

Chapter 4 BUILDING CODES AND FRANCHISES

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ARTICLE I. BUILDING CODES ADOPTED

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§ 4-1. International Building Code adopted.

The International Building Code, current edition and all future amendments and editions thereto, unless otherwise provided, is hereby adopted and declared operative and binding within the corporate limits of the City of Fayette, Alabama, and its police jurisdiction.

(Ord. No. 2005-05, § 1, 8-9-05)

Editor's note—

Section 1 of Ord. No. 2005-05, adopted Aug. 9, 2005, amended [§ 4-1](#) in its entirety to read as herein set out. Former [§ 4-1](#) pertained to the Southern Standard Building Code and derived from an ordinance of Aug. 18, 1975.

State law reference— Code of Alabama, § 11-43-59 and § 11-45-8.

§ 4-1.1. Schedule of permit fees.

On all buildings, structures or alterations in the city where codes are enforced, requiring a permit, a permit fee shall be paid at the time of filing the application. The fee schedules shall be as follows:

Residential building permit fees:

\$100—1,000	\$6.00
\$1,000—2,000	\$6.00 per thousand or fraction thereof
\$2,000—15,000	\$12.00 + \$3.00 each additional thousand or fraction thereof
\$15,000—50,000	\$51.00 + \$2.50 each additional thousand or fraction thereof
\$50,000—100,000	\$138.50 + \$2.00 each additional thousand or fraction thereof
\$100,000—500,000	\$238.50 + \$1.25 each additional thousand or fraction thereof
\$500,000 and over	\$738.50 + \$0.75 each additional thousand or fraction thereof

Nonresidential building permit fees:

\$0.00—1,000	\$15.00
\$1,000—2,000	\$15.00 per thousand or fraction thereof
\$2,000—15,000	\$30.00 + \$4.00 each additional thousand or fraction thereof
\$15,000—50,000	\$82.00 + \$3.75 each additional thousand or fraction thereof
\$50,000—100,000	\$213.25 + \$3.50 each additional thousand or fraction thereof
\$100,000—500,000	\$388.25 + \$2.75 each additional thousand or fraction thereof
\$500,000 and over	\$1,488.25 + \$2.00 each additional thousand or fraction thereof

<i>Construct swimming pool</i>	\$25.00
<i>Alterations to roof structure</i>	\$50.00
<i>Moving of building</i>	\$30.00

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<i>Demolition of building</i>	\$12.00
<i>Erection of sign</i>	\$25.00

<i>Electrical inspection fees:</i>	
Residential (under 2,000 sq. ft.)	\$42.50
Residential (over 2,000 sq. ft.)	62.50
Nonresidential (under 2,000 sq. ft.)	52.50
Nonresidential (over 2,000 sq. ft.)	72.50
<i>Plumbing inspection fees:</i>	
Residential (under 2,000 sq. ft.)	\$42.50
Residential (over 2,000 sq. ft.)	62.50
Nonresidential (under 2,000 sq. ft.)	52.50
Nonresidential (over 2,000 sq. ft.)	72.50

(Ord. No. 1995-04, § 1, 8-3-95; Ord. No. 1995-07, § 1, 9-18-95)

§ 4-2. International Plumbing Code adopted.

The International Plumbing Code, current edition and all future amendments and editions thereto, unless otherwise provided, is hereby adopted and declared operative and binding within the corporate limits of the City of Fayette, Alabama, and its police jurisdiction.

(Ord. No. 2005-05, § 2, 8-9-05)

Editor's note—

Section 1 of Ord. No. 2005-05, adopted Aug. 9, 2005, amended [§ 4-2](#) in its entirety to read as herein set out. Former [§ 4-2](#) pertained to the Southern Standard Building Code, Part III and derived from an ordinance of Aug. 18, 1975.

§ 4-2.1 International Mechanical Code adopted.

The International Mechanical Code, current edition and all future amendments and editions thereto, unless otherwise provided, is hereby adopted and declared operative and binding within the corporate limits of the City of Fayette, Alabama, and its police jurisdiction.

(Ord. No. 2005-05, § 3, 8-9-05)

§ 4-3. ICC Electrical Code adopted.

The ICC Electrical Code, current edition and all future amendments and editions thereto, unless otherwise provided, is hereby adopted and declared operative and binding within the corporate limits of the City of Fayette, Alabama, and its police jurisdiction.

(Ord. No. 2005-05, § 4, 8-9-05)

§ 4-3.1. Electrical license policy.

The city requires any individual interested in doing electrical work in the city to show proof of a valid statewide electrical license before a city license will be issued, with the following exception: any individual who holds a current electrical license for the City of Fayette will be allowed to continue working as such as long as the individual maintains a current license and such license was current prior to October 1, 1995.

(Ord. No. 1995-04, § 2, 8-3-95)

§ 4-4. Penalty for violation of provisions.

Any person, firm, corporation or agent who shall violate a provision of this article or fail to comply therewith or with any of the requirements thereof, shall be guilty of a misdemeanor. Each such person shall be deemed guilty of a separate offense on each and every day or portion thereof during which any violation of any of the provisions of this article is committed or continued and, upon conviction of any such violation, such person shall be fined not less than five dollars (\$5.00) nor more than two hundred dollars (\$200.00) for each offense.

(Ord. of 8-18-75, § 6)

§ 4-5. Building and electrical inspectors—Designated.

The office of building official and the office of electrical official are hereby created and the executive official in charge of each office shall be known as the building inspector and the electrical inspector. The inspectors, hereinabove provided for, shall be appointed by the city council of the City of Fayette, Alabama. Their appointment shall continue during good behavior and satisfactory service. During the temporary absence or disability of either the building inspector or electrical inspector, the appointing authority shall designate an acting building inspector and/or electrical inspector.

(Ord. of May 16, 1960, § 1.)

§ 4-6 Building and Electrical Inspectors - Duties

It shall be the duty of the building inspector to enforce all laws relating to the construction, alteration, removal and demolition of buildings and structures, etc. It shall be the duty of the electrical inspector to enforce all laws relating to the installation of electrical wiring, etc.

(Ord. of May 16, 1960, § 2.)

§ 4-7 Authority of Inspectors

The building inspector and the electrical inspector, in the discharge of their official duties, and upon proper identification, shall have authority to enter any building, structure or premises at a reasonable hour.

(Ord. of May 16, 1960, § 3.)

ARTICLE II - FRANCHISE TO GAS BOARD

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§ 4-8 Franchise Granted to Gas Board

The City of Fayette hereby grants to The Gas Board of the City of Fayette, its successors and assignees, the right, privilege, authority and franchise to acquire, construct, own, maintain, enlarge, extend, improve and operate a natural gas transmission and distribution system in the City of Fayette, Alabama, for the purpose of supplying gas to the City of Fayette and the surrounding territory and the inhabitants thereof and to use the streets, avenues, alleys and public ways and places in the city for such purposes.

(Ord. of Aug. 18, 1954, § 1.)

§ 4-9 Authority Granted to Board

The City of Fayette hereby grants to said board the right, privilege, authority and franchise at any time and from time to time during the period covered by this franchise and without any requirement as to permit or fee therefor, to construct and extend its mains, pipes and conduits over or under or along any street, avenue, alley or public way or place in the city for the purpose of constructing, repairing, improving, enlarging or extending said natural gas transmission and distribution system.

(Ord. of Aug. 18, 1954, § 2.)

§ 4-10 Authority to Fund Granted

The City of Fayette hereby consents and agrees that the franchise hereby granted shall be covered by any mortgage or deed or indenture of trust executed by the said board for the purpose of securing funds with which to acquire, construct, enlarge, extend, improve or operate said natural gas transmission and distribution system, and that any such mortgage or deed or indenture of trust shall constitute a lien thereon and that it may be transferred or assigned subject to the conditions thereon, but such franchise shall not otherwise be transferred or assigned.

(Ord. of Aug. 18, 1954, § 3.)

§ 4-11 Agreement by Board

The Gas Board of the City of Fayette shall, and by accepting this franchise agrees that it will, construct and operate said natural gas transmission and distribution system and keep it in good repair and operating condition so as adequately to supply the reasonable needs of the City of Fayette and its inhabitants at all times.

