

APPENDIX K FLOODPLAIN ORDINANCE

ARTICLE I. GENERAL PROVISIONS

Sec. 1.1. Statutory authorization and purpose.

- A. This ordinance is adopted pursuant to the authority granted to localities by Code of Virginia § 15.2-984.
- B. The city council finds the purpose of these provisions is to prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:
 - 1. Regulating uses, activities, and development that, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies;
 - 2. Restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding;
 - 3. Requiring all uses, activities, and developments that do occur in flood-prone districts be protected or flood-proofed against flooding and flood damage;
 - 4. Protecting individuals from buying land and structures that are unsuited for intended purposes because of flood hazards; and
 - 5. Acknowledging that the tide data over the last one hundred (100) years shows that Virginia Beach is facing an increased danger of flooding caused by both sea level rise and subsidence and has adopted the Sea Level Wise Adaptation Report as part of the Comprehensive Plan.

(Ord. No. 3309, 11-26-13; Ord. No. 3685, 2-1-22)

Sec. 1.2. Applicability.

These provisions shall apply to all privately and publicly owned lands within the jurisdiction of the City of Virginia Beach and identified as areas at risk of flooding by the City of Virginia Beach or shown on the Flood Insurance Rate Map (FIRM) or included on the flood insurance study (FIS) that are provided to the City of Virginia Beach by the Federal Emergency Management Agency (FEMA) and dated January 16, 2015.

(Ord. No. 3309, 11-26-13; Ord. No. 3376, 10-7-14; Ord. No. 3685, 2-1-22)

Sec. 1.3. Definitions.

Base flood. The flood having a one (1) percent chance of being equaled or exceeded in any given year; also referred to as the one hundred (100) year flood.

Base flood elevation. The FEMA designated one (1) percent annual chance water surface elevation. The water surface elevation of the base flood in relation to the datum specified on the city's FIRM.

Basement. Any area of the building having its floor sub-grade (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.

City council. The body designated to review appeals made by individuals with regard to decisions of the floodplain administrator in the interpretation of this ordinance.

City manager. The City Manager of the City of Virginia Beach, or his designees.

Design Flood Elevation (regulatory flood protection elevation). The base flood elevation plus the freeboard required by this ordinance.

Development. Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, the placement of manufactured homes, streets, mining, dredging, filling, grading, paving, excavation or drilling operations, storage of equipment or materials, or the subdivision of land.

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

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

Existing construction. Structures for which the "start of construction" commenced before the effective date of the most recent FIRM (January 16, 2015) "Existing construction" may also be referred to as "existing structures."

Flood or flooding.

1. A general or temporary condition of partial or complete inundation of normally dry land areas from:
 - a. The overflow of inland or tidal waters;
 - b. The unusual and rapid accumulation or runoff of surface waters from any source; or
 - c. Mudflows, which are proximately caused by flooding as defined in paragraph 1.b. of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event that results in flooding as defined in paragraph 1.a. of this definition.

Flood Insurance Rate Map (FIRM). An official map of the city, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study (FIS). A report by FEMA that examines, evaluates, and determines flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudflow and flood-related erosion hazards.

Floodplain. Any land area susceptible to being inundated by water from any source.

Flood proofing. 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, or structures and their contents.

Floodway. The channel of a river or other watercourse and the adjacent land areas that shall be reserved to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot. The "floodway" may also be referred to as the "regulatory floodway".

Freeboard. A factor of safety usually expressed in feet above the base flood elevation for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed. When a freeboard is included in the height of a structure, the flood insurance premiums may be less expensive.

Highest adjacent grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure. Any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs that have been approved by the Secretary of the Interior; or
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior; or
 - b. Directly by the Secretary of the Interior in states without approved programs.

Hydrologic and Hydraulic Engineering Analysis. Analyses performed by a professional engineer licensed by the Commonwealth of Virginia, in accordance with standard engineering practices that are accepted by the Virginia Department of Conservation and Recreation and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

Letters of map change (LOMC). A letter of map change is an official FEMA determination, by letter, that amends or revises an effective FIRM or FIS. Letters of map change include:

1. *Letter of map amendment (LOMA):* An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area (SFHA). A LOMA amends the current effective FIRM and establishes that a land as defined by metes and bounds or a structure is not located in a SFHA.
2. *Letter of map revision (LOMR):* A revision based on technical data that may show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. A letter of map revision based on fill (LOMR-F) is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the city's floodplain management ordinance.
3. *Conditional letter of map revision (CLOMR):* A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum National Flood Insurance Program (NFIP) requirements for such projects with respect to delineation of SFHAs. A CLOMR does not revise the effective FIRM or FIS.

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 Federal Code 44CFR § 60.3.

Manufactured home. A structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days, but does not include a recreational vehicle.

Manufactured home park or subdivision. A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

Market value. The value of a structure, established prior to the damage in question, as determined by property values used for tax assessment purposes (assessment) as adjusted by the Virginia Beach Real Estate Assessor (market factor) to reflect current market conditions, or as determined by an independent appraisal done by a professional appraiser.

New construction. For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after October 3, 1970 and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management ordinance adopted by the city and includes any subsequent improvements to such structures.

Post-FIRM structures. A structure for which construction or substantial improvement occurred after October 3, 1970.

Pre-FIRM structures. A structure for which construction or substantial improvement occurred on or before October 3, 1970.

Recreational vehicle. A vehicle that is:

1. Built on a single chassis;
2. Four hundred (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.

Repetitive loss. Flood-related damages to a structure sustained on two (2) separate occasions during a ten-year period for which the cost of repairs at the time of each flood event, on average, equals or exceeds twenty-five (25) percent of the market value of the structure before the most recent damage occurred.

