

FLOODPLAIN MANAGEMENT ORDINANCE

A. PURPOSE

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

1. 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;
2. requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
3. controlling the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
4. controlling filling, grading, dredging and other development which may increase flood damage or erosion; and
5. preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

B. DEFINITIONS

1. **"Administering Agency"** means the Louisville and Jefferson County Metropolitan Sewer District.
2. **"Basement"** means that portion of a building having its floor subgrade (below ground level) on all sides.
3. **"Breakaway wall"** means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

4. **"Critical facility"** means any facility which if unusable or unreachable because of flooding would seriously and adversely affect the health and safety of the public, to include (but without limiting effect) 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.
5. **"Development"** means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other **structures**, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials or equipment.
6. **"Elevated building"** means 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.
7. **"Existing development"** means any **development** or **structure** for which permitted construction commenced before the effective date of this ordinance.
8. **"FEMA"** means the U. S. Federal Emergency Management Agency or any successor agency.
9. **"Flood"** or **"flooding"** means 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.
10. **"Flood Plain Board"** means the Board of the Louisville and Jefferson County Metropolitan Sewer District.
11. **"Floodplain permit"** means the approval required by Part C of this Article of the Louisville and Jefferson County Metropolitan Sewer District for **development**.
12. **"Floodplain storage compensation"** means 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**. 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.

13. **"Floodproof"** or **"floodproofing"** means 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.
14. **"Floor"** means the top surface of an enclosed area in a building (including **basement**), such as the top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.
15. **"Fully developed watershed"** means a condition of a **watershed** which most accurately reflects the ultimate land use of the **watershed** and its potential to cause runoff.
16. **"Functionally dependent facility"** means 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.
17. **"Historic structure"** means any **structure** which is
 - (a) 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;
 - (b) 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;
 - (c) listed individually by the Commonwealth of Kentucky on its state inventory of historic structures or listed individually by the City of Louisville or Jefferson County in its inventory of historic structures.
18. **"Local regulatory conveyance zone"** means the channel of a river or **solid blue line 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.

19. **"Local regulatory flood"** means the **flood** having a one-percent (1%) likelihood of being equaled or exceeded in any given year based on a **fully developed watershed**.
20. **"Local regulatory base flood elevation"** means height of the **local regulatory flood** expressed as feet above mean sea level (National Geodetic Vertical Datum 1929). 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 Jefferson County or one of the municipalities within its boundaries, the actual use rather than the designated zoning category on the zoning maps shall be used.
21. **"Local regulatory floodplain"** means 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**.
22. **"Lowest adjacent grade"** means the lowest natural elevation of the ground surface, prior to construction, next to the proposed walls of a building.
23. **"Manufactured home"** means 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.
24. **"Manufactured home park"** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
25. **"National Flood Insurance Program"** or **"NFIP"** means the Federal program authorized by 42 United States Code 4001 et seq. making available flood insurance protection to property owners in **flood** prone areas, which availability is conditioned on the community's adoption and enforcement of flood plain management regulations meeting the minimum criteria set forth in the statute and the regulations.

26. **"New construction"** means any **development** which had not begun construction on the effective date of this ordinance. 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.
27. **"Public water"** means water that flows from more than one property or from public lands or rights-of-way.
28. **"Structure"** means 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.
29. **"Solid blue line stream"** means a stream defined and designated as such on 7 ½ minute quadrangle topographic maps published by the U.S. Geologic Survey.
30. **"Substantial improvement"** means any combination of repairs, reconstruction, alteration, additions to or improvements to **existing development**, taking place during the life of the **structure** and begun after the effective date of this ordinance in which the cumulative cost equals or exceeds fifty percent (50%) of the market value of the **structure**. The market value of the **structure** for purposes of this ordinance is (a) 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 initial addition, repair or improvement, or (b) in the case of damage, prior to the damage's occurrence. The term includes repairs made to **structures** which have incurred damage equal to or in excess of fifty percent (50%) of the pre-damage value of the **structure**, regardless of the cumulative cost of the actual repair work performed. The cost of alteration, additions, or improvements shall reflect the value in the marketplace of the labor and materials to be used in the improvements. The first alteration of any wall, ceiling, floor or other structural part of the **structure** whether or not that alteration affects the external dimensions of the **structure** constitutes beginning of construction of the **substantial improvement**. The term does not include the cost of **floodproofing** or elevating a **structure** or any portion thereof above the **local regulatory base flood elevation** plus one foot.
31. **"Watershed"** means 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.

32. **"Watershed master plan"** means 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**.