(Ord. of Aug. 18, 1954, § 4.)

§ 4-12 Conditions of Franchise

The Gas Board of the City of Fayette shall, and by accepting this franchise agrees that it will, upon making any excavation in the streets, avenues, alleys, public ways and places of said city in the exercise of this franchise, restore the surface and paving at the point of such excavation in substantially the same condition as before the work was done, within a reasonable time thereafter, and will save the city harmless from any liability arising out of any change in the condition of any street, avenue, alley, public way or place by the said board.

(Ord. of Aug. 18, 1954, § 5.)

§ 4-13. Duration of franchise.

The rights, privileges, authorities and franchise, hereby granted, shall continue in force and effect for a period of thirty (30) years or until the principal of and interest on any bonds or obligations (including any refunding bonds or obligations) issued by said board for the purpose of securing funds with which to acquire, construct, enlarge, improve, extend, maintain or operate said natural gas transmission and distribution system, shall have been paid in full, whichever shall be the longer period permitted by law.

(Ord. of Aug. 18, 1954, § 6)

State law reference— For authority, see General Acts of 1951, §§ 416 et seq.

§ 4-14. Franchise to be exclusive.

This franchise shall be exclusive and the city hereby covenants and agrees not to grant any franchise for a gas plant or system during the term of the franchise, hereby granted, insofar as an exclusive franchise now is or may hereafter be authorized or permitted by law to a public corporation such as the Gas Board of the City of Fayette.

(Ord. of Aug. 18, 1954, § 7)

ARTICLE III. WEST ALABAMA TV CABLE COMPANY [\[1\]](#)

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§ 4-15. Franchise.

In consideration of the benefits to accrue to the City of Fayette, Alabama, and the inhabitants thereof, and based upon a finding of public convenience and necessity, West Alabama T.V. Cable Co., Inc., hereinafter called the "grantee", is hereby given, granted, invested with the right, authority, privilege, consent and franchise, to use the streets, avenues and public ways of the City of Fayette, Alabama, for the purpose of engaging in the business of operating a cable TV system including the right and privilege

to construct, erect, operate and maintain, in, upon, along, across, above, over and under the streets, alleys, public ways and public places now laid out or dedicated, and all extensions thereof, and additions thereto, in the city, poles, wires, cables, underground conduits, manholes, and other television conductors and fixtures necessary for the maintenance and operation in the City of West Alabama T.V. Cable Co., Inc., system for the interception, sale and distribution of television and radio signals, subject to and in accordance with the following conditions and requirements.

(Ord. No. 2010-09, § 1, 11-9-10)

§ 4-16. Definitions.

For the purpose of this article, the following words or phrases shall have the meaning assigned to them as hereinafter set out:

- (a) *Basic cable service*: Any service tier which includes the retransmission of local television broadcast signals.
- (b) *Cable channel* or *channel*: A portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering television channel (as television channel is defined by the Federal Communication Commission Regulations).
- (c) *Cable operator* is grantee, West Alabama T.V. Cable Company, Inc.
- (d) *Cable system* means a facility, consisting of a set of closed transmission paths and associated signal generation, reception and control equipment that is designed to provide cable service which includes video programming which is provided to multiple subscribers within a community.
- (e) *City* is the City of Fayette, a municipal corporation.
- (f) *City council* is the city council of the City of Fayette or governing body.
- (g) *Grantee* is the cable operator or West Alabama T.V. Cable Company, Inc.
- (h) *Person* is any person, firm, partnership, association, corporation, company or organization of any kind.
- (i) *Public, educational or governmental access facilities* means channel capacity designated for public, educational or governmental use and facilities and equipment for the use of such channel capacity.
- (j) *Service tier* means the category of cable service or other services provided by a cable operator for which a separate rate is charged by the cable operator.
- (k) *Video programming* means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

(Ord. No. 2010-09, § 2, 11-9-10)

§ 4-17. Nonexclusivity.

The grant of the right, privilege and franchise herein to West Alabama T.V. Cable Co., Inc., to use and otherwise occupy the streets, alleys and public ways and places for the purposes herein set forth shall be nonexclusive and the City of Fayette reserves the right to grant other franchises or rights in said streets, alleys, public ways or public places, to any other person, firm or corporation at any time. This franchise is not exclusive.

(Ord. No. 2010-09, § 3, 11-9-10)

§ 4-18. Duration; term of franchise.

The duration and term of this franchise and all rights and authorities herein granted shall be for a maximum period of five (5) years from the date of the final adoption of this article. This franchise may be terminated sooner in accordance with the provisions hereof.

This franchise and the rights, privileges and authority hereby granted shall take effect on the first day of the first month next following its final enactment and upon publication as herein stated. The operator shall, within ten (10) days after the effective date, file with the city clerk its unconditional acceptance of this franchise and promise to comply with and abide by all the provisions, terms and conditions. Such acceptance of promise shall be in writing duly executed and sworn to by or on behalf of the grantee before a notary public or other officer authorized by law to administer oaths. Should the operator fail to comply with the aforesaid, it shall acquire no rights, privileges or authority under this franchise whatever.

(Ord. No. 2010-09, § 4, 11-9-10)

§ 4-19. Compliance with applicable laws.

The grantee shall, at all times during the term of this franchise, be subject to and comply with all applicable laws, ordinances and regulations, including the lawful exercise of the police power by the city and 47 U.S.C. Section 521 et seq.

(Ord. No. 2010-09, § 5, 11-9-10)

§ 4-20. Service area.

This franchise relates to the present territorial corporate limits of the City of Fayette and to any area henceforth added thereto during the term of this franchise.

(Ord. No. 2010-09, § 6, 11-9-10)

§ 4-21. Insurance.

The grantee shall, for the duration of this franchise, maintain workman's compensation insurance and liability insurance in the form of a comprehensive, general and automobile liability policy or policies. This insurance shall be in sufficient amounts to reasonably assure the operator's financial responsibility in the event of injury or death or property damage, with the following minimum limits, one million [dollars] (\$1,000,000.00) combined single limit bodily injury and property damage and public liability insurance. The city, its officers, agents and employees shall be listed as additional insureds on said insurance policies. Certificates of insurance, certifying the existence of said insurance shall be filed with and kept by the city clerk of the City of Fayette.

(Ord. No. 2010-09, § 7, 11-9-10)

§ 4-22. Indemnification.

- (a) The grantee shall pay and by its acceptance of this franchise, the grantee specifically agrees that it will pay all damages or penalties which the city, its officers, agents, servants and employees, may legally be required to pay as a result of the granting of this franchise. These damages or penalties shall include, but shall not be limited to, damages arising out of copyright infringements and all other damages arising out of the ownership, lease, use, installation, operation or maintenance of the West Alabama T.V. Cable Company, Inc., system authorized herein whether or not any act or omission complained of is authorized, allowed or prohibited by this franchise.
- (b) The grantee shall pay and by its acceptance of this franchise specifically agrees that it will pay all expenses incurred by the city, its officers, agents, servants and employees, in defending themselves

with regard to all damages and penalties mentioned in subsection (a) above. These expenses shall include all out-of-pocket expenses, such as attorney's fees and shall also include the reasonable value of any services rendered by any officers or employees of the city.

(Ord. No. 2010-09, § 8, 11-9-10)

§ 4-23. Police powers.

It is expressly understood that, in granting this franchise, the City of Fayette does not waive or surrender any of its rights or police powers in exercising governmental control. The grantee shall comply with all reasonable regulations and ordinances duly adopted pursuant to the police powers and governmental authority of the governing body of the city and the city, by entering into this franchise, does not subordinate any of its powers of governmental authority to the franchise herein being granted. Further, there is hereby reserved to the city every right and power which is required to be reserved by the provisions of this article or by any law of the city, and the operator, by its acceptance of any franchise, agrees to be bound thereby and to comply with any action or requirements of the city in its exercise of such rights or powers heretofore or hereinafter enacted or established.

(Ord. No. 2010-09, § 9, 11-9-10)

§ 4-23.1. Regulation of services, facilities, rates and equipment.

The grantee shall provide the city with:

- (a) A program listing for its basic cable service;
- (b) A program listing for any other service tiers which it offers; and,
- (c) A rate schedule for all service tiers, ancillary equipment and installation services which it offers.