Special flood hazard area (SFHA). The land in the floodplain subject to a one (1) percent or greater chance of being flooded in any given year as set forth in this ordinance. These areas are designated as AE, AH, AO, A, and VE on the FIRM.

Start of construction. For other than new construction and substantial improvement under the Coastal Barrier Resources Act (P.L. 97-348), means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement, or other improvement was within one hundred eighty (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 the 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. For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

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 fifty (50) percent of the market value of the structure before the damage occurred.

Substantial improvement. Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure before the start of construction of the improvement. This term includes structures that have incurred substantial damage regardless of the actual repair work performed. 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 that have been identified by the local code enforcement official and are the minimum necessary to assure safe living conditions; or
2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.
3. Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, shall comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places shall be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

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

Watercourse. Any natural or artificial lake, river, creek, stream, ditch, channel, waterway, gully, ravine, swale, or wash in which water flows, either continuously, periodically, or intermittently, and which has a definite channel, bed, or banks.

(Ord. No. 3309, 11-26-13; Ord. No. 3376, 10-7-14; Ord. No. 3580, 2-5-19; Ord. No. 3685, 2-1-22)

Sec. 1.4. Compliance and liability.

- A. No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this ordinance and any other applicable ordinances and regulations that apply to uses within the city.
- B. The degree of flood protection sought by the provisions of this ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study, but does not imply total flood protection. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that

districts outside the floodplain district or land uses permitted within such district will be free from flooding or flood damages.

- C. This ordinance shall not create liability on the part of the City of Virginia Beach or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

(Ord. No. 3309, 11-26-13)

Sec. 1.5. Records.

Records of actions associated with administering this ordinance shall be kept on file and maintained by the floodplain administrator.

(Ord. No. 3309, 11-26-13)

Sec. 1.6. Abrogation and greater restrictions.

This ordinance supersedes any ordinance currently in effect in the floodplain. Any ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive.

(Ord. No. 3309, 11-26-13)

Sec. 1.7. Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance be declared by the courts to be unconstitutional or invalid for any reason whatsoever, such decision shall not affect the validity of the ordinance as a whole other than the part so declared to be unconstitutional or invalid.

(Ord. No. 3309, 11-26-13)

Sec. 1.8. Penalty for violations.

Any person who fails to comply with any of the requirements or provisions of this ordinance or directions of the Directors of Planning or any authorized employee of the City of Virginia Beach shall be guilty of the appropriate violation and subject to the penalties therefore. Any violation of the provision of this ordinance shall be punishable by a fine of not more than one hundred dollars (\$100.00). Each person shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this ordinance is committed.

The Virginia Uniform Statewide Building Code (VA USBC) addresses building code violations and the associated penalties in VA USBC § 104 and § 115. Violations and associated penalties of the Zoning Ordinance for the City of Virginia Beach are addressed in Section 104 of the Zoning Ordinance.

In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this ordinance. The imposition of a fine or penalty for any violation of, or noncompliance with, this ordinance shall not excuse the violation or noncompliance or permit it to continue, and all such persons shall be required to correct or remedy such violations within a reasonable time. Any structure constructed, reconstructed, enlarged, altered, or relocated in noncompliance with this ordinance may be declared by the City of Virginia Beach to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this ordinance.

ARTICLE II. ADMINISTRATION

Sec. 2.1. Designation of the floodplain administrator.

The City Manager of the City of Virginia Beach is hereby appointed the floodplain administrator to administer and implement this ordinance. The floodplain administrator has delegated the duties and responsibilities set forth in this ordinance to the Department of Planning and Community Development.

(Ord. No. 3309, 11-26-13; Ord. No. 3685, 2-1-22)

Sec. 2.2. Duties and responsibilities of the floodplain administrator or his designee.

The duties and responsibilities of the floodplain administrator or his designee shall include but are not limited to:

- A. Interpreting floodplain boundaries and providing available base flood elevation and flood hazard information;
- B. Verifying that applicants proposing an alteration of a watercourse have notified adjacent communities, the department of conservation and recreation (division of dam safety and floodplain management), and other appropriate agencies (Virginia Department of Environmental Quality (VADEQ), United States Army Corps of Engineers (USACE), etc.) and have submitted copies of such notifications to FEMA;
- C. Advising applicants for new construction or substantial improvement of structures that are located within an area of the coastal barrier resources system established by the Coastal Barrier Resources Act that Federal flood insurance is not available on such structures; areas subject to this limitation are shown on FIRMs as coastal barrier resource system areas or otherwise protected areas;
- D. Submitting to FEMA, or requiring applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for the city, within six (6) months after such data and information becomes available if the analyses indicate changes in base flood elevations;
- E. Maintaining and permanently keeping records that are necessary for the administration of these regulations, including:
 - 1. Flood insurance studies, FIRMs (including historic studies and maps and current effective studies and maps) and letters of map change; and
 - 2. Documentation supporting issuance and denial of permits, Elevation Certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been floodproofed, inspection records, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.
- F. Notifying FEMA when the corporate boundaries of the City of Virginia Beach have been modified and:
 - 1. Providing a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to this ordinance has either been assumed or relinquished through annexation; and
 - 2. If the FIRM for any annexed area includes SFHAs that have flood zones with regulatory requirements that are not set forth in this ordinance, prepare amendments to this ordinance to

adopt the FIRM and appropriate requirements, and submit the amendments to the city council for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended ordinance shall be provided to the department of conservation and recreation (division of dam safety and floodplain management) and FEMA.