C. FLOOD HAZARD REDUCTION PROVISIONS

1. Local Regulatory Conveyance Zone

- (a) No **development**, shall occur in the **local regulatory conveyance zone** except as approved in a permit issued by the **administering agency** and are
- (i) Detention, retention, or other stormwater, flood control, or water quality facilities which are beneficial to the stream corridor and riparian environment or
 - (ii) Uses consisting of open space which are in conformance with the Zoning Regulations of Louisville and Jefferson County 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
 - (iii) Necessary for navigation and waterborne freight handling or
 - (iv) Necessary for transportation or utility crossings or
 - (v) Structures related to those in (ii) or (iii) 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
 - (vi) **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**.
- (b) No permit shall be required for

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

2. Streams

For "**solid blue line streams**"

- (a) Notwithstanding anything in this Part C to the contrary, no relocation, channelization, or stripping of the stream, stream banks, or channel shall occur except for public projects 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 are the only alternative which is viable, and all exceptions are approved by the **administering agency**, the Louisville and Jefferson County Planning Commission, the Kentucky Division of Water, and if applicable, the U. S. Army Corps of Engineers.
- (b) A natural vegetation buffer strip shall be preserved at least twenty-five feet on each side of the stream bank as defined by the hydraulic model of the channel. In areas not already disturbed by urban, suburban, or agricultural land uses prior to the effective date of this ordinance, existing 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.

- (c) When removal of vegetation within the buffer strip specified in (ii) above is necessary for the location and construction of a public project or project with benefit to the public in preventing flooding described in 2 (a) 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.

3. **Local Regulatory Floodplain**

(a) **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**.

(b) Required Issuance.

The **administering agency** shall issue a **floodplain permit** for

- (i) **Development**, not including **critical facilities**, for use as a residence
 - (A) consisting of **new construction** or **substantial improvement** where the lowest **floor** including the **basement** if any is elevated at least one foot above the **local regulatory base flood elevation** or
 - (B) consisting of **existing development** other than **substantial improvement** which
 - (I) replaces or repairs the pre-existing condition of **development** or constructs additions or remodeling which do not constitute **substantial improvement** 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

- (II) **floodproofs** the existing **development** below the **local regulatory base flood elevation** plus one foot so that those areas including all mechanical and utility equipment 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 registered professional engineer or architect and provided to the **administering agency** and
 - (III) **floodproofs** any addition or elevates it no less than one foot above the **local regulatory base flood elevation**
- (C) consisting of emplacing a **manufactured home**
- (I) in an existing **manufactured home park** which
 - a) elevates the lowest **floor** of the **manufactured home** at least one foot above the **local regulatory base flood elevation** or
 - b) 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,
 - c) and in either (a) or (b) above, firmly anchors the **manufactured home** to the securely anchored foundation so as to resist flotation, collapse and lateral movement.
 - (II) in a **newly constructed** or **substantially improved** or expanded **manufactured home park** or the **new construction** or **substantial improvement** or expansion of such a **manufactured home park** which

- a) replaces the **manufactured home** on a building pad which is raised no less than one foot above the **local regulatory base flood elevation** and
 - b) firmly anchors the **manufactured home** to the securely anchored foundation so as to resist flotation, collapse and lateral movement.
- (III) 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 section C3(b)(I)(C) and insures their compliance with those requirements.
- (D) On any lot created after the effective date of this ordinance, no **new construction** shall occur unless access to the lot is available from a road which is at or above the **local regulatory base flood elevation**.
- (ii) **Development**, other than a **critical facility**, for all other uses
 - (A) where the lowest **floor** including **basement** if any and all mechanical and utility equipment are elevated at least one foot above the **local regulatory base flood elevation** or
 - (B) where **development** consists of **new construction** or **substantial improvement** where the portion of the **new construction** or **substantial improvement** below the **local regulatory base flood elevation** plus one foot is **floodproofed** so that those areas including all mechanical and utility equipment 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 registered professional engineer or architect and provided to the **administering agency**.

(C) **existing development** not consisting of **substantial improvement** which

(I) 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

(II) **floodproofs** the existing **development** as repaired or replaced in accordance with the standard provided in section (ii)(B) above, and

(III) **floodproofs** any addition or elevates it no less than one foot above the **local regulatory base flood elevation**

(iii) **Development for Critical Facilities.**

(A) a **critical facility** consisting of **substantial improvement** so long as it meets the other requirements of this section (ii)(A) and (B) provided that the lowest **floor** including the **basement** if any is elevated at least one foot above the **local regulatory base flood 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 one foot above the **local regulatory base flood elevation.**

(B) a **critical facility** not consisting of **new construction** or **substantial improvement** which

(I) 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

(II) **floodproofs** the existing **development** as repaired

or replaced in accordance with the standard provided in section (ii)(B) above, and

- (III) **floodproofs** any addition or elevates it no less than one foot above the **local regulatory base flood elevation**.