Grantee will use its best efforts to keep the city informed of the individual cable and noncable services it provides from time to time.

Grantee shall give the city sixty (60) days notice of any change in the rates grantee charges for basic cable service, ancillary equipment, and related installation service. Grantee will provide the city, upon request, rate schedule for any other cable or noncable services it provides from time to time.

The operator shall transmit the foregoing video program in such a manner that:

- (1) It produces a picture, whether in black and white or in color, that is undistorted, free from ghost images, and accompanied with proper audio on typical standard production TV sets in good repair and as good as the state of the art allows;
- (2) That the operator shall be capable of distributing color TV signals and when the signals the grantee distributes are received in color, they shall be distributed in color where technically feasible;
- (3) That the operator shall transmit signals of adequate strength to produce good pictures, good video displays with good audio transmission at all outlets without causing crossmodulation in the cables or interfering with other electrical or electronic systems;
- (4) Limit failures to a minimum by locating and correcting malfunction promptly;
- (5) Demonstrate by instruments and otherwise to subscribers that a signal, of adequate strength and quality is being delivered.

(Ord. No. 2010-09, § 10, 11-9-10)

§ 4-23.2. Operation and maintenance; construction and technical standards.

- (a) Grantee shall construct, install, operate and maintain its system in a manner consistent with all laws, ordinances and construction standards of the City of Fayette, and, standards of good engineering practices for measurements on cable television systems, published by the National Cable Television Association, 1983, which standards are incorporated by reference in the franchise agreement. In addition, operators shall provide the city, upon request, with a written report of the results of an annual proof of performance test.
- (b) Construction, installation and maintenance of the cable system shall be performed in an orderly and workmanlike manner. All cables and wires shall be installed, where possible, parallel with and in the same manner as electric and telephone lines. Multiple cable configurations shall be arranged and parallel and bundled with due respect for engineering considerations. Underground installation shall be in conformance with applicable codes.
- (c) Operator's system shall not endanger or interfere with the safety of persons or property in the franchise area or other areas where the operator may have equipment located.
- (d) The operator shall render efficient service, make repairs promptly and interrupt service only for good cause and for the shortest time possible. Such interruptions insofar as possible shall be preceded by notice and occur during times of minimum use of the system.
- (e) The operator shall maintain an office in the City of Fayette which shall be open during all useful business hours, having a listed telephone number and be so operated that complaints and requests for repairs of adjustments may be received during routine business hours.

(Ord. No. 2010-09, § 11, 11-9-10)

§ 4-23.3. Carriage of signals.

All FCC regulations shall be complied with regarding the carriage of the programming of any existing or future television broadcasting station which covers the City of Fayette, in its principal broadcast area.

(Ord. No. 2010-09, § 12, 11-9-10)

§ 4-23.4. Other requirements.

This franchise authorizes only the operation of West Alabama T.V. Cable Co., Inc., as provided for herein and does not operate as a substitute for any other franchise, license, or permit which might be required by law, ordinance or regulation.

(Ord. No. 2010-09, § 13, 11-9-105)

§ 4-23.5. Use of streets.

- (a) All transmission and distribution structures, lines, and equipment erected by the grantee within the city shall be so located as to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said streets.
- (b) In case of a disturbance of any street, easement or paved area or other property the grantee shall, at its own cost and expense and in a manner approved by the city, replace and restore such street, easement or paved area or other property in as good a condition as before the work involved in such a disturbance was done.
- (c) If at any time during the period of a franchise the city shall lawfully elect to alter or change the grade of any street, the grantee upon reasonable notice by the city, shall remove, relay and relocate its poles, wires, cables, underground conduits, manholes and other fixtures at its own expense.

- (d) Any poles or other fixtures placed in or adjacent to any street by the grantee shall be placed in such manner as to comply with all requirements of the city. The city shall have the right, during the life of the franchise granted hereby, to install and maintain free of charge, upon the poles and towers of the grantee, any wire and pole fixtures necessary for a police alarm system or other city purposes, on the condition that such wire and pole fixtures do not interfere with the CATV operations of the grantee.
- (e) The grantee shall, at the request of any person holding a moving permit duly and lawfully issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee shall be given not less than forty-eight (48) hours notice to arrange for such temporary wire changes.
- (f) The grantee shall notify the city regarding the need to trim trees upon and overhanging streets of the city so as to prevent the branches of such trees from coming into contact with the wires and cables of the grantee; at the option of the city, such trimming may be done by the city at the expense of the grantee or by the grantee under the city's supervision and direction at the expense of the grantee. When authorized, trimming shall be limited to the area required to clear cable passage and shall not include major structural branches which materially alter the appearance and natural growth habits of the tree. Trimming of trees as hereinabove stated shall not take place by grantee until after due notification to the city regarding the same.

(Ord. No. 2010-09, § 14, 11-9-10)

§ 4-23.6. Safety requirements.

In addition to those requirements stated herein, the operator shall insure that:

- (a) The safety, functioning and appearance of the property and convenience and safety of other persons not be adversely affected by the installation or construction of facilities necessary for a cable system.
- (b) The cost of the installation, construction, operation or removal of such facilities be borne by the cable operator or subscriber, or a combination of both.
- (c) The owner of the property shall be justly compensated by the cable operator for any damages caused by installation, construction, operation or removal of such facilities by the operator.
- (d) The operator shall insure that access to cable service is not denied to any group of potential residential cable subscribers because of income of the residents of the local area in which such group resides. Further, operator shall not, as to rates, charge of service facilities, rules, regulations or in any other respect, make or grant any undue preference or disadvantage on the basis of race, religion, sex, creed or national origin.

(Ord. No. 2010-09, § 15, 11-9-10)

§ 4-23.7. Nonassignment.

The rights and privileges herein granted to the operator shall not be assigned, sublet or transferred without the prior written consent of the city council, such consent being duly adopted by resolution as spread upon the minutes of the city council.

(Ord. No. 2010-09, § 16, 11-9-10)

§ 4-23.8. Removal of facilities upon request.

Upon termination of service extended subscriber, the grantee shall promptly remove all its facilities and equipment from the premises of such subscriber upon request.

(Ord. No. 2010-09, § 17, 11-9-10)

§ 4-23.9. Reservation of rights.

It is hereby reserved to the city, the power to adopt any ordinance or amend any ordinance pertaining to cable TV operation regulation so as to require additional or greater standards of construction, operation, maintenance or otherwise on the part of the operator.

Neither the granting of this franchise nor any provision of this article shall constitute a waiver or bar to the exercise of any governmental right or power of the city.

The right is hereby reserved to the city council to adopt, in addition to provisions contained herein, such additional regulations as it shall find necessary in the exercise of its police power.

The city shall have the right to inspect the books, records, maps, plans, income tax returns and other light materials of the grantee at any time during normal business hours.

The city shall have the right, during the life of this franchise to install and maintain free of charge upon poles of the grantee, any wire and pole fixtures necessary for police or fire alarm system, on the condition that such wire and pole fixtures do not interfere with the cable system operation of the grantee.

The city shall have the right to observe all construction or installation of work performed subject to the provisions of this franchise and make such inspections as it shall find necessary to determine compliance with the terms of this franchise and other pertinent provisions of law.

At the expiration of the term for which this franchise is granted, or upon its termination and cancellation, as provided for herein, the city shall have the right to require the grantee to remove, at its own expense, all portions of the West Alabama T.V. Cable Company, Inc., system from all public ways within the city.

(Ord. No. 2010-09, § 18, 11-9-10)

§ 4-23.10. Maps, plats and reports.

The operator shall file with the city clerk two (2) accurate maps or plats of all existing or proposed installations.

(Ord. No. 2010-09, § 19, 11-9-10)

§ 4-23.11. Forfeiture of franchise.

