

TITLE 14

ZONING AND LAND USE CONTROL

CHAPTER

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6. FENCING REGULATIONS ON LIMITED ACCESS HIGHWAYS.
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CHAPTER 1

PLANNING COMMISSION¹

SECTION

- 14-101. Created.
- 14-102. Membership.
- 14-103. Organization, rules, and staff.
- 14-104. Powers and duties.
- 14-105. Oath of office.

14-101. Created. In order to guide and accomplish a coordinated and harmonious development of the municipality which will, in accordance with existing and future needs, best promote public health, safety, morals, order, convenience, prosperity and the general welfare as well as efficiency and economy in the process of development, the municipal planning commission is hereby created and established as authorized by the Tennessee Code Annotated, § 13-4-101 et seq., and such planning commission shall be organized and empowered as hereinafter set out. (1981 Code, § 17-16)

¹Municipal code references

Airport commission: title 2, chapter 1.

Airport zoning regulations: title 14, chapter 4.

14-102. Membership. The municipal planning commission shall consist of nine (9) members. One of the members shall be the mayor, or his designee, excluding city employees, one shall be a council member selected by the city council, and the seven (7) remaining members shall be citizens, appointed by the mayor. The terms of the appointive members shall be for three (3) years. Any vacancy on an appointive membership shall be filled for the unexpired term by the mayor, who shall have the authority to remove any appointive member for sufficient and just reason. The term of the member selected from the city council shall run concurrently with his membership on the city council. All members shall serve without compensation. (1981 Code, § 17-17, modified)

14-103. Organization, rules, and staff. The municipal planning commission shall elect its chairman from its appointive members. The term of the chairman shall be for one year with eligibility for reelection. The commission shall adopt rules for the transaction of its business and for recording its findings, and determinations, which record shall be a public record. (1981 Code, § 17-18, modified)

14-104. Powers and duties. The municipal planning commission shall have all the powers, duties and responsibilities as set forth in Tennessee Code Annotated, title 13, chapters 4 and 7, as amended. (1981 Code, § 17-19)

14-105. Oath of office. Before beginning a term of service on the municipal planning commission, a member shall take the following oath of office:

"I do solemnly swear or affirm that I will support the Constitution of the United States, the Constitution of the State of Tennessee, and that I will perform with fidelity the duties of the office to which I have been appointed and which I am about to assume." (as added by Ord. #2004-23, June 2004)

CHAPTER 2

ZONING ORDINANCE

SECTION

14-201. Land use to be governed by zoning ordinance.

14-201. Land use to be governed by zoning ordinance. Land use within the City of Cleveland shall be governed by the, zoning ordinance and any amendments thereto.¹

¹The Cleveland Zoning Ordinance, and any amendments, is included in this municipal code as Appendix C.

Amendments to the zoning map are of record in the office of the city recorder.

CHAPTER 3

[DELETED]

This chapter was deleted by Ord. #2006-3, Jan. 2006.

CHAPTER 4

AIRPORT ZONING REGULATIONS¹

SECTION

- 14-401. Definitions.
- 14-402. Airport zoning map.
- 14-403. Zones.
- 14-404. Height limits.
- 14-405. Use restrictions.
- 14-406. Nonconforming uses.
- 14-407. Variances.
- 14-408. Permits.
- 14-409. Hazard marking and lighting.
- 14-410. Appeals.
- 14-411. Administrative agency.
- 14-412. Board of zoning appeals; powers.
- 14-413. Judicial review.

14-401. Definitions. As used in this chapter, unless the context otherwise requires:

- (1) "Airport" means the Municipal Airport, Cleveland, Tennessee.
- (2) "Airport hazard" means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at the airport or is otherwise hazardous to such landing or taking-off of aircraft.
- (3) "Landing area" means the area of the airport used for the landing, take-off or taxiing of aircraft.
- (4) "Nonconforming use" means any structure, tree or use of land which does not conform to a regulation prescribed in this chapter or an amendment thereto, as of the effective date of such regulations.
- (5) "Person" means any individual, firm, co-partnership, corporation, company, association, joint stock association or body politic, and includes any trustee, receiver, assignee or other similar representative thereof.
- (6) "Structure" means any object constructed or installed by man, including, but without limitation, buildings, towers, smokestacks and overhead transmission lines.
- (7) "Tree" means any object of natural growth. (1981 Code, § 3-36)

¹Municipal code reference

Airport commission: title 2, chapter 1.

State law reference

Tennessee Code Annotated, § 42-6-101 et seq.

14-402. Airport zoning map. In order to outline definitely the horizontal and vertical limits beyond which the projection of any structure or tree will constitute an airport hazard, the Airport Zoning Map, dated October 7, 1959, of the Cleveland Municipal Airport, Cleveland, Tennessee, which is on file with the city is hereby incorporated into this chapter and made a part thereof.

(1) The established elevation of the airport is eight hundred seventy-three (873) feet MSL.

(2) The airport reference point is established at a location described as follows: A point on the center line of the paved runway, said point being located one thousand six hundred fifty (1,650) feet from the southwest end of the runway pavement, as evidenced by the map of the elevation of restricted zone which is on file with the city and made a part hereof dated July 13, 1961. (1981 Code, § 3-37, modified)

14-403. Zones. In order to carry out the provisions of this chapter, there are hereby created and established certain zones which include the airport approach surface zones, horizontal surface zones, conical surface zones and transitional surface zones, as shown on the airport zoning map, which is on file with the city. The surface for each of these zones constitutes a ceiling above which no structures or objects of natural growth are to be constructed or allowed to grow. The geographical areas to which the requirements and limits are to apply are the areas lying directly beneath the approach surface zone, horizontal surface zone, conical surface zone, and transitional surface zone. The limits of these zones are shown with controlling contours on the zoning maps, which are on file with the city.

(1) **Approach surface zones.** The approach surface zone is an inclined plane located directly above the approach area. The approach areas for each particular runway are symmetrically located with respect to the extended runway center line and have lengths and widths as shown on the airport zoning map, which is on file with the city, which also shows the slopes of the respective approach surface zones.

(2) **Horizontal surface zone.** The horizontal surface zone is a plane, circular in shape, with its height one hundred fifty (150) feet above the established airport elevation and having a radius from the airport reference point as indicated on the airport zoning map, which is on file with the city.

(3) **Conical surface zone.** The conical surface zone extends upward and outward from the periphery of the horizontal surface zone with a slope of 20:1 measured in a vertical plane passing through the airport reference point. Measuring radially outward from the periphery of the horizontal surface zone, the conical surface extends for a horizontal distance as shown on the airport zoning map, which is on file with the city.

(4) **Transitional surface zone.** The transitional surface zones are inclined planes with a slope of 7:0 measured upward and outward in a vertical plane at right angles to the center line of the runway. The transitional surface

zones, symmetrically located on either side of the runway, extend upward and outward from a line on either side of the runway which is parallel to and level with the runway center line. These parallel lines are at a horizontal distance from the runway center line equal to one-half of the minimum width of each approach area as shown on the airport zoning map, which is on file with the city. (1981 Code, § 3-38, modified)

14-404. Height limits. Except as otherwise provided in this chapter no structure or tree shall be erected, altered, allowed to grow, or maintained in any airport approach surface zone, horizontal surface zone, conical surface zone or transitional surface zone to a height in excess of the height limit herein established for such zone. For purposes of this regulation, height limits shown on the airport zoning map, which is on file with the city, are hereby established for each of the zones in question. (1981 Code, § 3-39, modified)

14-405. Use restrictions. Notwithstanding any other provisions of chapter, no use may be made of land within any airport approach surface zone, horizontal surface zone, conical surface or transitional surface zone, in such manner as to create electrical interference with radio communication between the airport and aircraft, make it difficult for flyers to distinguish between airport lights and others, result in glare in the eyes of flyers using the airport, impair visibility in the vicinity of the airport, or otherwise endanger the landing, taking-off, or maneuvering of aircraft. (1981 Code, § 3-40)

14-406. Nonconforming uses. The regulations prescribed in §§ 14-404 and 14-405 shall not be construed to require the removal, lowering or other change or alterations of any structure or tree not conforming to the regulations as of the effective date hereof, or otherwise interfere with the continuance of any nonconforming use. Nothing herein contained shall require any change in the construction, alteration or intended use of any structure the construction or alteration of which was begun prior to the effective date of the ordinance from which this chapter was derived, and which was diligently prosecuted and completed within two (2) years thereof. (1981 Code, § 3-41)

14-407. Variances. Any person desiring to erect any structure or increase the height of any structure, or permit the growth of any tree, or use his property, not in accordance with the regulations prescribed in this chapter, may apply for a variance therefrom. Such variance shall be allowed where a literal application or enforcement of the regulations would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in accordance with the spirit of this chapter. (1981 Code, § 3-42)

14-408. Permits. (1) **Future uses.** No material change shall be made in the use of land, and no structure or tree shall be erected, altered, planted or otherwise established in any airport approach surface zone, horizontal surface zone, conical surface zone or transitional surface zone, unless a permit shall have been applied for and granted. Each such application shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure or tree would conform to the regulations therein prescribed. If such determination is in the affirmative, the permit applied for shall be granted.

(2) **Existing uses.** Before any existing use, structure or tree may be replaced, substantially altered or repaired, rebuilt, allowed to grow higher, or replanted, within any airport approach surface zone, horizontal surface zone, conical surface zone or transitional surface zone, a permit must be secured authorizing such replacement, change or repair. No such permit shall be granted that would allow the establishment or creation of an airport hazard or permit a nonconforming use, structure or tree to be made or become higher, or become a greater hazard to air navigation, than it was on the effective date of the ordinance from which this chapter is derived or than it is when the application for a permit is made. Except as indicated, all applications for a permit for replacement, change or repair of existing use, structure or tree shall be granted. (1981 Code, § 3-43)

14-409. Hazard marking and lighting. Any permit or variance granted under §§ 14-407 or 14-408 may, if such action is deemed advisable to effectuate the purposes of this chapter and reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to permit the city, at its own expense, to install, operate and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard. (1981 Code, § 3-44)

14-410. Appeals. (1) Any person aggrieved, or taxpayer affected, by any decision of the city building inspector made in its administration of this chapter, may appeal to the board of zoning appeals for which provision is made in § 14-412.

(2) All appeals taken under this section must be taken within a reasonable time, as provided by the rules of the board, by filing with the city building inspector and with the board, a notice of appeal specifying the grounds thereof. The city building inspector shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

(3) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the city building inspector certifies to the board, after the notice of appeal has been filed with it, that by reason of the facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property.

In such case, proceedings shall not be stayed otherwise than by order of the board on notice to the city building inspector and on due cause shown.

(4) The board shall fix a reasonable time for the hearing of the appeal, give public notice and due notice to the parties in interest, and decide the same within a reasonable time. Upon the hearing any party may appear in person or by agent or by attorney.