- G. Upon the request of FEMA, completing and submitting a report concerning participation in the NFIP, which may request information regarding the number of buildings in the SFHA, the number of permits issued for development in the SFHA, and the number of variances issued for development in the SFHA.
- H. Reviewing applications for permits to determine whether proposed activities will be located in the SFHA;
- I. Reviewing applications to determine whether proposed activities will be reasonably safe from flooding and requiring new construction and substantial improvements to meet the requirements of this ordinance;
- J. Reviewing applications to determine whether all necessary permits have been obtained from the federal, state, or local agencies from which prior or concurrent approval is required; in particular, permits from state agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the SFHAs of free-flowing non-tidal waters of the state;
- K. Approving applications and issuing permits to develop in flood hazard areas if the provisions of this ordinance have been met, or disapproving applications if the provisions of this ordinance have not been met;
- L. Granting administrative variances pursuant to section 6.1 of this ordinance;
- M. Inspecting, or causing to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with this ordinance or to determine if non-compliance has occurred or violations have been committed;
- N. Reviewing elevation certificates and requiring incomplete or deficient certificates to be corrected;
- O. Maintaining and permanently keeping documentation supporting the issuance and denial of permits, elevation certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been flood proofed, and other required design certifications, variances, and records of enforcement actions taken to correct violations of this ordinance;
- P. Enforcing the provisions of this ordinance, investigating violations, issuing notices of violations or stop work orders, and requiring permit holders to take corrective action;
- Q. Advising the city council regarding the intent of this ordinance and, for each application for a variance, preparing a staff report and recommendation;
- R. Administering the requirements related to proposed work on existing buildings:
 - 1. Making determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged; and
 - 2. Making reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct, and prohibit the non-compliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage;
- S. Undertaking, as determined appropriate by the floodplain administrator due to the circumstances, other actions that may include but are not limited to: issuing press releases, public service

announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in SFHAs; and assisting property owners with documentation necessary to file claims for increased cost of compliance coverage under National Flood Insurance Program (NFIP) flood insurance policies; and

- T. It is the duty of the city floodplain administrator to take into account flood, mudslide, and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire jurisdictional area of the city, whether or not those hazards have been specifically delineated geographically (e.g., via mapping or surveying).

(Ord. No. 3309, 11-26-13; Ord. No. 3685, 2-1-22)

Sec. 2.3. Reserved.

Editor's note(s)—Ord. No. 3685, adopted February 1, 2022, repealed § 2.3, which pertained to duties and responsibilities of the department of planning and derived from Ord. No. 3309, 11-26-13.

Sec. 2.4. Reserved.

Editor's note(s)—Ord. No. 3685, adopted February 1, 2022, repealed § 2.4, which pertained to shared duties and responsibilities and derived from Ord. No. 3309, 11-26-13.

Sec. 2.5. Use and interpretation of FIRMs.

The floodplain administrator shall make interpretations, where needed, as to the exact location of SFHAs, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:

- A. Where field surveyed topography indicates that adjacent ground elevations:
 - 1. Are below the base flood elevation, even in areas not delineated as a SFHA on a FIRM, the area shall be considered a SFHA and subject to the requirements of this ordinance;
 - 2. Are above the base flood elevation, the area shall be regulated as a SFHA unless the applicant obtains a letter of map change that removes the area from the SFHA.
- B. In FEMA-identified SFHAs where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified SFHAs, any other flood hazard data available from a federal, state, local or other source shall be reviewed and reasonably used.
- C. Base flood elevations and designated floodway boundaries on FIRMs and in Flood Insurance Studies (FISs) shall take precedence over base flood elevations and floodway boundaries by any other sources if such sources show reduced floodway widths or lower base flood elevations.
- D. Other sources of data shall be reasonably used if such sources show increased base flood elevations or larger floodway areas than are shown on FIRMs and in FISs.
- E. If a preliminary FIRM and/or a preliminary FIS has been provided by FEMA:
 - 1. Upon the issuance of a letter of final determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering this ordinance.

-
2. Prior to the issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to section 4.6 and used where no base flood elevations or floodway areas are provided on the effective FIRM.
 3. Prior to issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change or appeal to FEMA.

(Ord. No. 3309, 11-26-13)

Sec. 2.6. Jurisdictional boundary changes.

- A. The city floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas. The city shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards. If the FIRM for any annexed area includes SFHAs that have flood zones with regulatory requirements that are not set forth in this ordinance, the city shall prepare amendments to this ordinance to adopt the FIRM and appropriate requirements, and submit the amendments to the city council for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended ordinance shall be provided to the department of conservation and recreation (division of dam safety and floodplain management) and FEMA.
- B. In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22(a)(9)(v), all NFIP participating communities shall notify FEMA and, optionally, the department of conservation and recreation in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area.
- C. So that all FIRMs accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority shall be included with the notification.

(Ord. No. 3309, 11-26-13)

Sec. 2.7. District boundary changes.

The delineation of any of the floodplain districts may be revised by the City of Virginia Beach where natural or man-made changes have occurred or where more detailed studies have been conducted or undertaken by the USACE or other qualified agencies, or an individual documents the need for such change. However, prior to any such change, approval shall be obtained from FEMA.

(Ord. No. 3309, 11-26-13)

Sec. 2.8. Interpretation of district boundaries.

Initial interpretations of the boundaries of the floodplain districts shall be made by the floodplain administrator. Should a dispute arise concerning the boundaries of any of the districts a surveyor shall provide either an elevation certificate or recent survey showing topographic elevations and delineating the special flood hazard area.