- (a) In addition to all of the rights and powers pertaining to the city by virtue of this franchise or otherwise, the city reserves the right to terminate and cancel this franchise and all rights and privileges of the grantee hereunder in the event that the grantee:
 - (1) Violates any provision of this franchise or any rule, order or determination of the city council made pursuant to this franchise, except where such violation, other than of subsection (2) below, is in the opinion of the city, without fault or through excusable neglect.
 - (2) Becomes insolvent, unable to unwilling to pay its debts, files or has filed against it a petition of bankruptcy.
 - (3) Attempts to evade any of the provisions of this franchise or practices any fraud or deceit upon the city or its citizens.
- (b) Such termination and cancellation shall be by ordinance adopted after thirty (30) days' written notice to the grantee and shall in no way affect any of the city's rights under this franchise or any provision of law. In the event that such termination and cancellation depends upon a finding of fact, such finding of fact as is made by the city council shall be conclusive provided, however, that before this

franchise may be terminated and cancelled under this section, the operator must be provided with an opportunity to be heard before the city council.

(Ord. No. 2010-09, § 20, 11-9-10)

§ 4-23.12. City's right of intervention.

The operator agrees not to oppose intervention by the city in any suit or proceedings to which the operator is a party.

(Ord. No. 2010-09, § 21, 11-9-10)

§ 4-23.13. Further agreement and waiver by operator.

The operator agrees to abide by all provisions of this franchise and further agrees that it will not at any further time set up, against the city or the city council, the claim that the provisions of this franchise are unreasonable, arbitrary or void.

(Ord. No. 1995-05, § 22, 9-5-95)

§ 4-23.14. Publication.

This article shall be published one (1) time in The Times-Record, a newspaper published in the City of Fayette, Alabama, and the city clerk is hereby directed to cause such publication to be made. Expense of such publication shall be paid by the grantee.

(Ord. No. 2010-09, § 23, 11-9-10)

§ 4-23.15. Franchise fee.

In addition to all licenses, permits and taxes required by any rule, regulation, ordinance or law required to be paid by 47 U.S.C. Section 542, the operator shall pay a franchise fee to the city in the amount equal to two and one-quarter (2¼) percent of such cable operator's gross basic service revenues derived in such period from the operation of the cable system. The franchise fee shall be due September 23 of each year.

(Ord. No. 2010-09, § 24, 11-9-10)

§ 4-23.16. Erection, removal and common uses of poles.

- (a) No poles or other wireholding structures shall be erected by the operator without prior approval of the city council with regard to location, height, type and other pertinent aspects. However, no location of any pole or wireholding structure of the operator shall be a vested interest and such poles or structures shall be removed or modified by the operator at its own expense whenever the city council determines that the public convenience would be enhanced thereby. Where poles or other wireholding structures already existing for use in serving the city by another utility are available for use by the operator, but it does not make arrangement for such use, the city council may require the operator to use such poles and structures if it determines the public convenience will be enhanced thereby and the terms of the use available to the operator are just and reasonable.
- (b) Where the city council or a public utility serving the city desires to make use of the poles or other wireholding structures of the grantee, but agreement therefore with the grantee cannot be reached, the city council may require the grantee to permit such use for such consideration and upon such terms as the council determines that the use would enhance the public convenience and would not unduly interfere with the operator's system.

(Ord. No. 2010-09, § 25, 11-9-10)

§ 4-23.17. Flow through of refunds.

If during the term of this franchise, the operator receives refunds of any payments made for television or radio signals, it shall without delay notify the city council, suggest a plan for flow through of the refunds to its subscribers and retain such funds pending order of the council. After considering the plan submitted by the operator, the council shall order the flow through of the funds to the operators and subscribers in a fair and equitable manner.

By its acceptance of this franchise, the operator specifically grants and agrees that if, during the term hereof, it receives refunds of any payment made for television or radio signals, it shall without delay, notify the city council, suggest a plan for flow through of the funds to its subscriber, retain the funds pending order of the council and flow through such funds in accordance with the order of the council.

(Ord. No. 2010-09, § 26, 11-9-10)

§ 4-23.18. Termination of previously granted franchise.

The franchise previously granted by the city to the cable operator under Ordinance 1995-05 dated September 5, 1995, and effective on October 1, 1995, for a term of fifteen (15) years, is hereby, by mutual consent, terminated as of the effective date of this ordinance [November 9, 2010].

(Ord. No. 2010-09, § 27, 11-9-10)

§ 4-23.19. Severability.

If any section, subsection, sentence, clause, phrase, portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

(Ord. No. 2010-09, § 28, 11-9-10)

§ 4-23.20. Repealer.

All ordinances or parts of ordinances in conflict with the provisions of this article are hereby repealed to the extent of such conflict.

(Ord. No. 2010-09, § 29, 11-9-10)

§ 4-23.21. Effective date.

This article shall become effective upon publication and acceptance as aforesaid and expire five (5) years from date of acceptance.

(Ord. No. 2010-09, § 30, 11-9-10)

FOOTNOTE(S):

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Editor's note— Section 27 of Ord. No. 2010-09, adopted Nov. 9, 2010, terminated the franchise provisions granted by Ord. No. 1995-05, adopted Sept. 5, 1995, and codified as Art. III, §§ 4-15—4-23.20. Ord. No. 2010-09 further provided for a new agreement which has been codified to read as herein set out. ([Back](#))

ARTICLE IV - FLOOD DAMAGE PREVENTION

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§ 4-24 Statutory Authorization

The Legislature of the State of Alabama has in §11-52-1, et. seq., and §41-9-166, 1975, Code of Alabama, delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

(Ord. # 1984-5, Art. I., § A, Feb. 20, 1984.)

§ 4-25 Findings of Fact

- (1) The flood hazard areas of the City of Fayette are subject to periodic inundation which results in property, health and safety hazards and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- (2) These flood hazards can be intensified and increased by the cumulative effect of obstructions in flood plains causing increases in flood heights and velocities, and by the occupancy in flood areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise protected from flood damage.

(Ord. # 1984-5, Art. I, § B, Feb. 20, 1984.)

§ 4-26 Statement of Purpose

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

- (1) restrict or prohibit 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) require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) control the alteration of natural flood plains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase erosion or flood damage; and,
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert waters or which may increase flood hazards to other lands.

(Ord. No. 1984-5, Art. I, § C, 2-20-84)

§ 4-27. Objectives.

The objectives of this article are:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money for costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (6) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize future flood blight areas; and,
- (7) To insure that potential home buyers are notified that property is in a flood zone.

(Ord. No. 1984-5, Art. I, § D, 2-20-84)

§ 4-28. Definitions.

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

Addition (to existing building) means any walled or roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition which is connected by a firewall or is separated by independent perimeter load-bearing walls is new construction.

Appeal means a request for a review of the city building inspector's interpretation of any provision of this article or a request for a variance.

Area of shallow flooding means a designated AO or VO Zone on a community's flood insurance rate map (FIRM) with base flood depths from one to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate and where velocity flow may be evident.

Area of special flood hazard is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Basement means that portion of a building having its floor subgrade (below ground level) on all sides.

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.

Building means any structure built for support, shelter or enclosure for any occupancy or storage.

Development means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or permanent storage of materials.

Elevated building means a nonbasement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, piling, columns (posts and piers), shear walls, or breakaway walls.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal water; or
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood hazard boundary map (FHBM) means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as Zone A.

Flood insurance rate map (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood insurance study is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the flood boundary floodway map and the water surface elevation of the base flood.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

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Floor means the top surface of an enclosed area in a building (including basement), i.e., 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.

Functionally dependent facility means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

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

Mean sea level means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purpose of this article, the term is synonymous with National Geodetic Vertical Datum (NGVD).

Manufactured home means a structure, 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 one hundred eighty (180) consecutive days or longer and intended to be improved property.

National Geodetic Vertical Datum (NGVD) as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

New construction means structures for which the "start of construction" commenced on or after the effective date of this ordinance [Jan. 19, 1987].

Start of construction for other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. 97-348), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within one hundred eighty (180) days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, 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, footing, 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.

Structure means a walled and roofed building that is principally aboveground, a manufactured home, a gas or liquid storage tank, or other manmade facilities or infrastructures.

Substantial improvement means any combination of repairs, reconstruction, alteration, or improvements to a structure, taking place during the life of a structure in which the cumulative cost equals or exceeds fifty (50) percent of the market value of the structure. The market value of the structure should be (1) the appraised value of the structure prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions.

Variance is a grant of relief from the requirements of this article which permits construction in a manner otherwise prohibited by this article where specific enforcement would result in unnecessary hardship.