(5) The board may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or modify, the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought be made.

(6) The board shall make written findings of fact and conclusions of law giving the facts upon which it acted and its legal conclusions from such facts in reversing, or affirming, or modifying any order, requirement, decision or determination which comes before it under the provisions of this chapter.

(7) The concurring vote of a majority of the members of the board shall be sufficient to reverse any order, requirement, decision or determination of the city building inspector, or to decide in favor of the applicant on any matter upon which it is required to pass under this chapter or to effect any variation in this chapter. (1981 Code, § 3-45)

14-411. Administrative agency. The city building inspector is hereby designated the administrative agency charged with the duty of administering and enforcing the regulations prescribed in this chapter. The duties of the city building inspector shall include that of hearing and deciding all permits under § 14-408, but the city building inspector shall not have or exercise any of the powers or duties herein delegated to the board of zoning appeals. (1981 Code, § 3-46)

14-412. Board of zoning appeals; powers. The board of zoning appeals of the city, in addition to the powers and duties heretofore conferred upon such board shall have and exercise the following powers:

(1) To hear and decide appeals from any order, requirement, decision or determination made by the city building inspector in the enforcement of this chapter;

(2) To hear and decide special exceptions to the terms of this chapter upon which such board may be required to pass by subsequent ordinances;

(3) To hear and decide specific variances under § 14-407. (1981 Code, § 3-47)

14-413. Judicial review. Any person aggrieved or taxpayer affected by any order or decision of the board of zoning appeals may have said order or decision reviewed by either the Circuit or Chancery Court as provided by Tennessee Code Annotated, title 27, chapter 9. (1981 Code, § 3-48)

CHAPTER 5

SIGN CONTROL REGULATIONS¹

SECTION

14-501. Along Paul Huff Parkway.

14-501. Along Paul Huff Parkway. (1) Boundary. The rules [set out in this section] apply only to the following described property along the Paul Huff Parkway from six hundred (600) feet west of the intersection of North Lee Highway (U.S. 11):

Situated in the Third Civil District of Bradley County and in the First Ward of the City of Cleveland, more particularly described as follows:

Beginning at a point in the west line of U.S. Highway No. 11 at the southeast corner of the Donald Ledford Property; thence South 38 degrees 11 minutes West with the west line of U.S. Highway No. 11, 613.1 feet to a point; thence North 49 degrees 43 minutes West 9.5 feet to a point; thence continuing with the west line of said Highway South 38 degrees 11 minutes West, 309.2 feet to a point and corner with McLain property; thence North 72 degrees 02 minutes West with McLain's property line, 865.3 feet to a point; thence continuing with McLain's property line North 37 degrees 27 minutes West, 194.3 feet to a point; thence South 82 degrees 34 minutes West with McLain's property line, 76.4 feet to a point and corner with Duff property; thence with the Duff property line the following courses and distances: North 12 degrees 52 minutes East, 22.5 feet; North 58 degrees 50 minutes West, 270 feet; North 45 degrees 44 minutes West, 224.7 feet; North 39 degrees 54 minutes West, 141.8 feet; North 33 degrees 54 minutes West, 105.7 feet; North 31 degrees 13 minutes West, 632.4 feet; North 34 degrees 13 minutes West, 291.9 feet; North 45 degrees 43 minutes West, 55.5 feet; North 53 degrees 47 minutes West, 98.8 feet; and North 48 degrees 22 minutes West, 105 feet, more or less, to the center line of Mouse Creek; thence in a northeasterly direction with the center line of Mouse Creek, 1620 feet, more or less, to a point 200 feet southwest of the southwest corner of Lot 21 of Sequoia Grove Subdivision; thence South 54 degrees 59 minutes East, 560 feet, more or less, to a point; thence South 64 degrees 27 minutes East, 1,003 feet, more or less, to a point; thence South 68 degrees 26 minutes East,

¹Municipal code references

Building, utility, etc. codes: title 12.

Fire protection and fireworks: title 7.

Traffic control: title 15.

565 feet, more or less, to a point in the west line of Cawood property; thence with Cawood's line South 35 degrees 30 minutes West, 329.9 feet to a point; thence continuing with Cawood's line, South 61 degrees 21 minutes East, 964.8 feet to a point and corner with Preston property; thence South 36 degrees 57 minutes West, 176.9 feet to a point; thence South 37 degrees 35 minutes West, 78.6 feet to a point; thence South 37 degrees 16 minutes West, 292.6 feet to a point; thence South 52 degrees 59 minutes East, 81.8 feet to a point; thence South 36 degrees 58 minutes West, 19.8 feet to a point; thence South 60 degrees 10 minutes East, 133.8 feet to a point; thence South 39 degrees 45 minutes East, 75 feet to a point; thence North 82 degrees 56 minutes West, 63.1 feet to a point; thence North 60 degrees 11 minutes West, 165.8 feet to a point; thence South 38 degrees 00 minutes West, 33.25 feet to a point; thence South 52 degrees 00 minutes East, 468.56 feet to a point, the place of beginning.

There is specifically EXCLUDED from the foregoing described tract of land any portion of the same that lies within the floodway district.

(2) Prohibited signs: [Within the above described area, the following signs are prohibited:]

(a) Any sign or device that advertises a business, product, service, event, etc., that is not located on nor connected with the site upon which the sign or device is located.

(b) Any sign or device that is movable or is designed to be moved from place to place.

(c) Any sign or device that is illuminated in a manner to resemble or imitate traffic signals, emergency vehicles or the like.

(d) Any sign or device that uses bulbs that are reflective, pulsating lights or generally are flashing lights.

(e) Any sign or device that requires guywires or excessive, unsightly bracing for support.

(3) Permitted signs: [Within the area described in subsection (1), the following signs are permitted:]

(a) Signs designed to advertise the location of businesses and services located on the same site as the sign or device (on-premises), as permitted by appropriate zoning law.

(b) Each project or development shall be restricted to one (1) ground-mounted sign per street front. This sign is intended to identify businesses and services in the project by name and address. The sign can also have features that provide for changeable copy to notify of events, sales, etc.

(c) Service stations or businesses dealing in the sale of petroleum products to the public are allowed one (1) sign per street front in addition to those allowed in subsection (3)(b) above that identify the brand and name and/or address of the business.

(d) Traffic directional signs.

(4) Exemptions: A sign existing on a property within the corporate limits of the City of Cleveland prior to the enactment or subsequent amendment of this chapter shall be eligible to be replaced on the same property, however, the sign face shall be no larger, measured by square footage, than the existing size of the sign and the relocation is caused generally by circumstances beyond the control of the owner of the property or the sign. (1981 Code, § 20.5-26, as amended by Ord. of Jan. 1999)

CHAPTER 6

FENCING REGULATIONS ON LIMITED ACCESS HIGHWAYS

SECTION

14-601. City council to establish limited access highways.

14-602. Fencing.

14-603. Request to remove fencing.

14-601. City council to establish limited access highways. The city council may designate some locally-owned streets as limited access highways, and negotiate with affected property owners for the right to limit said access. (Ord. of Nov. 1994)

14-602. Fencing. When such limited access highways are established, the city engineer shall be responsible for erecting chainlink fencing designating the limited access. It shall be a violation of this chapter for any individual, corporation, or partnership to remove, or have removed, any portion of said fencing without written permission from the city council. (Ord. of Nov. 1994)

14-603. Request to remove fencing. The city council will not remove any fencing on state or federally owned limited access highways. The city council may remove some fencing on city-owned limited access highways, provided the following conditions are met:

- (1) The fencing only is removed, but not the limited access provisions;
- (2) An appropriate number of signs stating "Limited Access Highway - Entrance Permits Required" must be erected where the fencing is removed; and
- (3) The property fronting the fencing must be developed, or a detailed site plan approved prior to any approval to remove the fencing.
- (4) If the property becomes vacant for more than 180 days, the city council may, at its discretion, require the fencing to be re-installed. (Ord. of Nov. 1994)

CHAPTER 7

MOBILE HOMES AND MOBILE HOME PARKS

SECTION

- 14-701. Definitions.
- 14-702. Plan, R-4 zoning, permits required.
- 14-703. Location of mobile homes restricted.
- 14-704. Upgrade of substandard or single lot mobile home.
- 14-705. Non-conforming use-remedy.
- 14-706. Administration and enforcement.
- 14-707. Compliance.
- 14-708. Authorization.
- 14-709. Minimum size.
- 14-710. Minimum number of spaces.
- 14-711. Mobile home park design standards.
- 14-712. Street construction standards.
- 14-713. Appeals.
- 14-714. Mobile homes or parks in annexed areas.
- 14-715. Charges.

14-701. Definitions. Except as specifically defined herein, all words used have their customary dictionary definitions where not inconsistent with the context. For this purpose certain words or terms are defined as follows:

(1) "Buffer strip" shall mean an evergreen buffer which shall consist of a greenbelt planted strip not less than ten (10) feet in width. Such a greenbelt shall be composed of one row of evergreen trees, spaced not more than forty (40) feet apart and not less than two (2) rows of shrubs or hedge, spaced not more than five (5) feet apart and which grow to a height of five (5) feet or more after one full growing season and which shrubs will eventually grow to not less than ten (10) feet.

(2) "Lot of record" is a lot the boundaries of which are filed as a legal record in the Bradley County Register of Deeds office prior to the effective date of this ordinance.

(3) "Mobile home (trailer)" shall mean a detached single-family dwelling unit with any or all of the following characteristics:

(a) Is not self-propelled, but is transportable on its own or detachable wheels, or on a flat bedded or other trailer, in one or more sections which in the traveling mode is eight (8) body feet or more in width, or thirty-five (35) feet or more in length, or when erected on site is three hundred twenty (320) feet or more square feet;

(b) A single, self-contained unit that is built on a permanent chassis and designed to be used as a dwelling unit with or without a permanent foundation when connected to the required utilities;

(c) Includes the plumbing, heating, air conditioning, and electrical systems contained therein; and

(d) Includes any units which meet the definition of a mobile home as defined by national codes, federal legislation, or Tennessee Code Annotated.

Except that such terms shall also include any structure which meets all of the requirements of this section, except the size requirements, provided the manufacturer complies with the standards established under Tennessee state law.

(4) "Mobile home park" is an area of land used by the landowner for the accommodation of three (3) or more mobile homes to be used for dwelling or sleeping purposes.

(5) "Mobile home space" is an area of land used or intended for the use of one mobile home.

(6) "Mobile home subdivision" is a subdivision of land specifically created to accommodate mobile homes on individual lots which are sold in fee simple.

(7) "Non-conforming use" is a mobile home that is not located either on a single lot of record as the principal structure or in an approved mobile home park prior to the effective date of this ordinance.