(Ord. No. 3309, 11-26-13; Ord. No. 3685, 2-1-22)

Sec. 2.9. Submitting technical data.

A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six (6) months after the date such information becomes available, a community shall notify FEMA of the changes by submitting technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

(Ord. No. 3309, 11-26-13)

Sec. 2.10. Letters of map revision.

When development in the floodplain causes a change in the base flood elevation, the applicant, including state agencies, shall notify FEMA by applying for a conditional letter of map revision or a letter of map revision.

(Ord. No. 3309, 11-26-13)

Sec. 2.11. Appeals to decisions made by the floodplain administrator.

It is further provided that any decision of the floodplain administrator or his designee may be modified, reversed, or affirmed by the city council upon appeal by any aggrieved party to such decision, if such appeal is filed with the floodplain administrator within thirty (30) days of such decision through the application for a Floodplain Variance outlined in Section VI of this ordinance.

(Ord. No. 3309, 11-26-13; Ord. No. 3685, 2-1-22)

ARTICLE III. ESTABLISHMENT OF FLOODPLAIN DISTRICTS

Sec. 3.1. Description of floodplain districts.

- A. *Special flood hazard areas (SFHA)*. The SFHAs shall include land in the floodplain subject to a one (1) percent or greater chance of being flooded in any given year. The basis for the delineation of these districts shall be the FIS and the FIRM for the City of Virginia Beach prepared by FEMA, Federal Insurance Administration, dated January 16, 2015, and any subsequent revisions or amendments thereto.

The boundaries of the SFHAs are established as shown on the FIRM, which is declared to be a part of this ordinance and shall be kept on file at the City of Virginia Beach Department of Planning and Community Development, and include the following districts:

1. The Floodway District is in an AE Zone and is delineated, for the purposes of this ordinance, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the one (1) percent annual chance flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this district are specifically defined in Table 7 of the above-referenced FIS and shown on the accompanying FIRM.
2. The AE or AH Zones on the FIRM accompanying the FIS shall be those areas for which one (1) percent annual chance flood elevations have been provided and the floodway has not been delineated.

-
3. The A Zone on the FIRM accompanying the FIS shall be those areas for which no detailed flood profiles or elevations are provided, but the one (1) percent annual chance floodplain boundary has been approximated.
 4. The AO Zone on the FIRM accompanying the FIS shall be those areas of shallow flooding identified as AO on the FIRM.
 5. The Coastal A Zone on the FIRM accompanying the FIS shall be those areas labeled as AE and are located seaward of the limit of moderate wave action (LiMWA) line.
 6. The VE or V Zones on FIRMs accompanying the FIS shall be those areas that are known as coastal high hazard areas, extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storm or seismic sources.
- B. *Local flood hazard areas.* The City of Virginia Beach may identify and regulate local flood hazard or ponding areas that are not delineated on the FIRM. These areas are identified as follows:
1. *Other areas of flood risk.* The X and the X (Shaded) Zone on the FIRM where the City of Virginia Beach Stormwater Master Plan has identified areas, outside SFHAs delineated on the FIRM, that area susceptible to flooding. The most recent updated version of the modeling shall be used to identify areas that are likely to experience flooding.
 2. *Floodplain subject to special restrictions.* The Floodplain Subject to Special Restrictions is identified in section 4.10 and includes areas in the southern part of the city which are characterized by wind tides, low topography, and poorly draining soils.

(Ord. No. 3309, 11-26-13; Ord. No. 3376, 10-7-14; Ord. No. 3685, 2-1-22)

ARTICLE IV. FLOODPLAIN DISTRICT PROVISIONS

Sec. 4.1. Permit and application requirements.

- A. *Permit requirement.* All uses, activities, and development occurring within any floodplain district, including placement of manufactured homes and structures, shall be undertaken only upon the issuance of the appropriate permit. Such development shall be undertaken only in strict compliance with the provisions of this ordinance and with all other applicable codes and ordinances, as amended, such as the VA USBC and the City of Virginia Beach development ordinances. Prior to the issuance of any such permit, the building official shall require all applications to include compliance with all applicable state and federal laws and shall review all sites to assure they are reasonably safe from flooding. Under no circumstances shall any use, activity, or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.
- B. *Site plans and permit applications.* All applications for development within any floodplain district and all building permits issued within any floodplain district shall incorporate the following information:
1. For any addition, conversion of any non-habitable space to habitable space, or the construction or installation of a new accessory structure that requires a building permit.
 - a. A physical survey, performed after the effective date of the FIRM that:
 - i. Accurately depicts current improvements on the property;
 - ii. Provides a flood zone determination and BFE or flood depth at the stie; and
 - iii. Delineates the location of the flood zones on the property.

-
- b. For structures located in the SFHA delineated on the FIRM, a current elevation certificate sealed by a licensed design professional.
 - 2. For new construction and any substantial improvement of the principal structure:
 - a. A proposed site plan sealed by a registered design professional that provides:
 - i. The elevation of the base flood at the site;
 - ii. The elevation of the lowest floor (including basement) or, in V Zones, the lowest horizontal structural member;
 - iii. For structures to be flood-proofed (non-residential only), the elevation to which the structure will be flood-proofed; and
 - iv. Topographic information showing existing and proposed ground elevations.

(Ord. No. 3309, 11-26-13; Ord. No. 3685, 2-1-22)

Sec. 4.2. General standards.