(Ord. No. 1984-5, Art. II, 2-20-84; Ord. No. 1987-02, § 1(A), 1-19-87)

§ 4-29. Lands to which this article applies.

This article shall apply to all areas of special flood hazard within the jurisdiction of the City of Fayette.

(Ord. No. 1984-5, Art. III, § A, 2-20-84)

§ 4-30. Basis for establishing the areas of special flood hazard.

The area of special flood hazard identified by the Federal Emergency Management Agency in its "Flood Insurance Study, City of Fayette, Alabama," dated September 1, 1983, and the Flood Insurance Rate Map, dated March 1, 1984, and any revision thereto are adopted by reference and declared to be a part of this article.

(Ord. No. 1984-5, Art. III, § B, 2-20-84)

§ 4-31. Establishment of development permit.

A development permit shall be required in conformance with the provisions of this article prior to the commencement of any development activities.

(Ord. No. 1984-5, Art. III, § C, 2-20-84)

§ 4-32. Compliance.

No structure or land shall hereafter be located, extended, converted, or structurally altered without full compliance with the terms of this article and other applicable regulations.

(Ord. No. 1984-5, Art. III, § D, 2-20-84)

§ 4-33. Abrogation and greater restrictions.

This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. No. 1984-5, Art. III, § E, 2-20-84)

§ 4-34. Interpretation.

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

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and,
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. # 1984-5, Art. III, § F, Feb. 20, 1984.)

§ 4-35 Warning and Disclaimer of Liability

The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Article does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This Article shall not create liability on the part of the City of Fayette, or

by any officer or employee thereof, for any flood damages that result from reliance on this Article or any administrative decision lawfully made hereunder.

(Ord. # 1984-5, Art. III, § G, Feb. 20, 1984.)

§ 4-36 Penalties for Violation

Violation of the provisions of this Article or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this Article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than Five Hundred Dollars (\$500.00) or imprisoned for not more than thirty (30) days, or both, and in addition shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Fayette from taking such other lawful action as is necessary to prevent or remedy any violation.

(Ord. # 1984-5, Art. III, § H, Feb. 20, 1984.)

§ 4-37 Designation of City Building Inspector

The City Building Inspector is hereby appointed to administer and implement the provisions of this Article,

(Ord. # 1984-5, Art. IV, § A, Feb. 20, 1984.)

§ 4-38 Permit Procedures

Application for a Development Permit shall be made to the City Building Inspector on forms furnished by him, prior to any development activities, and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- (1) Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all structures.
- (2) Elevation in relation to mean sea level to which any non-residential structure will be flood-proofed.
- (3) Provide a certificate from a registered professional engineer or architect that the non-residential flood-proofed structure meets the flood-proofing criteria in [§ 4-42](#) (2).
- (4) Description of the extent to which any water-course will be altered or relocated as a result of proposed development.
- (5) Provide a flood elevation of flood-proofing certification after the lowest floor is completed. Within twenty-one (21) calendar days of establishment of the lowest floor elevation, or flood-proofing by whatever construction means, it shall be the duty of the permit holder to submit to the City Building Inspector a certification of the elevation of the lowest floor, flood-proofed elevation, or the elevation of the lowest portion of the horizontal structural members of the lowest floor, whichever is applicable, as built. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood-proofing is utilized for a particular building, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work done within the twenty-one (21) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The City Building Inspector shall review the Flood Elevation Survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to

submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.

(Ord. # 1984-5, Art. IV, § B, Feb. 20, 1984.)

§ 4-39 Duties and Responsibilities of the City Building Inspector

The duties of the City Building Inspector shall include, but not be limited to:

- (1) Review all development permits to assure that the permit requirements of this Article have been satisfied.
- (2) Advise permittees that additional federal or state permits may be required, and if specific federal or state permits are known, require that copies of such permits be provided and maintained on file with the development permit.
- (3) Notify adjacent communities and the Alabama Department of Economic and Community Affairs prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
- (5) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures in accordance with [§ 4-38](#) (5) above. Verification may be accomplished by obtaining a statement on as-built elevations certified by the engineer or land surveyor who supplied the initial elevations for the applicant.
- (6) Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been flood-proofed, in accordance with [§ 4-38](#) (5) above. Verification may be accomplished by obtaining a statement on as-built elevations certified by the engineer or surveyor who supplied the initial elevations for the applicant.
- (7) When flood-proofing is utilized for a particular structure, the City Building Inspector shall obtain certification from a registered professional engineer or architect.
- (8) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the city building inspector shall make the necessary interpretation. The person contesting the location of the boundary shall be given reasonable opportunity to appeal the interpretation as provided in this article.
- (9) When base flood elevation data has not been provided in accordance with [section 4-30](#) above, then the city building inspector shall obtain, review, and reasonably utilize any base flood elevation data available from a federal, state or other source, in order to administer the provisions of sections [4-41](#) through and including [section 4-44](#)
- (10) All records pertaining to the provisions of this article shall be maintained in the office of the clerk of the City of Fayette and shall be open for public inspection.

(Ord. No. 1984-5, Art. IV, § C, 2-20-84)

§ 4-40. Variance procedures.

- (1) The zoning board of adjustments as established by the zoning ordinance of the City of Fayette shall hear and decide appeals and requests for variance from the requirements of this article.
- (2) The zoning board of adjustments shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the city building inspector in the enforcement or administration of this article.

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- (3) Any person aggrieved by the decision of the zoning board of adjustments, or any taxpayer may appeal such decision to the Circuit Court of Fayette County, Alabama, as provided in said zoning ordinance and in section 11-52-61, 1975 Code of Alabama.
- (4) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places of the State Inventory of Historic Places without regard to the procedures set forth in the remainder of this section, except for [section 4-40\(8\)\(a\)](#) and (d), and provided the proposed reconstruction, rehabilitation, or restoration will not result in the structure losing its historical designation.
- (5) In passing upon such application, the zoning board of adjustments shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this article, and:
 - (a) The danger that materials may be swept onto other lands to the injury of others;
 - (b) The danger to life and property due to flooding or erosion damage;
 - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (d) The importance of the services provided by the proposed facility to the community;
 - (e) The necessity to the facility of a waterfront location, where applicable;
 - (f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (g) The compatibility of the proposed use with existing and anticipated development;
 - (h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (j) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site; and
 - (k) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (6) Upon consideration of the factors listed above and the purpose of this article, the zoning board of adjustments may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.
- (7) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (8) Conditions for variances:
 - (a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and in the instance of a historical building, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building.
 - (b) Variances shall only be issued upon (i) a showing of good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - (c) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

- (d) The city building inspector shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

(Ord. No. 1984-5, Art. IV, § D, 2-20-84; Ord. No. 1987-02, § 1(B), (C), 1-19-87)

§ 4-41. General standards.

In all areas of special flood hazard the following provisions are required:

- (1) All new construction and substantial improvements shall be 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 requirements for resisting wind forces.
- (3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damage.
- (4) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (5) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
- (6) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (7) Any alteration, repair, reconstruction, or improvements to a structure which is in compliance with the provisions of this article, shall meet the requirements of "new construction" as contained in this article.

(Ord. No. 1984-5, Art. V, § A, 2-20-84; Ord. No. 1987-02, § 1(D), 1-19-87)

§ 4-42. Specific standards.

In all areas of special flood hazard where base flood elevation data has been provided, as set forth in [section 4-30](#) or [section 4-39](#), the following provisions are required:

- (1) *Residential construction.* New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated not lower than 0 feet, above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of flood waters shall be provided in accordance with standards of [section 4-42](#)(3).
- (2) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below the base flood level the structure is water tight and 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. A registered engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in [section 4-38](#)(3).
- (3) *Elevated buildings.* New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the base flood elevation shall be designated to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

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- (a) Designs for complying with this must either be certified by a professional engineer or architect or meet the following minimum criteria:
 - (i) Provide a minimum of two (2) openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - (ii) The bottom of all openings shall be no higher than one foot above grade; and,
 - (iii) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
 - (b) Electrical, plumbing, and other utility connections are prohibited below the base flood elevation;
 - (c) Access to the enclosed areas shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of Maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairways or elevator); and,
 - (d) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.
- (4) *Floodways*. Located within areas of special flood hazard established in [section 4-30](#) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and has erosion potential, the following provisions shall apply:
- (a) Prohibit encroachments, including fill, new construction, substantial improvements and other developments unless certification by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge.
 - (b) If the above subsection is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of sections [4-41](#) and [4-42](#)
 - (c) Prohibit the placement of manufactured homes (mobile homes), except in an existing manufactured home (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of [section 4-41\(2\)](#) and the elevation standards of [section 4-42\(1\)](#) are met.