(8) "Principal structure" is the mobile home used as the main residential structure on the lot.

(9) "Skirting" is the permanent enclosure of the space between the ground and the floor of the mobile home unit with weather resistant, compatible materials. (1981 Code, § 13-1, as amended by Ord. of Jan. 1994)

14-702. Plan, R-4 zoning, permits required. A process is required for mobile home parks and travel parks. Fees charged under the permit requirement are for inspection and administration. Property must be zoned R-4 and a mobile home park plan approved by the Cleveland Municipal Planning Commission prior to the issuance of a permit. (1981 Code, § 13-2, as amended by Ord. of Jan. 1994)

14-703. Location of mobile homes restricted. The location of a mobile home is allowed inside the Cleveland corporate limits only in either of the following situations:

(1) An existing mobile home, located on a single lot as the principal structure and serviced by public utilities on the effective date of this ordinance; or

(2) An approved mobile home park. (1981 Code, § 13-3, as amended by Ord. of Jan. 1994)

14-704. Upgrade of substandard or single lot mobile home. A single mobile home, located on a lot of record as the principal structure on the effective

date of this ordinance, may be upgraded by replacement under the following conditions:

- (1) The replacement mobile home unit is five (5) years old or less on the date the unit is placed on the lots ;
- (2) Complete skirting of the replacement unit, using weather resistant materials that are similar to the new mobile home. (Ord. of Jan. 1994)

14-705. Non-conforming use-remedy. The owner or occupant of any non-conforming mobile home already placed on a lot, on or before 1-24-94 will be permitted to reside at the present location. However, if at any time the ownership or occupancy of either the lot or mobile home shall change or if such mobile home owner shall change, the owner shall be given a period not to exceed thirty (30) days in which to remove such mobile home and to comply with all provisions of this chapter. (Ord. of Jan. 1994)

14-706. Administration and enforcement. It shall be the duty of the city building inspector to administer and enforce the provisions of this chapter. The city building inspector is hereby authorized and directed to make inspections to determine the condition of mobile home parks. The city building inspector shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the enforcement of this chapter. (1981 Code, § 13-5, as amended by Ord. of Jan. 1994)

14-707. Compliance. To insure compliance with the provisions of this mobile home chapter, utility services will be connected only when the mobile home has been found by the chief building inspector to meet applicable code requirements and the chief building inspector has issued the appropriate permit(s).

Cleveland Utilities, Electric and Water Division, shall be presented with a copy of the mobile home permit, signed by the chief building inspector, as part of the owner(s) application for utility services. Should the owner or applicant fail to provide a signed copy of the permit, Cleveland Utilities shall deny service until the proper procedure to acquire permit(s) is completed. (Ord. of Jan. 1994)

14-708. Authorization. The chief building inspector is authorized to suspend or revoke a mobile home or mobile home park permit in cases where the owner(s) failure to comply with the provisions of this ordinance or other applicable city code has resulted in a threat to the public health, safety or welfare. (Ord. of Jan. 1994)

14-709. Minimum size. The tract of land for the mobile home park shall comprise an area of not less than one and one-half (1½) acres. The tract of land

shall consist of a single plot so dimensioned and related as to facilitate efficient design and management. (Ord. of Jan. 1994)

14-710. Minimum number of spaces. Minimum number of spaces completed and ready for occupancy before first occupancy is three (3). (Ord. of Jan. 1994)

14-711. Mobile home park design standards. (1) Site requirements. Each mobile home park shall be located outside of flood hazard areas on a well-drained site.

(2) Minimum mobile home park size. One and one-half (1½) acres.

(3) Size of mobile home spaces. Each mobile home space shall be at least four thousand (4,000) square feet, including parking area, with a minimum width of forty (40) feet. Each mobile home located in a mobile home park shall be situated such that there is at least:

(a) Ten (10) feet from the mobile home to any adjacent property line;

(b) Twenty-five (25) feet from the mobile home to any public street right-of-way;

(c) Ten (10) feet from the mobile home to any private roads or access drives within the mobile home park;

(d) Ten (10) feet of clear and open space between the mobile home and any adjacent mobile home and its attachments, and between the mobile home and any other buildings;

(e) Applications for a mobile home park shall be filed with and issued by the city building inspector subject to the planning commission's approval of the mobile home park plan. Applications shall be in writing and signed by the applicant and shall be accompanied with an approved plan of the proposed mobile home park. The plan shall contain the following information and conform to the following requirements:

(i) The plan shall be clearly and legibly drawn at a scale not smaller than one hundred (100) feet to one inch;

(ii) Name and address of owner of record;

(iii) Proposed name of park;

(iv) North point and graphic scale and date;

(v) Vicinity map showing location and acreage of the mobile home park;

(vi) Exact boundary lines of the tract by bearing and distance;

(vii) Names of owners of record of adjoining land;

(viii) Existing streets, utilities, easements, and watercourses on and adjacent to the tract;

(ix) Proposed design including streets, proposed street names, lot lines with approximate dimensions, easements, land to

be reserved or dedicated for public uses, and any land to be used for purposes other than mobile home spaces;

(x) Provisions for water supply, sewerage and drainage;
(xi) Such information as may be required by the city to determine if the proposed park will comply with legal requirements;

(xii) The applications and all accompanying plans and specifications shall be filed in triplicate.

(f) Certificates that shall be required are:

(i) Owners certification;
(ii) Planning commission's approval signed by the chairman; and

(iii) Any other certification deemed necessary by the planning commission. (Ord. of Jan. 1994, modified)

14-712. Street construction standards. Same as city "Minimum Construction Standards for Acceptance of Streets Dedicated to the City for Use and Maintenance of Public Ways". (Ord. of Jan. 1994)

14-713. Appeals. Any party aggrieved because of an alleged error in any order, requirement, decision or determination made by the building inspector in the enforcement of this ordinance may appeal for and receive a hearing by the Cleveland Board on Zoning Appeals (BZA), (advised by the city attorney) for an interpretation of pertinent chapter provisions. In exercising this power of interpretation of the chapter, the Cleveland Board on Zoning Appeals, with advice from the city attorney, may, in conformity with the provisions of this ordinance, reverse or affirm any order, requirement, decision or determination made by the building inspector.

Any person aggrieved by any decision of the BZA may seek review by a court of records of such decision in the manner provided by the laws of the state. (1981 Code, § 13-6, as amended by Ord. of Jan. 1994)

14-714. Mobile homes or parks in annexed areas. A mobile home or mobile home park that is annexed into the Cleveland corporate limits and is found to be of substandard condition or not in conformity with the provisions of this chapter and/or the Standard Housing Code, Southern Building Code Congress International, as amended shall be provided a period of not to exceed two (2) years from the effective date of annexation to comply with applicable law. Should the owner(s) fail to comply within the time provided, the unit(s) shall be declared as a non-conforming use by the chief building inspector or housing official, as appropriate, and the provisions of the Cleveland Municipal Zoning Ordinance, shall apply to remedy the non-conforming use. (Ord. of Jan. 1994)

14-715. Charges. Fees shall be charged as follows for mobile home park permits:

(1) Permit fee. A fee of \$25.00 per mobile home unit space in addition to the basic permits as provided by city law as amended.

(2) Annual operating fee. An annual fee of \$10.00 per mobile home unit space, payable by June 30 of each year is required to operate a mobile home park inside the city limits.

(3) Effective date. Enforcement of these charges shall begin June 30, 1995. (Ord. of Jan. 1994, modified)

CHAPTER 8

TRAVEL TRAILERS AND TRAVEL TRAILER PARKS

SECTION

- 14-801. Permit required.
- 14-802. Fee.
- 14-803. Application for permit.
- 14-804. Location restricted.
- 14-805. Inspections by city building inspector or city environmentalist.
- 14-806. Length of occupancy.
- 14-807. Minimum size of travel trailers space.
- 14-808. Site planning improvement standards.

14-801. Permit required. No place or site within the city shall be established or maintained by any person as a travel trailer park unless he holds a valid permit issued by the city building inspector in the name of such person for the specific travel trailer park. The city building inspector is authorized to issue, suspend or revoke permits in accordance with the provisions of this chapter. (1981 Code, § 13-56)

14-802. Fee. An annual permit fee for each travel trailer park in the amount of twenty-five dollars (\$25.00) shall be required. (1981 Code, § 13-57)

14-803. Application for permit. Applications for travel trailer park permits shall meet the same requirements as contained in § 14-711. (1981 Code, § 13-58)

14-804. Location restricted. It shall be unlawful for any travel trailer to be occupied or serviced outside of any properly designated travel trailer park. This provision shall not apply to the storage of travel trailers, provided such trailer unit is neither temporarily or permanently occupied as a dwelling unit while within the city limits. (1981 Code, § 13-59)

14-805. Inspections by city building inspector or city environmentalist. The city building inspector or city environmentalist is hereby authorized and directed to make inspections to determine the condition of travel trailer parks, in order that he may perform his duty of safeguarding the health and safety of the occupants of travel trailer parks and of the general public. The building inspector or city environmentalist shall have the power to enter at reasonable times upon any private or public property for the purpose of inspecting and investigating conditions relating to the enforcement of this chapter. (1981 Code, § 13-60, modified)

14-806. Length of occupancy. Travel trailer spaces shall be rented by the day or week only, and the occupant of such space shall remain in the same travel trailer park not more than fourteen (14) days. (1981 Code, § 13-61)

14-807. Minimum size of travel trailers space. Each travel trailer space shall have a minimum width of thirty (30) feet and a minimum length of fifty (50) feet. (1981 Code, § 13-62)

14-808. Site planning improvement standards. Site planning improvements shall conform to the standards established in Regulations VI-XX of the "State Regulations Governing the Construction Operation and Maintenance of Organized Camps in Tennessee," as provided in Tennessee Code Annotated §§ 68-110-101 through 68-110-106. (1981 Code, § 13-63)

CHAPTER 9

SUBDIVISION REGULATIONS

SECTION

14-901. Subdivision regulations to be governed by ordinance.

14-901. Subdivision regulations to be governed by ordinance. Subdivision regulations of the City of Cleveland shall be governed by Ordinance titled "Subdivision Regulations" adopted July 13, 1998, a copy of which is attached hereto and made a part hereof by reference.¹

¹Ordinance dated July 13, 1998, and any amendments thereto, are of record in the office of the city clerk.

CHAPTER 10

FLOOD HAZARD REDUCTION ORDINANCE

SECTION

- 14-1001. Findings of fact, purpose and objectives.
- 14-1002. Definitions.
- 14-1003. General provisions.
- 14-1004. Administration.
- 14-1005. Provisions for flood hazard reduction.
- 14-1006. Variance procedures.
- 14-1007. Conflicts with other ordinances.
- 14-1008. [Deleted.]
- 14-1009. [Deleted.]
- 14-1010. [Deleted.]
- 14-1011. [Deleted.]
- 14-1012. [Deleted.]
- 14-1013. [Deleted.]
- 14-1014. [Deleted.]
- 14-1015. [Deleted.]
- 14-1016. [Deleted.]
- 14-1017. [Deleted.]
- 14-1018. [Deleted.]