- A. The following provisions shall apply to all permits issued in all floodplain districts:
 - 1. New construction and substantial improvements of all structures shall be located, elevated, and constructed according to the VA USBC and anchored to prevent flotation, collapse, or lateral movement of the structure.
 - 2. Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state anchoring requirements for resisting wind forces.
 - 3. New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
 - 4. New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
 - 5. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities, including duct work, shall be designed and/or above the design flood elevation.
 - 6. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
 - 7. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
 - 8. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.
 - 9. No use shall be permitted if such use will increase the amounts of potentially damaging materials, including those likely to be injurious to health, that might be transported in floods.
 - 10. For properties located in SFHAs delineated on the FIRM, an elevation certificate and, if applicable, a flood-proofing certificate shall be provided to the Floodplain Administrator prior to any foundation inspection, final inspections, and the issuance of any certificates of occupancy, in order to assure compliance with these floodplain regulations.

-
11. Prior to any proposed alteration or relocation of any channels or of any watercourse or stream within the city, a permit shall be obtained from the USACE, VADEQ, the Virginia Marine Resources Commission, and the Wetlands Board through the joint permit application process. Furthermore, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the department of conservation and recreation (division of dam safety and floodplain management), other required agencies, and FEMA.
 12. The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

(Ord. No. 3309, 11-26-13; Ord. No. 3685, 2-1-22)

Sec. 4.3. Elevation and construction requirements.

In all floodplain districts, with the exception of Coastal A and Coastal High Hazard (VE) zones, the following provisions shall apply:

- A. *Residential construction requirements.* The lowest flood, including basement, shall be set to the higher of the following:
 - i. A minimum of two (2) feet above the base flood elevation established on the most recent FIRM or by the most recent FIS; or
 - ii. A minimum of one (1) foot above the 100-year HGL elevation measured at the nearest existing or proposed public drainage structure or BMP, in the City Stormwater Master Plan.
- B. *Non-residential construction requirements.* New construction or substantial improvement of any commercial, industrial, or non-residential building or manufactured home shall have the lowest floor, including basement, elevated as established in section 4.3.A. of this ordinance. Buildings may be flood-proofed in lieu of being elevated provided that all areas of the building components below the design flood elevation are watertight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A professional engineer or architect licensed by the Commonwealth of Virginia shall certify that the standards of this subsection are satisfied. Such certification, including the specific elevation (in relation to NAVD88) to which such structures are flood proofed, shall be maintained by the building official.
- C. Fully enclosed areas of new construction or substantially improved existing structures that are below the design flood protection elevation shall:
 1. Not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator).
 2. Be constructed entirely of flood resistant materials below the design flood elevation.
 3. Space below the lowest floor of SFHAs delineated on the FIRM shall include measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings shall either be certified by a professional engineer or architect licensed by the Commonwealth of Virginia or meet or exceed the following minimum design criteria:

-
- a. Provide a minimum of two (2) openings on different sides of each enclosed area subject to flooding.
 - b. The total net area of all openings shall be at least one (1) square inch for each square foot of enclosed area subject to flooding.
 - c. If a building has more than one (1) enclosed area, each area shall have openings to allow floodwaters to automatically enter and exit.
 - d. The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade.
 - e. Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions.
 - f. Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.
- D. *Manufactured homes and recreational vehicle requirements.*
- 1. All manufactured homes placed, or substantially improved, on individual lots or parcels or in an existing manufactured home park or in a Recreational Resort Community must meet all the requirements for new construction, including the elevation and anchoring requirements in article 4, section 4.2, and section 4.3 of this ordinance.
 - 2. All recreational vehicles placed on sites shall either:
 - a. Be on the site for fewer than one hundred eighty (180) consecutive days; or
 - b. Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is 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
 - c. Meet all the requirements for manufactured homes in article 4 section 4.3 D.1., and the provisions of section 4.9 if located in a V or VE Zone.

(Ord. No. 3309, 11-26-13; Ord. No. 3376, 10-7-14; Ord. No. 3417, 6-2-15; Ord. No. 3685, 2-1-22)

Sec. 4.4. Floodway requirements.

The following provisions shall apply within the Floodway District of an AE zone:

- A. Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not affect normal flood flow, result in any increase in flood levels within the community, increase erosion within or adjoining to the floodway, cause the diversion of floodwaters during the occurrence of the base flood discharge, increase peak flows or velocities in a manner likely to lead to added property damage or hazards to life, or increase the amounts of damaging materials that might be transported in floods. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently-accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the floodplain administrator.

Encroachments, including fill, new construction, substantial improvements, and other development within the floodway that would result in any increase in flood levels within the community during the occurrence of the base flood discharge is specifically prohibited. No variance shall be granted for any development, use, or activity that would cause any increase in the water surface elevation of the base flood.

If the above provisions are satisfied, all new construction and substantial improvements shall comply with all applicable provisions of article 4.

- B. The placement of new or replacement manufactured homes (mobile homes) is prohibited.

(Ord. No. 3309, 11-26-13; Ord. No. 3685, 2-1-22)

Sec. 4.5. AE or AH Zone requirements.

The following provisions shall apply in the AE or AH Zones:

- A. Until a regulatory floodway is designated, no new construction, substantial improvements or other development (including fill) shall be permitted within the areas of special flood hazard, designated as Zone AE or AH on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the city.
- B. Notwithstanding the criteria set forth in section 4.10, development activities in Zones AE or AH on the City of Virginia Beach FIRM that increase the water surface elevation of the base flood by more than one (1) foot may be allowed, provided that the applicant first applies, with the City of Virginia Beach's endorsement, for a conditional letter of map revision, and receives the approval of FEMA.