(c) Permissive Issuance.

The **administering agency** may issue a **floodplain permit** if the proposed **development** is consistent with the purposes of this ordinance and the factors listed below have been considered and either avoided or mitigated:

- (i) the danger to life and property presented by a **local regulatory flood**;
- (ii) 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;
- (iii) the danger that in a **local regulatory flood** materials may be swept onto other lands to the injury of others;
- (iv) the safety of access to the property in times of a **local regulatory flood** for ordinary and emergency vehicles;
- (v) 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;
- (vi) the expected heights, velocity, duration, rate of rise and sediment transport of the waters from a **local regulatory flood** expected at the site.

(d) General Provisions.

- (i) For a **floodplain permit** issued under either (b) or (c) above, any part of the **development** which is elevated above the adjacent grade

- (A) If solid foundation perimeter walls are to be used to elevate the structure above the **local regulatory base flood elevation**,
- (I) 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 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
 - (II) 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
 - (III) The interior portion of the area shall not be partitioned or finished into separate rooms.
- (B) 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 registered 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**.

- (ii) For a **floodplain permit** issued under Section C3(b) or (c) above, any **development** which displaces any storage capacity for floodwaters in the **local regulatory floodplain** shall provide **floodplain storage compensation**.
- (iii) No **floodplain permit** shall be issued under Section C3(b) or (c) above for **development** constituting **substantial improvement** or repairs or replacement 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.
- (iv) Except for police stations and fire stations, 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** (except for police stations and fire stations) to raise them above the **local regulatory base flood elevation**.
- (e) Certificate of Elevation.
 - (i) No person shall allow or permit construction to proceed beyond the lowest **floor** until a registered land surveyor or registered engineer has submitted to the **administering agency** a certificate of elevation 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**.
 - (ii) No person shall use or occupy a **structure** which by terms of the **floodplain permit** is to be **floodproofed** until a registered engineer or architect licensed in the Commonwealth has completed

and filed with the **administering agency** a certificate of **floodproofing** on a form approved by **FEMA**.

(f) Expiration of **Floodplain Permit**.

If the holder of a **floodplain permit** has not commenced construction within one (1) 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.

(g) Conformance with **Floodplain Permit**.

No person who has obtained a **floodplain permit** shall construct **development** except in accordance with its terms.

(h) Nonconforming Use.

An **existing development** which was lawful on the effective date of this ordinance but which is not in conformity with the provisions of this ordinance may be continued so long as

- (i) the **existing development** is not expanded or enlarged except in conformity with the provisions of this ordinance and
- (ii) any alteration, addition or repair of the **existing development**, either which was the consequence of damage from any source equal to fifty (50%) percent or more of the value of the **existing development** immediately before the damage occurred or which involves a cost in excess of fifty (50%) percent of the market value of such **existing development** and in either case is made only in conformity with the provisions of this ordinance.

4. Consent to Public Construction.

Notwithstanding any provision in this ordinance 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's 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 ordinance 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 ordinance and the activities and facilities provided for by the terms of this ordinance.

D. ADMINISTRATION

1. Administering Agency.

The Louisville and Jefferson County Metropolitan Sewer District shall be the **administering agency** for this ordinance. As **administering** agency it shall

- (a) Keep on file and make available to the public for its inspection up to date copies of the Flood Insurance Rate Maps published by the Flood Insurance Administration or **FEMA** for Jefferson County and any cities within its geographic boundaries as they may be amended by that Agency from time to time.
- (b) 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 Flood 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 the County.
- (c) Engage in a program of education to promote public awareness of the location of flood prone areas, 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**.
- (d) 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 the 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.
- (e) 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 registered professional engineer in the State of Kentucky as to floodproofing adequacies and base flood elevation data for proposed new **development**.

- (f) 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 ordinance 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.
- (g) 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 ordinance.
- (h) When the **development** is not in conformance with this ordinance 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 **Flood Plain Board**.
- (i) Notify adjacent communities and the State prior to any alteration or relocation of a watercourse and submit evidence of such notification to **FEMA**.
- (j) Assure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained.
- (k) Develop regulations as necessary implementing the provisions of this ordinance including application forms and required submittals of technical information and maps and drawings to provide the **administering agency** adequate information for its review.
- (l) Provide to the **Flood Plain Board** the information and assistance required and necessary for its proceedings and actions.

- (m) 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.