14-1001. Findings of fact, purpose and objectives. (1) Findings of fact.

(a) The City of Cleveland, Tennessee, Mayor and its Legislative Body wishes to maintain eligibility in the National Flood Insurance Program (NFIP) and in order to do so must meet the NFIP regulations found in Title 44 of the Code of Federal Regulations (C.F.R.), ch. 1, section 60.3.

(b) Areas of the City of Cleveland, Tennessee are subject to periodic inundation which could result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

(c) Flood losses are caused by the cumulative effect of obstructions in floodplains, causing increases in flood heights and velocities; by uses in flood hazard areas which are vulnerable to floods; or construction which is inadequately elevated, floodproofed, or otherwise unprotected from flood damages.

(2) **Statement of purpose.** It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas. This ordinance is designed to:

(a) Restrict or prohibit uses which are vulnerable to flooding or erosion hazards, or which result in damaging increases in erosion, flood heights, or velocities;

(b) Require that uses vulnerable to floods, including community facilities, be protected against flood damage at the time of initial construction;

(c) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;

(d) Control filling, grading, dredging and other development which may increase flood damage or erosion;

(e) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

(3) **Objectives.** The objectives of this ordinance are:

(a) To protect human life, health, safety and property;

(b) To minimize expenditure of public funds for costly flood control projects;

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

(d) To minimize prolonged business interruptions;

(e) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodprone areas;

(f) To help maintain a stable tax base by providing for the sound use and development of floodprone areas to minimize blight in flood areas;

(g) To ensure that potential homebuyers are notified that property is in a floodprone area;

(h) To maintain eligibility for participation in the NFIP. (Ord. of July 1998, as replaced by Ord. #2006-47, Jan. 2007, and Ord. #2011-08, June 2011)

14-1002. Definitions. To give them the meaning they have in common usage and to give this ordinance its most reasonable application given its stated purpose and objectives.

(1) "Accessory structure" means a subordinate structure to the principal structure on the same lot and, for the purpose of this ordinance, shall conform to the following:

(a) Accessory structures shall only be used for parking of vehicles and storage.

(b) Accessory structures shall be designed to have low flood damage potential.

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

(d) Accessory structures shall be firmly anchored to prevent flotation, collapse, and lateral movement, which otherwise may result in damage to other structures.

(e) Utilities and service facilities such as electrical and heating equipment shall be elevated or otherwise protected from intrusion of floodwaters.

(2) "Addition (to an existing building)" means any walled and roofed expansion to the perimeter or height of a building.

(3) "Appeal" means a request for a review of the local enforcement officer's interpretation of any provision of this ordinance or a request for a variance.

(4) "Area of shallow flooding" means a designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) with one percent (1%) or greater annual chance of flooding to an average depth of one to three feet (1'-3') where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate; and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

(5) "Area of special flood-related erosion hazard" is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

(6) "Area of special flood hazard" see "special flood hazard area."

(7) "Base flood" means the flood having a one percent (1%) chance of being equaled or exceeded in any given year. This term is also referred to as the 100-year flood or the one percent (1%) annual chance flood.

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

(9) "Building" see "structure."

(10) "Development" means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or storage of equipment or materials.

(11) "Elevated building" means a non-basement building built to have the lowest floor of the lowest enclosed area elevated above the ground level by means of solid foundation perimeter walls with openings sufficient to facilitate

the unimpeded movement of floodwater, pilings, columns, piers, or shear walls adequately anchored so as not to impair the structural integrity of the building during a base flood event.

(12) "Emergency flood insurance program" or "emergency program" means the program as implemented on an emergency basis in accordance with section 1336 of the Act. It is intended as a program to provide a first layer amount of insurance on all insurable structures before the effective date of the initial FIRM.

(13) "Erosion" means the process of the gradual wearing away of land masses. This peril is not "per se" covered under the program.

(14) "Exception" means a waiver from the provisions of this ordinance which relieves the applicant from the requirements of a rule, regulation, order or other determination made or issued pursuant to this ordinance.

(15) "Existing construction" means any structure for which the "start of construction" commenced before the effective date of the initial floodplain management code or ordinance adopted by the community as a basis for that community's participation in the NFIP.

(16) "Existing manufactured home park 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, final site grading or the pouring of concrete pads) is completed before the effective date of the first floodplain management code or ordinance adopted by the community as a basis for that community's participation in the NFIP.

(17) "Existing structures" see "existing construction."

(18) "Expansion to an existing manufactured home park 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).

(19) "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.

(b) The unusual and rapid accumulation or runoff of surface waters from any source.

(20) "Flood elevation determination" means a determination by the Federal Emergency Management Agency (FEMA) of the water surface elevations of the base flood, that is, the flood level that has a one percent (1%) or greater chance of occurrence in any given year.

(21) "Flood elevation study" means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) or flood-related erosion hazards.

(22) "Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by FEMA, where the boundaries of areas of special flood hazard have been designated as Zone A.

(23) "Flood Insurance Rate Map (FIRM)" means an official map of a community, issued by FEMA, delineating the areas of special flood hazard or the risk premium zones applicable to the community.

(24) "Flood insurance study" is the official report provided by FEMA, evaluating flood hazards and containing flood profiles and water surface elevation of the base flood.

(25) "Floodplain" or "flood prone area" means any land area susceptible to being inundated by water from any source (see definition of "flooding").

(26) "Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

(27) "Flood protection system" means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

(28) "Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities and structures and their contents.

(29) "Flood-related erosion" means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood, or by some similarly unusual and unforeseeable event which results in flooding.

(30) "Flood-related erosion area" or "flood-related erosion prone area" means a land area adjoining the shore of a lake or other body of water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

(31) "Flood-related erosion area management" means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works and floodplain management regulations.

(32) "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.

(33) "Freeboard" means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge or culvert openings, and the hydrological effect of urbanization of the watershed.

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

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

(36) "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 the Tennessee 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

(d) Individually listed on the City of Cleveland, Tennessee inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:

(i) By the approved Tennessee program as determined by the Secretary of the Interior; or

(ii) Directly by the Secretary of the Interior.

(37) "Levee" means a man-made 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.

(38) "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.

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

(40) "Manufactured home" means a structure, transportable in one (1) or more sections, which is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

(41) "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.

(42) "Map" means the Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by FEMA.

(43) "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 the purposes of this ordinance, the term is synonymous with the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum (NAVD) of 1988, or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

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

(45) "New construction" means any structure for which the "start of construction" commenced on or after the effective date of the initial floodplain management ordinance and includes any subsequent improvements to such structure.

(46) "New manufactured home park 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 the effective date of the ordinance comprising this chapter or the effective date of the initial floodplain management ordinance and includes any subsequent improvements to such structure.

(47) "North American Vertical Datum (NAVD)" means, as corrected in 1988, a vertical control used as a reference for establishing varying elevations within the floodplain.

(48) "100-year flood" see "base flood."

(49) "Person" includes any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.

(50) "Reasonably safe from flooding" means base flood waters will not inundate the land or damage structures to be removed from the special flood hazard area and that any subsurface waters related to the base flood will not damage existing or proposed structures.

(51) "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;
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

(52) "Regulatory 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.

(53) "Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

(54) "Special flood hazard area" is the land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE or A99.

(55) "Special hazard area" means an area having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, or AH.

(56) "Start of construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, the installation of piles, the 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 accessory buildings, such as garages or sheds, not occupied as dwelling units or not part of the main

structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

(57) "State coordinating agency." The Tennessee Department of Economic and Community Development's Local Planning Assistance Office, as designated by the Governor of the State of Tennessee at the request of FEMA to assist in the implementation of the NFIP for the state.

(58) "Structure" for purposes of this ordinance, means a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

(59) "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 percent (50%) of the market value of the structure before the damage occurred.

(60) "Substantial improvement" means any reconstruction, rehabilitation, addition, alteration or other improvement of a structure in which the cost equals or exceeds fifty percent (50%) of the market value of the structure before the "start of construction" of the initial improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed.

(a) The market value of the structure should be:

(i) The appraised value of the structure prior to the start of the initial improvement; or

(ii) In the case of substantial damage, the value of the structure prior to the damage occurring.

(b) The term does not, however, include either:

(i) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been pre-identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions and not solely triggered by an improvement or repair project; or

(ii) Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

(61) "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 percent (50%) of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

(62) "Variance" is a grant of relief from the requirements of this ordinance.

(63) "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 certification, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

(64) "Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, the North American Vertical Datum (NAVD) of 1988, or other datum, where specified, of floods of various magnitudes and frequencies in the floodplains of riverine areas. (as added by Ord. #2006-47, Jan. 2007, and replaced by Ord. #2011-08, June 2011)

14-1003. General provisions. (1) Application. This ordinance shall apply to all areas within the incorporated area of the City of Cleveland, Tennessee.

(2) Basis for establishing the areas of special flood hazard. The areas of special flood hazard identified in the City of Cleveland, Tennessee, as identified by FEMA, and in its Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM), Community Panel Numbers 47011C109E, 47011C110E, 47011C117E, 47011C119E, 47011C120E, 47011C125E, 47011C126E, 47011C127E, 47011C128E, 47011C129E, 47011C136E, 47011C137E, 47011C138E, 47011C139E, 47011C150E, 47011C207E, 47011C210E, 47011C230E, dated February 7, 2007, along with all supporting technical data, and letters of map revision affecting the aforementioned FIRM Community Panel Numbers approved by FEMA, are adopted by reference and declared to be a part of this ordinance.

(3) Requirement for development permit. A development permit shall be required in conformity with this ordinance prior to the commencement of any development activities. This development permit requirement applies to all properties lying partially or completely within a SFHA or which are within sixty feet (60') of any stream or watercourse.

(4) Compliance. No land, structure or use shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

(5) Abrogation and greater restrictions. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants or deed restrictions. However, where this ordinance conflicts or overlaps with another regulatory instrument, whichever imposes the more stringent restrictions shall prevail.

(6) Interpretation. In the interpretation and application of this ordinance, all provisions shall be:

- (a) Considered as minimum requirements;
- (b) Liberally construed in favor of the governing body; and
- (c) Deemed neither to limit nor repeal any other powers granted under Tennessee statutes.