(Ord. No. 3309, 11-26-13; Ord. No. 3376, 10-7-14)

Sec. 4.6. A Zone requirements.

The following provisions shall apply within an A Zone:

- A. For these areas, the floodplain administrator shall obtain, review, and reasonably utilize any base flood elevations and floodway information from federal, state, and other acceptable sources, when available. Where the specific one (1) percent annual chance flood elevation cannot be determined for this area using other sources of data, such as the USACE Floodplain Information Reports, the U.S. Geological Survey Floodprone Quadrangles, etc., then the applicant for the proposed use, development, and/or activity shall determine this base flood elevation. For development proposed in the A Zone the applicant shall use technical methods that correctly reflect currently accepted non-detailed technical concepts, such as flood hazard analyses, point on boundary, known high water marks from past floods, or detailed methodologies including hydrologic and hydraulic analyses. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the floodplain administrator.
- B. The floodplain administrator reserves the right to require a hydrologic and hydraulic analysis for any development and to determine the base flood elevation. When such base flood elevation data is utilized, the lowest floor shall be elevated to minimum of two (2) feet above the base flood level. During the permitting process, the floodplain administrator shall obtain:
1. The elevation of the lowest floor (including the basement) of all new and substantially improved structures; and

-
2. If the structure has been flood-proofed in accordance with the requirements of this ordinance, the elevation (in relation to NAVD88) to which the structure has been flood-proofed.

(Ord. No. 3309, 11-26-13; Ord. No. 3685, 2-1-22)

Sec. 4.7. AO Zone requirements.

The following provisions shall apply within an AO Zone:

- A. All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated above the highest adjacent grade an amount not less than the depth number specified in feet on the FIRM. If no flood depth number is specified, the lowest floor, including basement, shall be elevated no less than two (2) feet above the highest adjacent grade.
- B. All new construction and substantial improvements of non-residential structures shall:
 1. Have the lowest floor, including basement, elevated above the highest adjacent grade an amount not less than the depth number specified in feet on the FIRM. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least two (2) feet above the highest adjacent grade; or
 2. Together with attendant utility and sanitary facilities be completely flood-proofed to the specified flood 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.
- C. Adequate drainage paths around structures on slopes shall be provided to guide floodwaters around and away from proposed structures.

(Ord. No. 3309, 11-26-13)

Sec. 4.8. X and X (shaded) zone requirements. (Other areas of flood risk.)

- A. *Residential construction requirements.* The lowest floor, including basements, shall be set to a minimum of one (1) foot above the 100-year HGL elevation measured at the nearest existing or proposed public drainage structure or BMP, in the City Stormwater Master Plan.
- B. *Non-residential construction requirements.* New construction or substantial improvement of any commercial, industrial, or non-residential building or manufactured home shall have the lowest floor, including basement, elevated as established in Section 4.8.A. of this ordinance above. Buildings may be flood-proofed in lieu of being elevated provided that all areas of the building components below the design flood elevation are watertight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A professional engineer or architect licensed by the Commonwealth of Virginia shall certify that the standards of this subsection area satisfied. Such certification, including the specific elevation (in relation to NAVD88) to which such structures are flood proofed, shall be maintained by the building official.

(Ord. No. 3685, 2-1-22)

Sec. 4.9. V and VE Zone requirements.

The following provisions shall apply within Coastal A Zones and Coastal High Hazard Areas:

-
- A. All new construction and substantial improvements, including to manufactured homes, shall be elevated on pilings or columns so that:
1. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to a minimum of three (3) feet above the base flood elevation; and
 2. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one (1) percent chance of being equaled or exceeded in any given year.
- B. A professional engineer or architect licensed by the Commonwealth of Virginia shall develop or review the structural design, specifications, and plans for the construction and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of article IV, section 4.6 A. A V Zone Design Certificate shall be submitted to Permits and Inspections with plans for a building permit.
- C. The floodplain administrator shall obtain the elevation (in relation to NAVD88) of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures in Zones V and VE. The floodplain administrator shall maintain a record of all such information.
- D. All new construction shall be located landward of the reach of mean high tide.
- E. A professional engineer or architect licensed by the Commonwealth of Virginia shall develop and seal the structural design, specifications and plans for construction, and shall certify that the design and methods of construction to be used meet the following requirements:
1. All new construction and substantial improvements shall have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood-lattice work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system.
 2. Breakaway walls shall have a design safe loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot.
 3. The use of breakaway walls that exceed a design safe loading resistance of twenty (20) pounds per square foot may be permitted only if a professional engineer or architect licensed by the Commonwealth of Virginia certifies that the designs proposed meet the following conditions:
 - a. Breakaway wall collapse shall result from water load less than that which would occur during the base flood; and
 - b. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Water loading values shall be those associated with the base flood elevation on the FIRMs. Wind loading values shall be those required by the Virginia Uniform Statewide Building Code (VA USBC).
- F. The enclosed space below the lowest floor shall be used solely for parking of vehicles, building access, or storage. Such space shall not be partitioned into multiple rooms, temperature-controlled, or used for human habitation.

-
- G. The use of fill for structural support of buildings is prohibited. When non-structural fill is proposed in a coastal high hazard area, appropriate engineering analyses shall be conducted to evaluate the impacts of the fill prior to issuance of a development permit.
 - H. Existing nonconforming uses and structures located below the level of the base flood elevation, as shown in the FIS and accompanying FIRMs, shall not be expanded.
 - I. Sand dunes, barrier beaches, and other natural protective barriers shall remain intact to provide protection against wind, waves, and erosion drainage. Any person who desires to use or alter any coastal primary sand dune or beaches, other than for the purpose of conducting the activities specified in Article 1600, Section 1602 of the Zoning Ordinance of the City of Virginia Beach, shall first obtain a permit, or authorization, from the USACE, VADEQ, the Virginia Marine Resources Commission, and the Wetlands Board through the joint permit application process.
 - J. Manufactured homes are prohibited.

