SUBSTANTIAL IMPROVEMENT.** Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either:

- (1) Before the improvement or repair is started; or
- (2) If the structure has been damaged and is being restored, before the

damage occurred.

For the purposes of this definition **SUBSTANTIAL IMPROVEMENT** is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or

- (2) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

**VARIANCE.** A grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

**WATER DEPENDENT.** A structure for commerce or industry, which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

(Ord. 1070, passed 10-26-99)

**§ 151.06 LANDS TO WHICH CHAPTER APPLIES.**

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the city.

(Ord. 1070, passed 10-26-99)

**§ 151.07 BASIS FOR ESTABLISHING AREAS OF SPECIAL FLOOD HAZARD.**

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled The Flood Insurance Study for Crook County, Oregon, and Incorporated Areas dated July 17, 1989, and as amended, with accompanying flood insurance maps, as amended, are hereby adopted by reference and declared to be a part of this chapter. The flood insurance study is on file at the city Planning Department, City Hall, 400 East 3rd Street, Prineville, Oregon.

(Ord. 1070, passed 10-26-99)

**§ 151.08 ABROGATION AND GREATER RESTRICTIONS.**

This chapter is 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.

(Ord. 1070, passed 10-26-99)

**§ 151.09 INTERPRETATION.**

In the interpretation and application of this chapter, all provisions shall be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and,
- (3) Deemed neither to limit or repeal any other powers granted under

state statutes.

(Ord. 1070, passed 10-26-99)

**§ 151.10 WARNING AND DISCLAIMER OF LIABILITY.**

The degree of flood protection required by this chapter 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. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

(Ord. 1070, passed 10-26-99)

**PROVISIONS FOR FLOOD HAZARD REDUCTION**

**§ 151.20 GENERAL STANDARDS.**

In all areas of special flood hazards, the following standards are required:

(A) Anchoring.

(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

(2) All manufactured homes must likewise be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage.

(3) Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's Manufactured Home Installation in Flood Hazard Areas guidebook for additional techniques).

(B) Construction materials and methods.

(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

(3) Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(C) Utilities.

(1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

(2) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,

(3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(D) Subdivision proposals.

(1) All subdivision proposals shall be consistent with the need to minimize flood damage.

(2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

(4) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments, which contain at least 50 lots or 5 acres (whichever is less).

(E) Review of building permits. Where elevation data is not available either through the flood insurance study or from another authoritative source (§ 151.36(B)(2)), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

(Ord. 1070, passed 10-26-99)

**§ 151.21 SPECIFIC STANDARDS.**

In all areas of special flood hazards where base flood elevation data has been provided as set forth in § 151.07, Basis for establishing the areas of special flood hazard, or § 151.36(B)(2), Use of other base flood data, the following provisions are required.

(A) Residential construction.

(1) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated one foot above the base flood elevation.

(2) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must be either certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria.

(a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

(b) The bottom of all openings shall be no higher than one foot above grade.

(c) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(B) Nonresidential construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated at or above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

(1) Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

(2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

(3) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in § 151.36(B)(3)(b);

(4) Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in division (A)(2)above;

(5) Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building floodproofed to the base flood level will be rated as one foot below).

(C) Manufactured homes.

(1) All manufactured homes to be placed or substantially improved within Zones AI-A30, AH and AE on the community's FIRM on sites:

(a) Outside of a manufactured home park or subdivision,  
(b) In a new manufactured home park or subdivision,  
(c) In an expansion to an existing manufactured home park or subdivision, or

(d) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood; shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated one foot above the base flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement.

(2) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones AI-30, AH, and AE on the community's FIRM that are not subject to the above manufactured home provisions be elevated so that either:

(a) The lowest floor of the manufactured home is elevated one foot above the base flood elevation, or

(b) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

(D) Recreational vehicles. Recreational vehicles placed on sites within Zones AI -30, AH, and AE on the community's FIRM shall either:

(1) Be on the site for fewer than 180 consecutive days,

(2) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

(3) Meet the requirements of division (C) above and the elevation and anchoring requirements for manufactured homes.

(E) Additions. If the cost of the proposed addition is greater than 50% of the market value of the existing structure as established in the most recent Crook County Assessment Roll, then the addition must be elevated one foot above the base flood elevation (BFE). Generally, the original part of the structure does not need to be elevated, just the addition. However, if the cost of the common boundary between the existing structure and the addition is greater than 50% of the market value of the existing structure, both the addition and the existing structure must be elevated.

(F) Reconstruction. If a building was damaged and the amount of damaged exceeded 50% of the structure's market value as established in the most recent Crook County Assessment Roll, then, upon repair, the structure must be elevated one foot above the BFE. The determination of the 50% value is based upon all the damage sustained. Thus, a building which sustains damages exceeding 50% of its market value will be subject to the substantial improvement rule set forth in division (A) above and will be required to elevate even if the actual cost of repair is reduced below the 50% threshold.

(G) Rehabilitation. If the cost of rehabilitation of an existing structure exceeds 50% of the market value of the structure as established by the most recent Crook County Assessment Roll, the entire structure is required to be elevated to one foot above the BFE.