(7) Warning and disclaimer of liability. The degree of flood protection required by this ordinance 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 ordinance 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 ordinance shall not create liability on the part of the City of Cleveland, Tennessee or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

(8) Penalties for violation. Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance shall constitute a misdemeanor punishable as other misdemeanors as provided by law. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon adjudication therefore, be fined as prescribed by Tennessee statutes, 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 Cleveland, Tennessee from taking such other lawful actions to prevent or remedy any violation. (as added by Ord. #2006-47, Jan. 2007, and replaced by Ord. #2011-08, June 2011)

14-1004. Administration. (1) Designation of ordinance administrator. The stormwater manager is hereby appointed as the administrator to implement the provisions of this ordinance.

(2) Permit procedures. Application for a development permit shall be made to the administrator on forms furnished by the community prior to any development activities. The development permit may include, but is not limited to the following: plans in duplicate drawn to scale and showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill placement, storage of materials or equipment, and drainage facilities. Specifically, the following information is required:

(a) Application stage. (i) Elevation in relation to mean sea level of the proposed lowest floor, including basement, of all buildings where base flood elevations are available, or to certain height above the highest adjacent grade when applicable under this ordinance.

(ii) Elevation in relation to mean sea level to which any non-residential building will be floodproofed where base flood elevations are available, or to certain height above the highest adjacent grade when applicable under this ordinance.

(iii) A FEMA Floodproofing Certificate from a Tennessee registered professional engineer or architect that the proposed

non-residential floodproofed building will meet the floodproofing criteria in § 14-1005(1) and (2).

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

(b) Construction stage. Within AE Zones, where base flood elevation data is available, any lowest floor certification made relative to mean sea level shall be prepared by or under the direct supervision of, a Tennessee registered land surveyor and certified by same. The administrator shall record the elevation of the lowest floor on the development permit. When floodproofing is utilized for a non-residential building, said certification shall be prepared by, or under the direct supervision of, a Tennessee registered professional engineer or architect and certified by same.

Within approximate A Zones, where base flood elevation data is not available, the elevation of the lowest floor shall be determined as the measurement of the lowest floor of the building relative to the highest adjacent grade. The administrator shall record the elevation of the lowest floor on the development permit. When floodproofing is utilized for a non-residential building, said certification shall be prepared by, or under the direct supervision of, a Tennessee registered professional engineer or architect and certified by same.

For all new construction and substantial improvements, the permit holder shall provide to the administrator an as-built certification of the lowest floor elevation or floodproofing level upon the completion of the lowest floor or floodproofing.

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

(3) Duties and responsibilities of the administrator. Duties of the administrator shall include, but not be limited to, the following:

(a) Review all development permits to assure that the permit requirements of this ordinance have been satisfied, and that proposed building sites will be reasonably safe from flooding.

(b) Review proposed development to assure that all necessary permits have been received from those 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.

(c) Notify adjacent communities and the Tennessee Department of Economic and Community Development, Local Planning Assistance

Office, prior to any alteration or relocation of a watercourse and submit evidence of such notification to FEMA.

(d) For any altered or relocated watercourse, submit engineering data/analysis within six (6) months to FEMA to ensure accuracy of community FIRMs through the letter of map revision process.

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

(f) Record the elevation, in relation to mean sea level or the highest adjacent grade, where applicable, of the lowest floor (including basement) of all new and substantially improved buildings, in accordance with § 14-1004(2).

(g) Record the actual elevation, in relation to mean sea level or the highest adjacent grade, where applicable, to which the new and substantially improved buildings have been floodproofed, in accordance with § 14-1004(2).

(h) When floodproofing is utilized for a non-residential structure, obtain certification of design criteria from a Tennessee registered professional engineer or architect, in accordance with § 14-1004(2).

(i) 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), 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 ordinance.

(j) When base flood elevation data and floodway data have not been provided by FEMA, obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other sources, including data developed as a result of these regulations, as criteria for requiring that new construction, substantial improvements, or other development in Zone A on the City of Cleveland, Tennessee FIRM meet the requirements of this ordinance.

(k) Maintain all records pertaining to the provisions of this ordinance in the office of the administrator and shall be open for public inspection. Permits issued under the provisions of this ordinance shall be maintained in a separate file or marked for expedited retrieval within combined files. (as added by Ord. #2006-47, Jan. 2007, and replaced by Ord. #2011-08, June 2011)

14-1005. Provisions for flood hazard reduction. (1) General standards. In all areas of special flood hazard, the following provisions are required:

(a) New construction and substantial improvements shall be anchored to prevent flotation, collapse and lateral movement of the structure;

(b) Manufactured homes shall be installed using methods and practices that minimize flood damage. They must be elevated and 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 requirement is in addition to applicable State of Tennessee and local anchoring requirements for resisting wind forces;

(c) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;

(d) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;

(e) All electrical, heating, ventilation, plumbing, air conditioning equipment, 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;

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

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

(h) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;

(i) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance, shall meet the requirements of "new construction" as contained in this ordinance;

(j) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provision of this ordinance, shall be undertaken only if said non-conformity is not further extended or replaced;

(k) All new construction and substantial improvement proposals shall provide copies of all necessary federal and state permits, including section 404 of the Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1334;

(l) All subdivision proposals and other proposed new development proposals shall meet the standards of § 14-1005(2);

(m) When proposed new construction and substantial improvements are partially located in an area of special flood hazard, the entire structure shall meet the standards for new construction;

(n) When proposed new construction and substantial improvements are located in multiple flood hazard risk zones or in a flood hazard risk zone with multiple base flood elevations, the entire structure

shall meet the standards for the most hazardous flood hazard risk zone and the highest base flood elevation.

(2) Specific standards. In all areas of special flood hazard, the following provisions, in addition to those set forth in § 14-1005(1), are required:

(a) Residential structures. In AE Zones where base flood elevation data is available, new construction and substantial improvement of any residential building (or manufactured home) shall have the lowest floor, including basement, elevated to no lower than two feet (2') above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

Within approximate A Zones where base flood elevations have not been established and where alternative data is not available, the administrator shall require the lowest floor of a building to be elevated to a level of at least three feet (3') above the highest adjacent grade (as defined in § 14-1002). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

(b) Non-residential structures. In AE Zones, where base flood elevation data is available, new construction and substantial improvement of any commercial, industrial, or non-residential building, shall have the lowest floor, including basement, elevated or floodproofed to no lower than two feet (2') above the level of the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

In approximate A Zones, where base flood elevations have not been established and where alternative data is not available, new construction and substantial improvement of any commercial, industrial, or non-residential building, shall have the lowest floor, including basement, elevated or floodproofed to no lower than three feet (3') above the highest adjacent grade (as defined in § 14-1002). Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls shall be provided in accordance with the standards of this section: "Enclosures."

Non-residential buildings located in all A Zones may be floodproofed, in lieu of being elevated, provided that all areas of the building below the required elevation are watertight, with walls substantially impermeable to the passage of water, and are built with structural components having the capability of resisting hydrostatic and

hydrodynamic loads and the effects of buoyancy. A Tennessee 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 administrator as set forth in § 14-1004(2).

(c) Enclosures. All new construction and substantial improvements that include fully enclosed areas formed by foundation and other exterior walls below the lowest floor that are subject to flooding, shall be designed to preclude finished living space and designed to allow for the entry and exit of flood waters to automatically equalize hydrostatic flood forces on exterior walls.

(i) Designs for complying with this requirement must either be certified by a Tennessee professional engineer or architect or meet or exceed the following minimum criteria.

(A) 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;

(B) The bottom of all openings shall be no higher than one foot (1') above the finished grade;

(C) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

(ii) The enclosed area shall be the minimum necessary to allow for parking of vehicles, storage or building access.

(iii) The interior portion of such enclosed area shall not be finished or partitioned into separate rooms in such a way as to impede the movement of floodwaters and all such partitions shall comply with the provisions of § 14-1005(2).

(d) Standards for manufactured homes and recreational vehicles. (i) All manufactured homes placed, or substantially improved, on:

(A) Individual lots or parcels;

(B) In expansions to existing manufactured home parks or subdivisions; or

(C) In new or substantially improved manufactured home parks or subdivisions;

Must meet all the requirements of new construction.

(ii) All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that either:

(A) In AE Zones, with base flood elevations, the lowest floor of the manufactured home is elevated on a permanent foundation to no lower than two feet (2') above the level of the base flood elevation; or

(B) In approximate A Zones, without base flood elevations, the manufactured home chassis is elevated and supported by reinforced piers (or other foundation elements of at least equivalent strength) that are at least three feet (3') in height above the highest adjacent grade (as defined in § 14-1002).

(iii) Any manufactured home, which has incurred "substantial damage" as the result of a flood, must meet the standards of § 14-1005(1) and (2).

(iv) All manufactured homes must be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

(v) All recreational vehicles placed in an identified special flood hazard area must either:

(A) Be on the site for fewer than one hundred eighty (180) consecutive days;

(B) Be fully licensed and ready for highway use (a recreational vehicle is 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

(C) The recreational vehicle must meet all the requirements for new construction.

(e) Standards for subdivisions and other proposed new development proposals. Subdivisions and other proposed new developments, including manufactured home parks, shall be reviewed to determine whether such proposals will be reasonably safe from flooding.

(i) All subdivision and other proposed new development proposals shall be consistent with the need to minimize flood damage.

(ii) All subdivision and other proposed new development proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

(iii) All subdivision and other proposed new development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(iv) In all approximate A Zones require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than fifty (50) lots or five (5) acres, whichever is the lesser, include within such proposals base flood elevation data (see § 14-1005(5)).

(3) Standards for special flood hazard areas with established base flood elevations and with floodways designated. Located within the special flood hazard areas established in § 14-1003(2), are areas designated as floodways. A

floodway may be an extremely hazardous area due to the velocity of 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 and velocities. Therefore, the following provisions shall apply:

(a) Encroachments are prohibited, including earthen fill material, new construction, substantial improvements or other development within the 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 cumulative effect of the proposed encroachments or new development shall not result in any increase in the water surface elevation of the base flood elevation, velocities, or floodway widths during the occurrence of a base flood discharge at any point within the community. A Tennessee registered professional engineer must provide supporting technical data, using the same methodologies as in the effective flood insurance study for the City of Cleveland, Tennessee and certification, thereof.

(b) New construction and substantial improvements of buildings, where permitted, shall comply with all applicable flood hazard reduction provisions of § 14-1005(1) and (2).

(4) Standards for areas of special flood hazard Zones AE with established base flood elevations but without floodways designated. Located within the special flood hazard areas established in § 14-1003(2), where streams exist with base flood data provided but where no floodways have been designated (Zones AE), the following provisions apply:

(a) No encroachments, including fill material, new construction and substantial improvements shall be located within areas of special flood hazard, unless certification by a Tennessee registered professional engineer is provided demonstrating 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 foot (1') at any point within the community. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.

(b) New construction and substantial improvements of buildings, where permitted, shall comply with all applicable flood hazard reduction provisions of § 14-1005(1) and (2).