(Ord. No. 1984-5, Art. V, § C, 2-2-84; Ord. No. 1987-02, § 1(E)—(G), 1-19-87)

§ 4-43. Standards for subdivision proposals.

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development (including manufactured home parks and subdivisions) which is greater than the lesser of fifty (50) lots or five (5) acres.

(Ord. No. 1984-5, Art. V, § C, 2-20-84; Ord. No. 1987-02, § 1(H), 1-19-87)

§ 4-44. Standards for small homes.

Located within the areas of special flood hazard established in [section 4-30](#), where small streams exist but where no base flood data has been provided or where no floodways have been provided, the following provisions apply:

- (1) No encroachments, including fill material or structures shall be located within a distance of the stream bank equal to five (5) times the width of the stream at the top of bank or twenty (20) feet on each side from top of bank, whichever is greater, unless certification by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) New construction or substantial improvements of structures shall be elevated or flood-proofed in accordance with elevations established in accordance with [section 4-39](#)

(Ord. No. 1984-5, Art. V, § D, 2-20-84)

§ 4-45. Standards for areas of shallow flooding (AO Zones).

Located within the areas of special flood hazard established in [section 4-30](#) are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore the following provisions apply:

- (1) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated to the depth number specified on the flood insurance rate map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated, at least two (2) feet above the highest adjacent grade.
- (2) All new construction and substantial improvements of nonresidential structures shall:
 - (a) Have the lowest floor, including basement, elevated to the depth number specified on the flood insurance rate map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement shall be elevated at least two (2) feet above the highest adjacent grade, or;
 - (b) Together with attendant utility and sanitary facilities be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(Ord. No. 1987-02, § 1(l), 1-19-87)

ARTICLE V. FLOOD DAMAGE PREVENTION ORDINANCE—NON-COASTAL/RIVERINE COMMUNITIES

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DIVISION 1. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND OBJECTIVES

[§ 4-46. Statutory authorization.](#)

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§ 4-46. Statutory authorization.

The Legislature of the State of Alabama has in Title 11, Chapter 19, Sections 1—24, Chapter 45, Sections 1—11, Chapter 52, Sections 1—84, and Title 41, [Chapter 9](#), Section 166 of the Code of Alabama, 1975, authorized local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City of Fayette, Alabama, does ordain as follows.

(Ord. No. 2010-02, § 1(Art. 1, § A), 5-11-10)

§ 4-47. Findings of fact.

- (1) The flood hazard areas of the City of Fayette, Alabama, are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood relief and protection, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- (2) These flood losses are caused by the occupancy in flood hazard areas of uses vulnerable to floods, which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages, and by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities.

(Ord. No. 2010-02, § 1(Art. 1, § B), 5-11-10)

§ 4-48. Statement of purpose.

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

- (1) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (2) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion;
- (3) Control filling, grading, dredging and other development which may increase flood damage or erosion;
- (4) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood damage or erosion; and
- (5) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters.

(Ord. No. 2010-02, § 1(Art. 1, § C), 5-11-10)

§ 4-49. Objectives.

The objectives of this article are:

- (1) To protect human life and health;
- (2) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (3) To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas;
- (4) To minimize expenditure of public money for costly flood control projects;
- (5) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (6) To minimize prolonged business interruptions; and
- (7) To insure that potential home buyers are notified that property is in a flood area.

(Ord. No. 2010-02, § 1(Art. 1, § D), 5-11-10)

DIVISION 2. GENERAL PROVISIONS

[§ 4-50. Lands to which this article applies.](#)

[§ 4-51. Basis for area of special flood hazard.](#)

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§ 4-50. Lands to which this article applies.

This article shall apply to all areas of special flood hazard within the jurisdiction of the City of Fayette, Alabama.

(Ord. No. 2010-02, § 1(Art. 2, § A), 5-11-10)

§ 4-51. Basis for area of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in its flood insurance study (FIS), dated June 4, 2010, with accompanying maps and other supporting data and any revision thereto, are adopted by reference and declared a part of this article. For those land areas acquired by a municipality through annexation, the current effective FIS and data for Fayette County are hereby adopted by reference. Areas of special flood hazard may also include those areas known to have flooded historically or defined through standard engineering analysis by governmental agencies or private parties but not yet incorporated in a FIS.

(Ord. No. 2010-02, § 1(Art. 2, § B), 5-11-10)

§ 4-52. Establishment of development permit.

A development permit shall be in conformance with the provisions of this article prior to the commencement of any development activities.

(Ord. No. 2010-02, § 1(Art. 2, § C), 5-11-10)

§ 4-53. Compliance.

No structure or land shall hereafter be located, extended, converted or altered without full compliance with the terms of this article and other applicable regulations.

(Ord. No. 2010-02, § 1(Art. 2, § D), 5-11-10)

§ 4-54. Abrogation and greater restrictions.

This article is not intended to repeal, abrogate, or impair any existing article, easements, covenants, or deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. No. 2010-02, § 1(Art. 2, § E), 5-11-10)

§ 4-55. Interpretation.

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

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 2010-02, § 1(Art. 2, § F), 5-11-10)

§ 4-56. Warning and disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur; flood heights may be increased by manmade or natural causes. This article does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the City of Fayette or by any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

(Ord. No. 2010-02, § 1(Art. 2, § G), 5-11-10)

§ 4-57. Penalties for violation.

Violation of the provisions of this article or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than five hundred dollars (\$500.00) or imprisoned for not more than thirty (30) days, or both, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Fayette from taking such other lawful actions as is necessary to prevent or remedy any violation.

(Ord. No. 2010-02, § 1(Art. 2, § H), 5-11-10)

§ 4-58. Savings clause.

If any section, subsection, sentence, clause, phrase, or word of this article is for any reason held to be noncompliant with 44 Code of Federal Regulation 59-78, such decision shall not affect the validity of the remaining portions of this article.

(Ord. No. 2010-02, § 1(Art. 2, § I), 5-11-10)

DIVISION 3. ADMINISTRATION

[§ 4-59. Designation of article administrator.](#)

[§ 4-60. Permit procedures.](#)

[§ 4-61. Duties and responsibilities of the administrator.](#)

§ 4-59. Designation of article administrator.

The City of Fayette City Engineer, acting as the floodplain administrator is hereby appointed to administer and implement the provisions of this article.

(Ord. No. 2010-02, § 1(Art. 3, § A), 5-11-10)

§ 4-60. Permit procedures.

Application for a development permit shall be made to the floodplain administrator on forms furnished by the community prior to any development activities, and may include, but not be limited to, the following: Plans in duplicate drawn to scale showing the elevations of the area in question and the nature, location, dimensions, of existing or proposed structures, fill placement, storage of materials or equipment, and drainage facilities.

Specifically, the following information is required:

(1) *Application stage:*

- (a) Elevation in relation to mean sea level (or highest adjacent grade) of the regulatory lowest floor level, including basement, of all proposed structures;
- (b) Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed;
- (c) Design certification from a registered professional engineer or architect that any proposed nonresidential floodproofed structure will meet the floodproofing criteria of subsections [4-63\(2\)](#) and [4-66\(2\)](#);
- (d) Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development; and

(2) *Construction stage:* For all new construction and substantial improvements, the permit holder shall provide to the floodplain administrator an as-built certification of the regulatory floor elevation or floodproofing level using appropriate FEMA elevation or floodproofing certificate immediately after the lowest floor or floodproofing is completed. When floodproofing is utilized for nonresidential structures, said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same.

Any work undertaken prior to submission of these certifications shall be at the permit holder's risk. The floodplain administrator shall review the above referenced certification data submitted. Deficiencies detected such review shall be corrected by the permit holder immediately and prior to further progressive work being allowed to proceed. Failure to submit certification or failure to make said corrections required hereby, shall be cause to issue a stop-work order for the project.