(H) Accessory structures and attached/detached garages. Such structures are also subject to the substantial improvement determination depending on their type of alteration. However, they can be exempt from the elevation requirements of the substantial improvement rule. In order to be exempt, they must be used only for parking, storage and access, and must meet the wet floodproofing requirements outlined in FEMA's Technical Bulletin 7-93.  
(Ord. 1070, passed 10-26-99)

#### **§ 151.22 FLOODWAYS.**

Located within areas of special flood hazard established in § 151.07 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

(A) Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional civil engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(B) If division (A) above of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this subchapter.  
(Ord. 1070, passed 10-26-99)

#### **§ 151.23 ENCROACHMENTS.**

The cumulative effect of any proposed development, where combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one foot at any point.  
(Ord. 1070, passed 10-26-99)

#### **§ 151.24 STANDARDS FOR SHALLOW FLOODING AREAS.**

Shallow flooding areas appear on FIRMS as AO and X zones with depth designations. The base flood depths in these zones range from one to three feet above ground where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas, the following provisions apply:

(A) New construction and substantial improvements of residential structures and manufactured homes within AO or X zones shall have the lowest floor (including basement) elevated above the highest grade adjacent to the building, one foot or more above the depth number specified on the FIRM (at least two feet if no depth number is specified).

(B) New construction and substantial improvements of nonresidential structures within AO or X zones shall either:

(1) Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, one foot or more above the depth number specified on the FIRM (at least two feet if no depth number is specified); or

(2) Together with attendant utility and sanitary facilities, be completely flood proofed to or above that level so that any space below that level is

watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as in § 151.21(B)(3).

(3) Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

(D) Recreational vehicles placed on sites within AO or X Zones on the community's FIRM either:

(1) Be on the site for fewer than 180 consecutive days,

(2) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

(3) Meet the above requirements of this section and the elevation and anchoring requirements for manufactured homes.

(Ord. 1070, passed 10-26-99)

## **ADMINISTRATION AND ENFORCEMENT**

### **§ 151.35 ESTABLISHMENT OF DEVELOPMENT PERMIT.**

(A) Requirement. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in § 151.07. The permit shall be for all structures including manufactured homes, as set forth in the definitions in § 151.05, and for all development including fill and other activities, also as set forth in the definitions.

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

(1) Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures.

(2) Elevation in relation to mean sea level to which any structure has been floodproofed.

(3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in § 151.21(B).

(4) Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

(Ord. 1077, passed 3-14-00)

### **§ 151.36 DESIGNATION OF PLANNING DIRECTOR; DUTIES.**

(A) The Planning Director is hereby appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

(B) Duties of the Planning Director shall include, but not be limited to the following.

- (1) Permit review.
    - (a) Review all development permits to determine that the permit requirements of this chapter have been satisfied.
    - (b) Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.
    - (c) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of § 151.22(A) are met.
  - (2) Use of other base flood data. When base flood elevation data has not been provided in accordance with § 151.07, Basis for Establishing the Areas of Special Flood Hazard, the Planning Director shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer §§ 151.21 and 151.22, Specific Standards, and Floodways.
  - (3) Information to be obtained and maintained.
    - (a) Where base flood elevation data is provided through the flood insurance study or required as in division (B)(2) above, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
    - (b) For all new or substantially improved floodproofed structures:
      1. Verify and record the actual elevation (in relation to mean seal level), and
      2. Maintain the floodproofing certifications required in § 151.35(B)(3).
    - (c) Maintain for public inspection all records pertaining to the provisions of this chapter.
  - (4) Alteration of watercourses.
    - (a) Notify adjacent communities and the Department of Land Conservation and Development prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
    - (b) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
  - (5) Interpretation of FIRM boundaries. Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in § 151.37.
- (Ord. 1070, passed 10-26-99)

#### **§ 151.37 VARIANCE PROCEDURE.**

- (A) Appeal Board.

(1) The Planning Commission, as established by Ordinance No. 715 as amended by city Ordinances Nos. 927 and 1013, shall hear and decide appeals and requests for variances from the requirements of this chapter.

(2) The Planning Commission shall hear and decide appeals when it is alleged that there is an error in any requirement, decision, or determination made by the enforcement or administration of this chapter.

(3) Those aggrieved by the decision of the Planning Commission, or any taxpayer, may appeal such decision to the City Council, as provided for in land use applications in Ordinance No. 1057 (Chapter 153 herein).

(4) In making a decision upon such applications, the Planning Commission, or City Council upon appeal, shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and the following.

(a) The danger that materials may be swept onto other lands to the injury of others.

(b) The danger to life and property due to flooding or erosion damage.

(c) The susceptibility of the proposed facility and its contents to flood damage and the extent of such damage on the individual owner.

(d) The importance of the services provided by the proposed facility to the community.

(e) The necessity to the facility of a waterfront location, where applicable.

(f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.

(g) The compatibility of the proposed use with existing and anticipated development.

(h) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area.

(i) The safety of access to the property in times of flood for ordinary and emergency vehicles.

(j) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.

(k) 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.

(5) Upon consideration of the factors of division (A)(4) above and the purposes of this chapter the Planning Commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(6) The City Recorder shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

(B) Conditions for variances.

(1) Generally, the only condition under which a variance from the elevation standard may be issued is 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 (a) - (k)

in division (A)(4) above have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.

(2) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in this section.

(3) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(5) Variances shall only be issued upon the following.

(a) A showing of good and sufficient cause.

(b) A determination that failure to grant the variance would result in exceptional hardship to the applicant.

(c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in division (A)(4) above, or conflict with existing local laws or ordinances.

(d) A determination that the variance is consistent with the standards of Section 60.6 of the Rules and Regulations of the National Flood Insurance Program (44 CFR 59-76).

(6) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece or property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

(7) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except division (B)(1) above, and otherwise complies with § 151.20(A) and (B) of the General Standards.

(8) 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 that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(Ord. 1070, passed 10-26-99)

### **§ 151.38 VIOLATIONS.**

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violations of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions), shall constitute a misdemeanor. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation, including, but not limited to, the withholding of occupancy permits.

(Ord. 1070, passed 10-26-99)

**§ 151.99 PENALTY.**

Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$500 for each violation, and in addition shall pay all costs and expenses involved in the case.

(Ord. 1070, passed 10-26-99)