(Ord. No. 3309, 11-26-13; Ord. No. 3376, 10-7-14; Ord. No. 3417, 6-2-15; Ord. No. 3685, 2-1-22)

Sec. 4.10. Floodplain subject to special restrictions.

- A. All SFHAs that ultimately drain to Back Bay or the Currituck Sound shall be identified as a floodplain subject to special restrictions.
- B. The following provisions shall apply within the floodplain subject to special restrictions:
 - 1. Notwithstanding any provision of this ordinance to the contrary, no filling shall be permitted, including filling with material excavated from the same floodplain except for:
 - a. The purpose of public roadway or other similar public works construction undertaken by the Department of Public Works or Virginia Department of Transportation, or their agent for construction. This construction includes flood protection and flood mitigation projects;
 - b. The maintenance, alteration, or relocation of bona fide agricultural ditches, swales, or agricultural pathways or those ditches required for proper lot drainage;
 - c. For shoreline stabilization or maintenance projects, such as riprap revetment, bulkheads, or other treatment used to stabilize and protect the banks of waterways, the city manager or his designee may approve the placement of fill provided the following criteria are met:
 - i. A joint permit application is submitted;
 - ii. The alignment of the stabilization structure is along the escarpment or in line with adjacent stabilization structures;
 - iii. If there is an existing shoreline stabilization structure, any proposed replacement structure shall be no more than six (6) inches higher than the existing structure; and
 - iv. Fill must be the minimum necessary to support the stabilization project.
 - 2. The city manager, or his designee, may approve the placement of fill provided that the following criteria are met:
 - a. Proposed fill within the floodplain:
 - i. Shall be mitigated to result in no decrease in flood storage volume on the site;
 - ii. Shall be mitigated entirely on the same site that will incur the fill;
 - iii. Shall be contiguous to the existing floodplain that is being filled; and

-
- iv. Shall be limited to the smallest amount of area and volume possible to correct irregularities within the boundary of the project.
 - b. The combined areas of fill and mitigation shall not exceed five (5) percent of the total area within the floodplain located on the site that will incur the fill.
3. Residential dwelling structures shall not be located within the floodplains subject to special restrictions on lots created after October 23, 2001. Residential dwelling structures located in a SFHA and constructed prior to October 23, 2001 may be expanded with attached additions to a total footprint of less than one thousand (1,000) square feet; such additions shall also comply with the requirements set forth in article V of this ordinance.
4. On lots where single family dwellings are permitted by right and which were recorded on or before October 23, 2001 and meet the requirements of section 402(b) of the city zoning ordinance, the minimum fill necessary shall be permitted only for the following:
- a. A driveway or other on-site parking area;
 - b. To ensure the proper functioning of a septic system;
 - c. To ensure proper lot drainage given the existing and proposed development in the immediate area; and
 - d. To meet the VA USBC requirements for slab or crawl foundations.

(Ord. No. 3309, 11-26-13; Ord. No. 3371, 9-16-14; Ord. No. 3685, 2-1-22)

Sec. 4.11. Subdivision proposal requirements.

- A. All subdivision proposals shall be consistent with the need to minimize flood damage.
- B. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- C. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- D. Base flood elevation data shall be obtained from the most recent FIRM (January 16, 2015) or developed using detailed methodologies, including hydraulic and hydrologic analysis, comparable to those contained in a FIS for all final plats and other development proposals (including manufactured home parks and neighborhoods).

(Ord. No. 3309, 11-26-13; Ord. No. 3376, 10-7-14)

ARTICLE V. EXISTING STRUCTURES IN FLOODPLAIN AREAS

Sec. 5.1. Existing structures.

A structure or use of a structure or premises that lawfully existed prior to the adoption of this ordinance, but which is not in conformity with this ordinance, may be continued subject to the following conditions:

- A. Any existing structures in the floodway area shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed expansion or enlargement would not result in any increase in the base flood elevation.

-
- B. Any modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain district to an extent or amount of less than fifty (50) percent of its market value shall conform to the VA USBC and meet the freeboard height in effect at the start of construction for the original structure.
 - C. Any modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, in any floodplain district to an extent or amount of fifty (50) percent or more of its market value shall be undertaken only in full compliance with this ordinance and shall require the entire structure to conform to the VA USBC.

(Ord. No. 3309, 11-26-13; Ord. No. 3417, 6-2-15; Ord. No. 3685, 2-1-22)

ARTICLE VI. VARIANCES AND APPEALS

Sec. 6.1. Administrative variances.

The floodplain administrator shall approve or deny an application requesting an administrative variance after receipt of a complete application. Administrative variances may only be granted for the following uses, development, or redevelopment:

- A. As defined in section 4.10, floodplains subject to special restrictions, for filling only.
- B. Any structure or use sustaining damage not caused by flood to an extent or amount of fifty (50) percent or more of its market value to allow the structure to be rebuilt to the freeboard height in effect at the start of construction for the original structure. If the structure is a pre-FIRM structure, full compliance with the current VAUSBC freeboard above the base flood elevation is required. Structures that are utilizing an approved land management plan for their on-site waste disposal may be allowed to continue the use of the land management plan as long as it is approved by the city and the health department, even for damage or destruction resulting from flood.
- C. As defined in section 4.8 B, X and X (Shaded) Zone requirements. (Other Areas of Flood Risk), and 4.3 A(ii) when the required finished floor is higher than the BFE plus two feet of freeboard, where the floodplain administrator, in consultation with the Development Services Center, has determined that the proposed stormwater engineering design will approximately mitigate any impacts to the finished floor of the nonresidential development.