(Ord. No. 2010-02, § 1(Art. 3, § B), 5-11-10)

§ 4-61. Duties and responsibilities of the administrator.

Duties of the floodplain administrator shall include, but shall not be limited to:

- (1) Review all development permits to assure that the permit requirements of this article have been satisfied; and, assure that sites are reasonably safe from flooding.
- (2) Review proposed development to assure that all necessary permits have been received from governmental agencies from which approval is required by federal or state law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. Require that copies of such permits be provided and maintained on file.
- (3) When base flood elevation data or floodway data have not been provided in accordance with [section 4-51](#), then the floodplain administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other sources in order to administer the provisions of division 4.
- (4) Verify and record the actual elevation in relation to mean sea level (or highest adjacent grade) of the regulatory floor level, including basement, of all new construction or substantially improved structures in accordance with subsection [4-60\(2\)](#).
- (5) Verify and record the actual elevation, in relation to mean sea level to which any new or substantially improved structures have been floodproofed, in accordance with subsections [4-63\(2\)](#) and [4-66\(2\)](#).
- (6) When floodproofing is utilized for a structure, the floodplain administrator shall obtain certification of design criteria from a registered professional engineer or architect in accordance with subsections [4-60\(1\)\(c\)](#) and subsection [4-63\(2\)](#) or subsection [4-66\(2\)](#).
- (7) Notify adjacent communities and the Alabama Department of Natural Resources prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency (FEMA), and the Alabama Department of Economic and Community Affairs/Office of Water Resources/NFIP state coordinator's office.
- (8) For any altered or relocated watercourse, submit engineering data/analysis within six (6) months to the FEMA and state to ensure accuracy of community flood maps through the letter of map revision process. Assure flood carrying capacity of any altered or relocated watercourse is maintained.
- (9) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the floodplain administrator shall make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (10) All records pertaining to the provisions of this article shall be maintained in the office of the floodplain administrator and shall be open for public inspection.

(Ord. No. 2010-02, § 1(Art. 3, § C), 5-11-10)

DIVISION 4. PROVISIONS FOR FLOOD HAZARD REDUCTION

[§ 4-62. General standards.](#)

[§ 4-63. Specific standards.](#)

[§ 4-64. Floodways.](#)

[§ 4-65. Building standards for streams without established base flood elevations \(approximate A-zones\).](#)

[§ 4-66. Standards for areas of shallow flooding \(AO\) zones.](#)

§ 4-62. General standards.

In all areas of special flood hazard the following provisions are required:

- (1) New construction and substantial improvements of existing structures shall be anchored to prevent flotation, collapse and lateral movement of the structure;
- (2) New construction and substantial improvements of existing structures shall be constructed with materials and utility equipment resistant to flood damage;
- (3) New construction and substantial improvements of existing structures shall be constructed by methods and practices that minimize flood damage;
- (4) Elevated buildings. All new construction and substantial improvements of existing structures that include any fully enclosed area located below the lowest floor formed by foundation and other exterior walls shall be designed so as to be an unfinished or flood-resistant enclosure. The enclosure shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwaters.
 - (a) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
 - (i) Provide a minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding;
 - (ii) The bottom of all openings shall be no higher than one (1) foot above grade; and
 - (iii) Openings may be equipped with screens, louvers, valves and other coverings and devices provided they permit the automatic flow of floodwater in both directions.
 - (b) So as not to violate the "lowest floor" criteria of this article, the unfinished or flood-resistant enclosure shall only be used for parking of vehicles, limited storage of maintenance equipment used in connection with the premises, or entry to the elevated area; and
 - (c) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.
- (5) All heating and air conditioning equipment and components, all electrical, ventilation, plumbing, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (6) Manufactured homes shall be anchored to prevent flotation, collapse, and 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 requirements for resisting wind forces;
- (7) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- (8) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters;

- (9) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding; and
- (10) Any alteration, repair, reconstruction or improvement to a structure which is not compliant with the provisions of this article, shall be undertaken only if the nonconformity is not furthered, extended or replaced.

(Ord. No. 2010-02, § 1(Art. 4, § A), 5-11-10)

§ 4-63. Specific standards.

In all areas of special flood hazard designated as A1-30, AE, AH, A (with estimated BFE), the following provisions are required:

- (1) *New construction and substantial improvements.* Where base flood elevation data are available, new construction and substantial improvement of any structure or manufactured home shall have the lowest elevated no lower than one (1) foot above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of subsection [4-62\(4\)](#), "elevated buildings."
- (2) *Nonresidential construction.* New construction and substantial improvement of any nonresidential structure located in A1-30, AE, or AH zones, may be floodproofed in lieu of elevation. The structure, together with attendant utility and sanitary facilities, must be designed to be watertight to one (1) foot above the base flood elevation, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the official as set forth above and in subsection [4-61\(6\)](#).
- (3) *Standards for manufactured homes and recreational vehicles.* Where base flood elevation data are available:
 - (a) All manufactured homes placed and substantially improved on:
 - (i) Individual lots or parcels,
 - (ii) In new or substantially improved manufactured home parks or subdivisions,
 - (iii) In expansions to existing manufactured home parks or subdivisions, or
 - (iv) On a site in an existing manufactured home park or subdivision where a manufactured home has incurred substantial damage as the result of a flood, must have the lowest floor basement elevated no lower than one (1) foot above the base flood elevation.
 - (b) Manufactured homes placed and substantially improved in an existing manufactured home park or subdivision may be elevated so that either:
 - (i) The lowest floor of the manufactured home is elevated no lower than one (1) foot above the level of the base flood elevation, or
 - (ii) Where no base flood elevation exists, the manufactured home chassis and supporting equipment is supported by reinforced piers or other foundation elements of at least equivalent strength and is elevated to a maximum of sixty (60) inches (five (5) feet) above grade.
 - (c) All manufactured homes must be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. (Refer: [section 4-62.](#))
 - (d) All recreational vehicles placed on sites must either:

- (i) Be on the site for fewer than one hundred eighty (180) consecutive days, fully licensed and ready for highway use if it is licensed, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached structures or additions; or
- (ii) The recreational vehicle must meet all the requirements for new construction, including the anchoring and elevation requirements of subsection [4-63\(3\)\(a\)](#), (c), above.

(4) *Standards for subdivisions.*

- (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; and
- (d) Base flood elevation data shall be provided for subdivision proposals and all other proposed development, including manufactured home parks and subdivisions, greater than fifty (50) lots or five (5) acres, whichever is the lesser.

(Ord. No. 2010-02, § 1(Art. 4, § B), 5-11-10)

§ 4-64. Floodways.

Located within areas of special flood hazard established in [section 4-51](#), are areas designated as floodways. A floodway may be an extremely hazardous area due to velocity floodwaters, debris or erosion potential. In addition, the area must remain free of encroachment in order to allow for the discharge of the base flood without increased flood heights. Therefore, the following provisions shall apply:

- (a) The community shall select and adopt a regulatory floodway based on the waters of the base flood, without increasing the water surface elevation of that flood more than one (1) foot at any point;
- (b) Encroachments are prohibited, including fill, new construction, substantial improvements or other development within the adopted regulatory floodway. Development may be permitted however, provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the encroachment shall not result in any increase in flood levels or floodway widths during a base flood discharge. A registered professional engineer must provide supporting technical data and certification thereof;
- (c) A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision, fulfills the requirements for such revisions as established under the provisions of § 65-12[sic], and receives the approval of the administrator.
- (d) Require, until a regulatory floodway is designed, that no new construction, substantial improvement, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's 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 community.
- (e) Only if subsections (b), (c) or (d), above, are satisfied, then any new construction or substantial improvement shall comply with all other applicable flood hazard reduction provisions of division 4.

(Ord. No. 2010-02, § 1(Art. 4, § C), 5-11-10)

§ 4-65. Building standards for streams without established base flood elevations (approximate A-zones).