2. Variances.

The **Flood Plain 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 Part C above as will not cause detriment to the public good, safety or welfare nor be contrary to the spirit, purposes or intent of this ordinance 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 ordinance will result in an unreasonable hardship on the owner of the property adversely affected by the provisions of Part C.

- (a) The following additional prerequisites are required for the granting of a variance from Part C:
 - (i) the property is a **historic structure**, the **development** proposed will not preclude the structure's continued designation as a **historic structure** and the variance requested from the provisions of Part C is the minimum required to preserve the historic character of the structure; or
 - (ii) the variance is the minimum necessary to afford relief, considering the **flood** hazard; and
 - (iii) 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
 - (iv) 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.
- (b) Conditions.

- (i) Upon consideration of the factors noted above and the intent and policies of this ordinance, the **Flood Plain Board** may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives herein.
- (ii) 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 the **local regulatory base flood 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.

(c) Additional information.

The **Flood Plain Board** may require the applicant to submit such additional information as it may deem necessary in order for it to evaluate the variance request.

(d) 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 **Flood Plain Board**, the **Flood Plain 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.

3. Appeals.

- (a) Any person aggrieved by a final written decision of the **administering agency** under this ordinance may appeal that decision to the Jefferson Circuit Court.
- (b) All appeals shall be taken in the appropriate Circuit Court within thirty (30) days after the final action or decision of the **administering agency** and all decisions which have not been appealed within thirty (30) days shall become final.
- (c) 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.

E. ENFORCEMENT

1. Civil Offense.

If, at any time **development** occurs which is not in accordance with the provisions of this ordinance 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 ordinance is a civil offense.

2. 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 ordinance 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 ordinance and/or the permit violated, when it occurred, how the violation is to be remedied to bring the **development** into conformity with this ordinance 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.

3. 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 ordinance 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 ordinance 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 (7) 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 **Flood Plain Board**. If the person to whom the citation is issued does not respond to the citation within seven (7) 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 **Flood Plain Board** and it shall enter its decision without a hearing.

4. **Flood Plain Board** Proceedings.

- (a) If the person to whom the citation is issued requests a hearing before the **Flood Plain Board**, the **Flood Plain Board** shall schedule the hearing within fourteen (14) days unless all parties mutually agree to a continuance.
- (b) 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 **Flood Plain Board** shall take all testimony under oath and may subpoena alleged violators, witnesses and evidence to its hearing.
- (c) Any person not appearing at a duly scheduled hearing shall be deemed to have waived the right to a hearing and the **Flood Plain Board** may enter its final decision.
- (d) The **Flood Plain 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.
- (e) The final order of the **Flood Plain Board** may be appealed to the Circuit Court of Jefferson County within thirty (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 thirty (30) days of its issuance, it shall be deemed final and unappealable.

5. Remedies.

At the conclusion of the hearing and after due deliberation of the evidence presented, the **Flood Plain Board** may

- (a) revoke or suspend a **floodplain permit** or a permit issued to perform work in a **local regulatory conveyance zone** if

- (i) a violation of any condition of the permit occurs; or
 - (ii) a violation of any provision of this ordinance or any other applicable law, ordinance, rule or regulation pertaining to the permit occurs; or
 - (iii) 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.
- (b) 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 County or other municipality.
- (c) order the owner of the property and/or the holder of the permit issued under this ordinance 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 ordinance has occurred or is in progress. If the action ordered by the **Flood Plain Board** is not taken within the period of time set by the **Flood Plain Board**, the **Flood Plain 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.
- (d) assess a civil monetary penalty in accordance with Section E 6 below.

6. Penalties.

- (a) Any person who violates this ordinance or fails to comply with any of its requirements shall be guilty of a civil offense and upon a finding of the **Flood Plain Board** that such violation has occurred may be fined by the **Flood Plain 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.

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

7. Notice to Parties of Record and Insurers.

When a violation of any provision of this ordinance has occurred and a nonappealable order of the **Flood Plain 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.

8. Public Nuisance.

Every **development** placed or maintained in the **local regulatory conveyance zone** or in the **local regulatory floodplain** in violation of this ordinance is a public nuisance and the creation thereof may be enjoined and maintenance thereof may be abated by legal or equitable action of the **administering agency** or the County or the municipality in which it is located. Nothing contained herein shall prevent the **administering agency**, any municipality or Jefferson County 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 and not instead of the remedies and penalties provided herein.

F. CONCURRENT ACTION BY PLANNING COMMISSION

This ordinance does not preclude the Louisville and Jefferson County 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 and Jefferson County 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.

G. DISCLAIMER OF LIABILITY

The County recognizes that although the degree of flood protection required by this ordinance 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 from flooding

or flood damages. These provisions shall not create liability on the part of the County or the **administering agency** or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.