(Ord. No. 3309, 11-26-13; Ord. No. 3417, 6-2-15; Ord. No. 3685, 2-1-22)

Sec. 6.2. City council variances.

- A. Notwithstanding any other provision of this ordinance, the city council shall have the authority to grant such variances from the terms of this ordinance as will not be contrary to the public interest in cases in which the strict application of the provisions of this ordinance would effectively prohibit or unreasonably restrict the use of the subject property. No variance shall be granted for any proposed use, development, or activity within any Floodway District that will cause any increase of the base flood elevation.
- B. In acting upon applications for variances, the city council shall satisfy all relevant factors and procedures specified in other sections of this ordinance and shall consider the following additional factors:
 - 1. The danger to life and property due to increased flood heights or velocities caused by encroachments.
 - 2. The danger that materials may be swept on to other lands or transported in floods posing the risk of injury to others.

-
3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
 4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
 5. The importance of the services provided by the proposed facility to the community.
 6. The requirements of the facility for a waterfront location.
 7. The availability of alternative locations not subject to flooding for the proposed use.
 8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 9. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
 10. The safety of access by ordinary and emergency vehicles to the property in time of flood.
 11. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
 12. The historic nature of a structure. Variances for repair or rehabilitation of historic structures may be granted upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 13. Such other factors that are relevant to the purposes of this ordinance.

(Ord. No. 3309, 11-26-13)

Sec. 6.3. Application process.

- A. Applications for variances from the requirements of this ordinance shall be made to the city council and filed with the director of planning. The fee for such applications shall be seven hundred eighty dollars (\$780.00). Such fee shall include all costs of notifications and advertising. Except in cases in which such fee is waived, the director shall not accept any application not accompanied by payment of the required fee. The procedure for the advertising, hearing and determination of applications for floodplain variances shall be in accordance with the requirements pertaining to applications for subdivision variances, as set forth in section 9.4 of the subdivision ordinance. In cases in which a variance application is filed by reason of a natural disaster that is the subject of a federal declaration of emergency, application and associated advertising fees shall be waived and such application shall be given expedited processing to the maximum practical extent.
- B. All applications shall be accompanied by the following:
 1. A separate map, on a 1" = 100' or greater scale, identifying all proposed land disturbance, including fill and mitigation areas, and the limits of the existing and proposed SFHAs, tidal and non-tidal wetlands, Southern Rivers Watershed Management Area Buffer, and CBPA Resource Protection Area Buffer; and
 2. A preliminary floodplain study addressing the physical and environmental characteristics of the floodplain located on adjoining properties and in the general area. Such study shall be sufficient to show that the variance, if granted, will meet the standards defined in section 6.4 and in addition thereto, shall:
 - a. Contain supporting data and calculations required for a Preliminary Stormwater Engineering Analysis as appropriate;

-
- b. Comply with the Public Works Design Standards Manual; and
 - c. Be certified by a professional engineer, architect, surveyor, landscape architect or practitioner of a related field having a valid license issued by the Commonwealth of Virginia or who is exempt from licensure pursuant to applicable provisions of the Virginia Code.

(Ord. No. 3309, 11-26-13; Ord. No. 3371, 9-16-14; Ord. No. 3547, 5-15-18, eff. 7-1-18; Ord. No. 3624, 6-16-20; Ord. No. 3685, 2-1-22)

Sec. 6.4. Requirements.

No variance shall be granted unless the following requirements are met:

- A. Such variance will not create or result in:
 - 1. Unacceptable or prohibited increases in flood heights;
 - 2. Additional threats to public safety;
 - 3. Extraordinary public expense;
 - 4. Nuisances; or
 - 5. Fraud or victimization of the public.
- B. The granting of such variance will not be detrimental to other property in the vicinity.
- C. The circumstances giving rise to the variance application are not of a general or recurring nature.
- D. Such circumstances arise from the physical character of the property or from the use or development of adjacent property and not from the personal situation of the applicant.
- E. The granting of such variance will not be in conflict with any city ordinance or regulation.
- F. Variances shall be the minimum necessary to provide relief.
- G. All variances shall meet all of the requirements for the Chesapeake Bay Preservation Area Ordinance (Appendix F) and the Southern Rivers Watershed Management Ordinance (Appendix G), unless a variance therefrom is granted.

(Ord. No. 3309, 11-26-13; Ord. No. 3371, 9-16-14)

Sec. 6.5. Notification.

The floodplain administrator shall notify the applicant for a variance in writing that the issuance of a variance to construct a structure below the base flood elevation a) increases the risks to life and property and b) will result in increased premium rates for flood insurance.

(Ord. No. 3309, 11-26-13)

Sec. 6.6. Records.

A record of all variance actions, including justifications for the granting of variances and notifications issued pursuant to this section shall be maintained by the floodplain administrator. Any variances that are issued shall be noted in the annual or biennial report submitted to FEMA.

(Ord. No. 3309, 11-26-13)

Sec. 6.7. Appeals to variance decisions.

Appeals of decisions by the city council under this ordinance shall be subject to review by the Circuit Court of the City of Virginia Beach, if filed within thirty (30) days from the date of city council action.

(Ord. No. 3309, 11-26-13)