Located within the areas of special flood hazard established in [section 4-51](#), where streams exist but no base flood data have been provided (approximate A-zones), the following provisions apply:

- (1) When base flood elevation data or floodway data have not been provided in accordance with [section 4-51](#), then the floodplain administrator shall obtain, review, and reasonably utilize any scientific or historic base flood elevation and floodway data available from a federal, state, or other source, in order to administer the provisions of division 4. Only if data are not available from these sources, then the following provisions (2) and (4) shall apply.
- (2) No encroachments, including structures or fill material, shall be located within an area equal to the width of the stream or twenty-five (25) feet, whichever is greater, measured from the top of the stream bank, unless certification by a registered professional engineer is provided demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (3) All development in Zone A must meet the requirements of [section 4-59](#) and subsections [4-60](#)(1) through (4).
- (4) In special flood hazard areas without base flood elevation data, new construction and substantial improvements of existing structures shall have the lowest floor of the lowest enclosed area (including basement) elevated no less than three (3) feet above the highest adjacent grade at the building site. Also, in the absence of a base flood elevation, a manufactured home must also meet the elevation requirements of subsection [4-63](#)(3)(b)(ii) in that the structure must be elevated to a maximum of sixty (60) inches (five (5) feet). Openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of subsection [4-62](#)(4), elevated buildings.

The floodplain administrator shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.

(Ord. No. 2010-02, § 1(Art. 4, § D), 5-11-10)

§ 4-66. Standards for areas of shallow flooding (AO) zones.

Areas of special flood hazard established in section 4-51, may include designated AO shallow flooding areas. These areas have base flood depths of one (1) to three (3) feet above ground, with no clearly defined channel. The following provisions apply:

- (1) All new construction and substantial improvements of residential and nonresidential structures shall have the lowest floor, including basement, elevated to the flood depth number specified on the flood insurance rate map (FIRM) above the highest adjacent grade. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least two (2) feet above the adjacent grade. Openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of subsection [4-62](#)(4), elevated buildings.

The floodplain administrator shall certify the lowest floor elevation level and the record shall become a permanent part of the permit file.

- (2) New construction and the substantial improvement of a nonresidential structure may be floodproofed in lieu of elevation. The with structure, together with attendant utility and sanitary facilities, must be designated to be watertight to the specific FIRM flood level or two (2) feet (if no map elevation is listed), above highest adjacent grade, with walls substantially impermeable to the passage of water, and structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or

architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the official as set forth above and as required in subsections [4-60\(1\)\(c\)](#) and (2).

- (3) Drainage paths shall be provided to guide floodwater around and away from any proposed structure.

(Ord. No. 2010-02, § 1(Art. 4, § E), 5-11-10)

DIVISION 5. VARIANCE PROCEDURES

[§ 4-67. Variance procedures.](#)

§ 4-67. Variance procedures.

- (a) The zoning board of adjustment as established by the City of Fayette shall hear and decide requests for appeals or variance from the requirements of this article.
- (b) The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the floodplain administrator in the enforcement or administration of this article.
- (c) Any person aggrieved by any final judgment or decision of the zoning board of adjustment may, within fifteen (15) days thereafter appeal therefrom to the circuit court or court of like jurisdiction, by filing with the board a written notice of appeal specifying the judgment or decision from which appeal is taken.
- (d) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum to preserve the historic character and design of the structure.
- (e) Variances may be issued for development necessary for the conduct of a functionally dependent use, provided the criteria of this article are met, no reasonable alternative exists, and the development is protected by methods that minimize flood damage during the base flood and create no additional threats to public safety.
- (f) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (g) In reviewing such requests, the zoning board of adjustment shall consider all technical evaluations, relevant factors, and all standards specified in this and other sections of this article.
- (h) Conditions for variances:
 - (1) A variance shall be issued only when there is:
 - a. A finding of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship; and
 - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
 - (2) The provisions of this article are minimum standards for flood loss reduction, therefore any deviation from the standards must be weighed carefully. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief; and, in the instance of an historic structure, a determination that the variance is the minimum necessary so as not to destroy the historic character and design of the building.

- (3) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation of the proposed lowest floor and stating that the cost of flood insurance will be commensurate with the increased risk to life and property resulting from the reduced lowest floor elevation.
 - (4) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the Alabama Department of Economic and Community Affairs/Office of Water Resources upon request.
- (i) Upon consideration of the factors listed above and the purposes of this article, the zoning board of adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.
- (Ord. No. 2010-02, § 1(Art. 5), 5-11-10)

DIVISION 6. DEFINITIONS

[§ 4-68. Definitions.](#)

§ 4-68. Definitions.

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

Addition (to an existing building) means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by an independent perimeter load-bearing wall shall be considered "new construction".

Area of shallow flooding means a designated AO or AH Zone on a community's flood insurance rate map (FIRM) with base flood depths from one (1) to three (3) feet, and/or where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of flood hazard is the land in the floodplain within a community subject to a one (1) percent or greater chance of flooding in any given year. In the absence of official designation by the Federal Emergency Management Agency, areas of special flood hazard shall be those designated by the local community and referenced in [section 4-51](#).

Base flood means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

Basement means that portion of a building having its floor sub grade (below ground level) on all sides.

Building means any structure built for support, shelter, or enclosure for any occupancy or storage.

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

Elevated building means a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, pilings, posts, columns, piers, or shear walls.

Existing construction is any structure for which the "start of construction" commenced before June 4, 2010.

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Existing manufactured home or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and final site grading or the pouring of concrete pads) is completed before June 4, 2010.

Expansion to an existing manufactured home or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads.

Flood or *flooding* means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (a) The overflow of inland or tidal waters; or
- (b) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood hazard boundary map (FHBM) means an official map of a community, issued by the Federal Insurance Administration, where the boundaries of areas of special flood hazard have been designated as Zone A.

Flood insurance rate map (FIRM) means an official map of a community, on which the Federal Emergency Management Agency has delineated the areas of special flood hazard and/or risk premium zones applicable to the community.

Flood insurance study and *flood elevation study* mean an examination, evaluation and determination of flood hazards and, if appropriate, corresponding watersurface elevations, or an examination, evaluation and determination of mudslide and/or flood-related erosion hazards.

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

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

Functionally dependent facility means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facility that are necessary for the loading and unloading of cargo or passengers, and shipbuilding, and ship repair facilities. The term does not include long-term storage or related manufacturing facilities.

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

Historic structure means any structure that is:

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

Levee means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

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Levee system means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of other provisions of this Code.

Manufactured home means a building, transportable in one (1) or more sections, 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 one hundred eighty (180) consecutive days or longer and intended to be improved property.

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

Mean sea level means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this article, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929 or other datum.

National Geodetic Vertical Datum (NGVD), as corrected, in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

New construction means any structure (see definition) for which the start of construction commenced after June 4, 2010, and includes any subsequent improvements to the structure.

New manufactured home or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after June 4, 2010.

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

Recreational vehicle means a vehicle which is:

- (a) Built on a single chassis;
- (b) Four hundred (400) square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck; and
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Remedy a violation means to bring the structure or other development into compliance with state or local floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the article or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

Section 1316 indicates no new flood insurance shall be provided for any property which the administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body, to be in violation of state or local laws, regulations or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

Start of construction means the date the development permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within one hundred eighty (180) days of the permit date. The actual start means the first placement of permanent construction of the structure such as

the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation, and includes the placement of a manufactured home on a foundation. (Permanent construction does not include initial 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 buildings appurtenant to the permitted structure, such as garages or sheds not occupied as dwelling units or part of the main structure.) (Note: accessory structures are not exempt from any article requirements.) For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

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

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

Substantial improvement means 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 which have incurred repetitive loss or substantial damage, regardless of the actual repair work performed. The market value of the building should be:

- (1) The appraised value of the structure prior to the start of the initial repair or improvement, or
- (2) In the case of damage, the value of the structure prior to the damage occurring. This term includes structures which have incurred substantial damage, regardless of the actual amount of repair work performed.

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

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Substantially improved existing manufactured home, parks or subdivisions is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds fifty (50) percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

Variance is a grant of relief from the requirements of this article which permits construction in a manner otherwise prohibited by this article.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in the Code of Federal Regulations (CFR) 44, § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) and corresponding parts of this article is presumed to be in violation until such time as that documentation is provided.

(Ord. No. 2010-02, § 1(Art. 6), 5-11-10)