(5) Standards for streams without established base flood elevations and floodways (A Zones). Located within the special flood hazard areas established in § 14-1003(2), where streams exist, but no base flood data has been provided and where a floodway has not been delineated, the following provisions shall apply:

(a) The administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from any

federal, state, or other sources, including data developed as a result of these regulations (see (b) below), as criteria for requiring that new construction, substantial improvements, or other development in approximate A Zones meet the requirements of § 14-1005(1) and (2).

(b) Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than fifty (50) lots or five (5) acres, whichever is the lesser, include within such proposals base flood elevation data.

(c) Within approximate A Zones, where base flood elevations have not been established and where such data is not available from other sources, require the lowest floor of a building to be elevated or floodproofed to a level of at least three feet (3') above the highest adjacent grade (as defined in § 14-1002). All applicable data including elevations or floodproofing certifications shall be recorded as set forth in § 14-1004(2). Openings sufficient to facilitate automatic equalization of hydrostatic flood forces on exterior walls shall be provided in accordance with the standards of § 14-1005(2).

(d) Within approximate A Zones, where base flood elevations have not been established and where such data is not available from other sources, no encroachments, including structures or fill material, shall be located within an area equal to the width of the stream or twenty feet (20'), whichever is greater, measured from the top of the stream bank, unless certification by a Tennessee registered professional engineer is provided demonstrating 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 foot (1') at any point within the City of Cleveland, Tennessee. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.

(e) New construction and substantial improvements of buildings, where permitted, shall comply with all applicable flood hazard reduction provisions of § 14-1005(1) and (2). Within approximate A Zones, require that those subsections of § 14-1005(2) dealing with the alteration or relocation of a watercourse, assuring watercourse carrying capacities are maintained and manufactured homes provisions are complied with as required.

(6) Standards for areas of shallow flooding (AO and AH Zones). Located within the special flood hazard areas established in § 14-1003(2), are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one to three feet (1' to 3') where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions, in addition to those set forth in § 14-1005(1) and (2), apply:

(a) All new construction and substantial improvements of residential and non-residential buildings shall have the lowest floor, including basement, elevated to at least two feet (2') above as many feet as the depth number specified on the FIRMs, in feet, above the highest adjacent grade. If no flood depth number is specified on the FIRM, the lowest floor, including basement, shall be elevated to at least three feet (3') above the highest adjacent grade. Openings sufficient to facilitate automatic equalization of hydrostatic flood forces on exterior walls shall be provided in accordance with standards of § 14-1005(2).

(b) All new construction and substantial improvements of non-residential buildings may be floodproofed in lieu of elevation. The structure together with attendant utility and sanitary facilities must be floodproofed and designed watertight to be completely floodproofed to at least two feet (2') above the flood depth number specified on the FIRM, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. If no depth number is specified on the FIRM, the structure shall be floodproofed to at least three feet (3') above the highest adjacent grade. A Tennessee 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 of this ordinance and shall provide such certification to the administrator as set forth above and as required in accordance with § 14-1004(2).

(c) Adequate drainage paths shall be provided around slopes to guide floodwaters around and away from proposed structures.

(7) Standards for areas protected by flood protection system (A99 Zones). Located within the areas of special flood hazard established in § 14-1003(2), are areas of the 100-year floodplain protected by a flood protection system but where base flood elevations have not been determined. Within these areas (A99 Zones) all provisions of §§ 14-1004 and 14-1005 shall apply.

(8) Standards for unmapped streams. Located within the City of Cleveland, Tennessee, are unmapped streams where areas of special flood hazard are neither indicated nor identified. Adjacent to such streams, the following provisions shall apply:

(a) No encroachments including fill material or other development including structures shall be located within an area of at least equal to twice the width of the stream, measured from the top of each stream bank, unless certification by a Tennessee registered professional engineer is provided demonstrating 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 foot (1') at any point within the locality.

(b) When a new flood hazard risk zone, and base flood elevation and floodway data is available, new construction and substantial improvements shall meet the standards established in accordance with §§ 14-1004 and 14-1005. (as added by Ord. #2006-47, Jan. 2007, and replaced by Ord. #2011-08, June 2011)

14-1006. Variance procedures. (1) Board of floodplain review.

(a) **Creation and appointment.** A board of floodplain review is hereby established which shall consist of the five (5) members of the Cleveland Board of Zoning Appeals appointed by the city council.

(b) **Procedure.** Meetings of the board of floodplain review shall be held at such times, as the board shall determine. Meetings may be held in conjunction with meetings of the Cleveland Board of Zoning Appeals or separately. All meetings of the board of floodplain review shall be open to the public. A quorum for the board of floodplain review shall be three (3) members. The chair and vice-chair of the board of floodplain review shall be as for the Cleveland Board of Zoning Appeals. The conduct of the board of floodplain review's business will be generally in accordance with Robert's Rules of Order. The board of floodplain review may adopt additional rules of procedure and shall keep records of applications and actions thereof, which shall be a public record. Compensation of the members of the board of floodplain review, if any, shall be set by the City Council of Cleveland, Tennessee.

(c) **Appeals: how taken.** An appeal to the board of floodplain review may be taken by any person, firm or corporation aggrieved or by any governmental officer, department, or bureau affected by any decision of the administrator based in whole or in part upon the provisions of this ordinance. Such appeal shall be taken by filing with the board of floodplain review a notice of appeal, specifying the grounds thereof. In all cases where an appeal is made by a property owner or other interested party, a fee of three hundred dollars (\$300.00) shall be paid by the appellant. The administrator shall transmit to the board of floodplain review all papers constituting the record upon which the appeal action was taken. The board of floodplain review shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to parties in interest and decide the same within a reasonable time which shall not be more than ninety (90) days from the date of the hearing. At the hearing, any person or party may appear and be heard in person or by agent or by attorney.

(d) **Powers.** The board of floodplain review shall have the following powers:

(i) **Administrative review.** To hear and decide appeals where it is alleged by the applicant that there is error in any order, requirement, permit, decision, determination, or refusal made by

the administrator or other administrative official in carrying out or enforcement of any provisions of this ordinance.

(ii) Variance procedures. In the case of a request for a variance the following shall apply:

(A) The City of Cleveland, Tennessee Board of Floodplain Review shall hear and decide appeals and requests for variances from the requirements of this ordinance.

(B) Variances may be issued for the repair or rehabilitation of historic structures as defined, herein, upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary deviation from the requirements of this ordinance to preserve the historic character and design of the structure.

(C) In passing upon such applications, the board of floodplain review shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

(1) The danger that materials may be swept onto other property to the injury of others;

(2) The danger to life and property due to flooding or erosion;

(3) The susceptibility of the proposed facility and its contents to flood damage;

(4) The importance of the services provided by the proposed facility to the community;

(5) The necessity of the facility to a waterfront location, in the case of a functionally dependent use;

(6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(7) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

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

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

(10) 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, water systems, and streets and bridges.

(D) Upon consideration of the factors listed above, and the purposes of this ordinance, the board of floodplain review may attach such conditions to the granting of variances, as it deems necessary to effectuate the purposes of this ordinance.

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

(2) Conditions for variances. (a) Variances shall be issued upon a determination that the variance is the minimum relief necessary, considering the flood hazard and the factors listed in § 14-1006(1).

(b) Variances shall only be issued upon: a showing of good and sufficient cause, a determination that failure to grant the variance would result in exceptional hardship; or 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 that the issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance (as high as twenty-five dollars (\$25.00) for one hundred dollars (\$100.00)) coverage, and that such construction below the base flood elevation increases risks to life and property. The administrator shall maintain the records of all appeal actions and report any variances to FEMA upon request. (as added by Ord. #2006-47, Jan. 2007, and replaced by Ord. #2011-08, June 2011)

14-1007. Conflicts with other ordinances. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed to the extent necessary to implement this ordinance. (as added by Ord. #2006-47, Jan. 2007, and replaced by Ord. #2011-08, June 2011)

14-1008. [Deleted]. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1009. [Deleted]. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1010. [Deleted]. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1011. **[Deleted]**. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1012. **[Deleted]**. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1013. **[Deleted]**. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1014. **[Deleted]**. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1015. **[Deleted]**. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1016. **[Deleted]**. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1017. **[Deleted]**. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

14-1018. **[Deleted]**. (as added by Ord. #2006-47, Jan. 2007, and deleted by Ord. #2011-08, June 2011)

CHAPTER 11

**MINIMUM STANDARDS FOR SITING CELLULAR
COMMUNICATION TOWERS**

SECTION

- 14-1101. Purpose.
- 14-1102. Definition.
- 14-1103. Permit application requirements.
- 14-1104. Co-location.
- 14-1105. Permitted locations, by zoning district.
- 14-1106. Separation of tower to off-site uses.
- 14-1107. Security fencing.
- 14-1108. Landscaping and aesthetics.
- 14-1109. Tower prohibited in airport approach zone.
- 14-1110. Abandoned tower policy.

14-1101. Purpose. Establish minimum standards and location requirements for siting wireless communication (cellular) towers and antennas within the corporate limits of the City of Cleveland, Tennessee in order to protect the public health and safety. (Ord. of Aug. 1998)

14-1102. Definition. For the purpose of this chapter, the word tower shall be defined as "any outdoor structure designed and constructed to support one (1) or more transmitting or receiving devices for telephone, radio or any similar wireless communication facilities, with the following exceptions":

- (1) Any citizens band or amateur radio station antenna;
- (2) A ground or building mounted citizens band radio antenna less than forty (40') feet in height or an amateur radio antenna not more than seventy-five feet (75') in height, provided there is adequate clearance with adjacent structures; an antenna in this category that exceeds seventy-five (75') in height must be reviewed and approved by the Cleveland Municipal Planning Commission;
- (3) Satellite dish type antenna or a conventional type television antenna for the exclusive use of a residential occupancy;
- (4) Mobile news or public information service antennas;
- (5) Hand-held communication devices such as walkie-talkies, cell phones and similar type devices;
- (6) Antennas owned by public agency or its members and used for emergency services, public utilities, operation or maintenance services. (Ord. of Aug. 1998)

11-1103. Permit application requirements. (1) The applicant for a permit to locate a tower is responsible for providing the following information to the chief building official:

(a) A site plan drawn to scale that shows the property lines of the site, the location of the tower in relation to the property lines, adjoining property within 300' feet of the site by owner and use, distances from the base of the tower to adjoining property lines and the nearest habitable structure, proposed easement(s) by location and type and, the location of any accessory buildings proposed to be located on the site including building setbacks from the property lines.

(b) A grading and drainage plan that indicates the existing and proposed elevation of the site and methods proposed to manage and control erosion during construction as well as permanent drainage methods and/or facilities.

(c) Proof of ownership or legal interest in the property.

(d) Engineering drawings that describe the design and structural integrity of the tower, its supports and attachments.

(e) A statement describing the general capability of the tower to serve more than one (1) user and whether space will be available for lease to additional users.

(2) Permit application review shall be co-ordinated by the planning director or a designee and conducted in the same procedure as subdivision plat review. (Ord. of Aug. 1998)

14-1104. Co-location. Towers shall be required to accommodate the maximum number of transmitting facilities subject to the design capacity of the tower for the purpose of reducing the number of potential tower locations within the corporate limits. Applicants for a tower permit are required to provide a statement that documents their efforts to secure a co-location on an existing tower. (Ord. of Aug. 1998)

14-1105. Permitted locations, by zoning district. Tower shall be permitted in a local highway business, professional or manufacturing zoning district within the corporate limits. A tower, without exception, is not permitted in a residential (R-1,2,3,4,5 or A) zoning district, the floodway district or in the central business district (CBD). (Ord. of Aug. 1998)

14-1106. Separation of tower to off-site uses. Tower separation shall be measured in straight line distance from the base of the tower structure to nearest zoning district boundary line. The tower location shall, without exception, maintain a minimum distance of 200 feet or 300% of the height of the tower; whichever is greater, from any adjoining district where a tower is not a permitted use. Accessory uses shall maintain building setbacks as prescribed by the applicable zoning district.

(1) If the adjoining district is a district where a tower is permitted, the building setbacks applicable to the zoning district wherein the tower is located shall apply. (Ord. of Aug. 1998)

14-1107. Security fencing. The area surrounding the tower location, but not necessarily the entire lot, shall be enclosed with fencing adequate to secure the tower under normal circumstances. (Ord. of Aug. 1998)

14-1108. Landscaping and aesthetics. Plant materials suitable to screen the tower location shall be incorporated into the design of the facility. As a general criteria, plant species that are native or commonly utilized in the area shall be considered in order to maintain compatibility with adjoining property. A general landscape plan shall be submitted concurrent with the site plan and is subject to the review of the Cleveland Urban Forester. (Ord. of Aug. 1998)

14-1109. Tower prohibited in airport approach zone. No tower shall be located within the Cleveland Municipal Airport approach surface zone, the horizontal surface zone, conical surface zone or transitional zone as shown on the airport zoning map, dated October 7, 1959, as amended. (Ord. of Aug. 1998)

14-1110. Abandoned tower policy. In the event a tower becomes obsolete or is out of service for any reason for six (6) consecutive months, the owner or record shall cause the tower to be dismantled and removed from site and disposed of in the manner appropriate for disposal or re-use of the tower materials. A time period one (1) year shall be provided from the time the tower is deemed to be out of service for the owner to either activate the tower or remove it from the site.

(1) Failure to comply with the terms of this section concerning removal of abandoned tower shall be subject to penalties as provided by the Cleveland Municipal Code. (Ord. of Aug. 1998)

CHAPTER 12

HISTORIC PRESERVATION

SECTION

- 14-1201. Statement of purpose.
- 14-1202. Historic preservation commission: composition and terms.
- 14-1203. Powers of the commission.
- 14-1204. Rules of order (by-laws).
- 14-1205. Designation of landmarks, landmark sites, and historic district.
- 14-1206. Certificates of appropriateness.
- 14-1207. Criteria for issuance of certificates of appropriateness.
- 14-1208. Procedures for issuance of certificates of appropriateness, review process, and fees.
- 14-1209. Economic hardship.
- 14-1210. Appeals.
- 14-1211. Minimum maintenance requirements.
- 14-1212. Public safety exchange.
- 14-1213. Enforcement and penalties.
- 14-1214. Appropriations.
- 14-1215. Disqualification of members by conflict of interest.

14-1201. Statement of purpose. Historic preservation activities will promote and protect the health, safety, prosperity, education, and general welfare of the people living in and visiting the City of Cleveland, Tennessee, hereinafter referred to as "the city".

More specifically, this historic preservation chapter is designed to achieve the following goals:

- (1) Protect, enhance and perpetuate resources which represent distinctive and significant elements of the city's historical, cultural, social, economic, political archaeological, and architectural identity;
- (2) Insure the harmonious, orderly, and efficient growth and development of the city;
- (3) Strengthen civic pride and cultural stability through neighborhood conservation;
- (4) Stabilize the economy of the city through the continued use, preservation, and revitalization of its resources;
- (5) Promote the use of resources for the education, pleasure, and welfare of the people of the city;
- (6) Provide a review process for the preservation and development of the city's resources. (as added by Ord. #2004-07, April 2004)

14-1202. Historic preservation commission: composition and terms. The city hereby establishes a historic zoning commission, the Cleveland Historic Preservation Commission, hereinafter referred to as "the commission,"

pursuant to the authority granted in Tennessee Code Annotated, § 13-7-403. The commission is to work to preserve, promote, and develop the city's historical resources and to advise the city on the designation of preservation districts, landmarks, and landmark sites and to perform such other functions as may be provided by law.

The commission shall consist of seven (7) members. The commission's membership shall include a representative of a local patriotic or historical organization; an architect or engineer, if available; and a person who is a member of the Cleveland Municipal Planning Commission at the time of his/her appointment. The commission's membership shall include members from the community in general but, if possible, it shall include professionals in primary or secondary historic preservation-related disciplines regardless of their place of residence. Efforts to include commission members from primary historic preservation-related disciplines (architecture, history, architectural history, archaeology) and secondary historic preservation-related disciplines (urban planning, American studies, American civilization, cultural geography, cultural anthropology, interior design, law, and related fields) shall be documented. Concerning the composition of the commission, diversity in terms of gender and ethnicity is desirable. All commission members shall have demonstrated knowledge of or interest, competence, or expertise in historic preservation.

All members of the commission are appointed by the city council and shall serve for designated terms and may be re-appointed. Initial appointments to the commission shall be made so as to provide staggered terms for membership. Three of the initial appointments shall be for four years; two initial appointments shall be for three years; and two initial appointments shall be for two years. Subsequent appointments shall be for terms of four years. Appointments are to be confirmed by the majority vote of the city council. Commission members may be removed at any time by the majority vote of city council. Reasons for removal of a commission member could include a pattern of poor attendance at meetings, refusal to follow applicable laws and ordinances in carrying out commission business, failure to comply with conflict of interest provisions, unprofessional conduct at commission meetings, etc. In the event of commission vacancies due to death, resignation, involuntary removal, etc., the city council shall appoint replacement members to serve the remainder of the unexpired term. (as added by Ord. #2004-07, April 2004)

14-1203. Powers of the commission. (1) The commission shall conduct or cause to be conducted a continuing study and survey of resources within the city; however, the commission is not authorized to incur any financial obligation without the express authorization of the city council.

(2) The commission shall recommend to the city the adoption of ordinances designating preservation districts, landmarks, and landmark sites where appropriate.

(3) The commission may recommend that the city recognize sub-districts within any preservation district, in order that the commission may

adopt specific guidelines for the regulation of properties within such a sub-district.

(4) The commission shall review applications proposing construction, alteration, demolition, or relocation of any resource within the preservation districts, landmarks, and landmarks sites.

(5) The commission shall grant or deny certificates of appropriateness, and may grant certificates of appropriateness contingent upon the acceptance by the applicant of specified conditions.

(6) The commission does not have jurisdiction over interior arrangements of buildings and structures, except where such change will affect the exterior of the building and structures.

(7) Subject to the express approval of the city council and subject to the requirements of the city, the commission may apply for, receive, hold, and spend funds from private and public sources, in addition to any appropriations made by the city for the purpose of carrying out the provisions of this chapter.

(8) Within the limits of any appropriations or grant in a budget approved by the city council and subject to the approval of the city manager, the commission is authorized to utilize such staff, technical experts or other persons as may be required for the performance of its duties and to request the equipment, supplies, and other materials necessary for its effective operation.

(9) The commission is authorized, solely in the performance of its official duties and only at reasonable times, to enter upon private land or water for the examination or survey thereof. No member or agent of the commission shall enter any private dwelling or structure without the express consent of the owner of record or occupant thereof. (as added by Ord. #2004-07, April 2004)

14-1204. Rules of order (by-laws). To fulfill the purposes of this chapter and carry out the provisions contained therein:

(1) The commission annually shall elect from its membership a chairman and vice-chairman. It shall select a secretary from its membership or its staff. If neither the chairman nor the vice-chairman attends a particular meeting, the remaining members shall select an acting chairman from the members in attendance at such meeting.

(2) This § 14-1204 of this chapter shall constitute the rules of order (by-laws) of the commission which shall govern the conduct of its business, subject to the approval of the city council. Such rules of order (by-laws) shall be a matter of public record. The commission may from time to time adopt such other rules of order (by-laws) as are necessary to its operation, subject to the approval of the city council. A quorum for voting on any item of business shall be any four members who are not disqualified from voting due to a conflict of interest. Except as provided in this chapter or in any subsequent amendment, questions arising concerning rules of order (by-laws) shall be settled by reference to Robert's Rules of Order.

(3) The commission shall develop design review guidelines for determining appropriateness as generally set forth in § 14-1207 of this chapter.

Such criteria shall insofar as possible be consistent with local, state, and federal guidelines and regulations including, but not limited to, building safety and fire codes and the Secretary of the Interior's Standards For Rehabilitation.

(4) The commission shall keep minutes and records of all meetings and proceedings including voting records, attendance, resolutions, findings, determinations, and decisions. All such material shall be a matter of public record. City staff designated by the city manager shall keep the aforementioned minutes and records, shall provide descriptions of the issues before the commission, shall provide notice of meetings, and other support services reasonably necessary to the operation of the commission.

(5) The commission shall establish its own regular meeting time; however, the first meeting shall be held after the adoption of this chapter and within thirty (30) days after the initial appointment of commission members. Regular meetings shall be scheduled at least once every three (3) months. The chairman, vicechairman, or any two (2) members may call a special meeting to consider an urgent matter. (as added by Ord. #2004-07, April 2004)

14-1205. Designation of landmarks, landmark sites, and historic districts. By ordinance, the city may establish landmarks, landmark sites, and preservation districts within the area of its jurisdiction. Such landmarks, landmark sites, or preservation districts shall be designated following the criteria contained in this chapter. (1) The commission shall initiate a continuing and thorough investigation of the archaeological, architectural, cultural, and historic significance of the city's resources. The findings shall be collected in a cohesive format, made a matter of public record, and made available for public inspection. The commission shall work toward providing complete documentation for previously designated preservation districts which would include:

(a) A survey of all property within the boundary of the district, with photographs of each building.

(b) A survey which would be in a format consistent with the statewide inventory format of the Historic Preservation Division of the (SHPO).

(2) The commission shall advise the city on the designation of preservation districts, landmarks, or landmark sites and submit or cause to be prepared ordinances to make such designation.

(3) A resource or resources may be nominated for designation upon motion of three members of the commission or by an organization interested in historic preservation or by an owner of the property being nominated. A nomination shall contain information as specified by the commission. The commission must reach a decision on whether to recommend a proposed nomination to the city council within six months in the case of a preservation district and two months in the case of either a landmark or landmark site. After six months for a district and two months for a landmark or landmark site if no action has been taken by the commission the nomination proceeds to the

Cleveland Municipal Planning Commission for their recommendation to the city council.

(4) The commission shall hold a public hearing on the proposed preservation district, landmark, or landmark site. If the commission votes to recommend to the city the designation of a proposed resource, it shall promptly forward to the Cleveland Municipal Planning Commission its recommendation, in writing, together with an accompanying file.

(5) The commission's recommendations to the city council for designation of a preservation district shall be accompanied by:

(a) A map of the preservation district that clearly delineates the boundaries

(b) A verbal boundary description and justification

(c) A written statement of significance for the proposed preservation district

(6) The city council shall conduct a public hearing, after notice, to discuss the proposed designation and boundaries thereof. A notice of the hearing shall be published in the newspaper generally used by the city for such notices.

(7) Within sixty (60) calendar days after the public hearing held in connection herewith, the city shall consider the adoption of the ordinance with such modifications as may be necessary.

(8) Furthermore, the commission shall notify, as soon as is reasonably possible, the appropriate state, county, and municipal agencies of the official designation of all landmarks, landmark sites and preservation districts. An updated list and map shall be maintained by such agencies and made available to the public. (as added by Ord. #2004-07, April 2004)

14-1206. Certificates of appropriateness. No exterior feature of any resource which is a designated landmark or landmark site or which is within a designated preservation district, shall be altered, added to, relocated, or demolished until after an application for a certificate of appropriateness of such work has been approved by the commission. Likewise, no construction which affects a resource shall be undertaken without a certificate of appropriateness.

(1) The commission shall serve as a review body with the power to approve and deny applications for certificates of appropriateness.

(2) In approving and denying applications for certificates of appropriateness, the commission shall accomplish the purposes of this chapter.

(3) A certificate of appropriateness shall not be required for work deemed by the commission to be ordinary maintenance or repair of any resource.

(4) All decisions of the commission shall be in writing and shall state the findings of the commission, its recommendations, and the reasons therefore.

(5) Expiration of a certificate of appropriateness: a certificate of appropriateness shall expire eighteen (18) months after its issuance EXCEPT THAT a certificate shall expire if work has not begun within six (6) months of its issuance. When a certificate has expired, an applicant may seek a new certificate.

(6) Resubmitting of applications: twelve months after denial of an application for a certificate of appropriateness, the application may be resubmitted without change. A changed application may be resubmitted at any time. (as added by Ord. #2004-07, April 2004)

14-1207. Criteria for issuance of certificates of appropriateness.

The commission shall use the Secretary of the Interior's Standards for Rehabilitation, as the basics for design guidelines created for each district or landmark and the following criteria in granting or denying certificates of appropriateness:

(1) General factors:

(a) Architectural design of existing building, structure, or appurtenance and proposed alteration

(b) Historical significance of the resource

(c) Materials composing the resource

(d) Size of the resource

(e) The relationship of the above factors to, and their effect upon the immediate surroundings and, if within a preservation district, upon the district as a whole and its architectural and historical character and integrity

(2) New construction:

(a) The following aspects of new construction shall be visually compatible with the buildings and environment with which the new construction is visually related, including but not limited to: the height, the gross volume, the proportion between width and height of the facade(s), the proportions and relationship between doors and windows, the rhythm of solids to voids created by openings in the facade, the materials, the textures, the patterns, the trims, and the design of the roof.

(b) Existing rhythm created by existing building masses and spaces between them shall be preserved.

(c) The landscape plan shall be compatible with the resource, and it shall be visually compatible with the environment with which it is visually related. Landscaping shall also not prove detrimental to the fabric of a resource, or adjacent public or private improvements like sidewalks and walls.

(d) No specific architectural style shall be required.

(3) Exterior alteration:

(a) All exterior alterations to a building, structure, object, site, or landscape feature shall be compatible with the resource itself and other resources with which it is related, as is provided in § 14-1207(1) and (2), and the design, over time, of a building, structure, object, or landscape feature shall be considered in applying these standards.

(b) Exterior alterations shall not adversely affect the architectural character or historic quality of a landmark and shall not destroy the significance of landmark sites.

(4) In considering an application for the demolition of a landmark or a resource within a preservation district; the following shall be considered:

(a) The commission shall consider the individual architectural, cultural, and/or historical significance of the resource.

(b) The commission shall consider the importance or contribution of the resource to the architectural character of the district.

(c) The commission shall consider the importance or contribution of the resource to neighboring property values.

(d) The commission shall consider the difficulty or impossibility of reproducing such a resource because of its texture, design, material, or detail.

(e) Following recommendation for approval of demolition, the applicant must seek approval of replacement plans, if any, as set forth in § 14-1207(2), prior to receiving a demolition permit and other permits. Replacement plans for this purpose shall include, but shall not be restricted to project concept, preliminary elevations and site plans, and completed working drawings for at least the foundation plan which will enable the applicant to receive a permit for foundation construction.

(f) Applicants that have received a recommendation for demolition shall be required to have a demolition permit as well as certificate of appropriateness for the new construction. Permits for demolition and construction shall not be issued simultaneously.

(g) When the commission recommends approval of demolition of a resource, a permit shall not be issued until all plans for the site have received approval from all appropriate city boards, commissions, departments, and agencies. (as added by Ord. #2004-07, April 2004)

14-1208. Procedures for issuance of certificates of appropriateness, review process, and fees. Anyone desiring to take action requiring a certificate of appropriateness concerning a resource for which a permit, variance, or other authorization from the city building official is also required, shall make application therefore in the form and manner required by the applicable code section or ordinance. Anyone desiring to take any action requiring a certificate of appropriateness shall submit an application for such certificate of appropriateness with the city building official. Applications for certificates of appropriateness shall be accompanied by a fee of fifty (50) dollars payable to the City of Cleveland, Tennessee. After receipt of any such application, the city building official shall be assured that the application is proper and complete. No building permit shall be issued by the city building official which affects a resource without a certificate of appropriateness. In the event that a building permit need not be obtained for construction, alteration, demolition, or relocation of any resource, a certificate of appropriateness is still

required before such work can be undertaken. Such application shall be reviewed in accordance with the following procedure:

(1) When any such application is filed, the city building official shall immediately notify the commission chairman, vice-chairman, or staff of the application having been filed.

(2) The chairman or vice-chairman shall set the agenda for the regular meeting date or set a time and date, which shall be not later than thirty (30) days after the filing of the application for a hearing by the commission, and the city building official shall be so informed.

(3) The applicant shall, upon request, have the right to a preliminary hearing by the commission for the purpose of making any changes or adjustments which might be more consistent with the commission's standards.

(4) Not later than three (3) days before the date set for the said hearing, the city official designated by the city manager shall provide written or verbal notice thereof to the applicant and to all members of the commission.

(5) Notice of the time and place of said hearing shall be given by publication in a newspaper having general circulation in the city at least three (3) days before such hearing and by posting such notice on the bulletin board in the lobby of city hall.

(6) At such hearing, the applicant for a certificate of appropriateness shall have the right to present any relevant evidence in support of the application. Likewise, the city shall have the right to present any additional relevant evidence in support of the application.

(7) The commission shall have the right to conditional approval.

(8) Either at the meeting or within not more than fifteen (15) days after the hearing on an application, the commission shall act upon it, either approving, denying, or deferring action until the next meeting of the commission, giving consideration to the factors set forth in § 14-1207 hereof. Evidence of approval of the application shall be by certificate of appropriateness issued by the commission and, whatever its decision, notice in writing shall be given to the applicant and the city building official.

(9) The issuance of a certificate of appropriateness shall not relieve an applicant for a building permit, special use permit, variance, or other authorization from compliance with any other requirement or provision of the laws of the city concerning zoning, construction repair, or demolition. (as added by Ord. #2004-07, April 2004)

14-1209. Economic hardship. No decision of the commission shall cause undue economic hardship. If an applicant requests, a hearing on economic hardship shall be conducted after a certificate of appropriateness has been denied. (as added by Ord. #2004-07, April 2004)

14-1210. Appeals. The applicant who desires to appeal a decision by the commission shall file an appeal with the circuit court (after the determination

of the issue by the commission) in the manner provided by law.(as added by Ord. #2004-07, April 2004)

14-1211. Minimum maintenance requirements. In order to insure the protective maintenance of resources, the exterior features of such properties shall be maintained to meet the requirements of the city's minimum housing code and the city's building code. (as added by Ord. #2004-07, April 2004)

14-1212. Public safety exclusion. None of the provisions of this chapter shall be construed to prevent any action of construction, alteration, or demolition necessary to correct or abate the unsafe or dangerous condition of any resource, or part thereof, where such condition has been declared unsafe or dangerous by the city building official or the fire department and where the proposed actions have been declared necessary by such authorities to correct the said condition provided, however, that only such work as is necessary to correct the unsafe or dangerous condition may be performed pursuant to this section. In the event any resource designated as a landmark or located within a preservation district shall be damaged by fire or other calamity to such an extent that it cannot be repaired and restored, it may be removed in conformity with normal permit procedures and applicable laws, provided that:

(1) The city building official concurs with the property owner that the resource cannot be repaired and restored and so notifies the commission in writing.

(2) The commission, if in doubt after receiving such notification from the city building official, shall be allowed time to seek outside professional expertise from the state historic preservation office and/or an independent structural engineer before issuing a certificate of appropriateness for the demolition. The commission may indicate in writing by letter to the city building official that it will require a time period of up to thirty days for this purpose, and, upon such notification to the city building official, this section shall be suspended until the expiration of such a delay period. (as added by Ord. #2004-07, April 2004)

14-1213. Enforcement and penalties. The historic preservation commission shall be enforced by the city building official, who shall have the right to enter upon any premises necessary to carry out his duties in this enforcement. Any person violating any provision of this chapter shall be guilty of a misdemeanor, and upon conviction shall be fined not less than two (\$2.00) nor more than fifty dollars (\$50.00) for each offense. Each day such violation shall continue shall constitute a separate offense. (as added by Ord. #2004-07, April 2004)

14-1214. Appropriations. The city council may make appropriations on behalf of the commission as necessary for the expenses of the operation of the commission and may make additional amounts available as necessary for the

acquisition, restoration, preservation, operation, and management of historic properties. (as added by Ord. #2004-07, April 2004)

14-1215. Disqualification of members by conflict of interest.

Because the city may possess relatively few residents with experience in the individual fields of history, architecture, architectural history, archaeology, urban planning, law, or real estate, and in order not to impair such residents from practicing their trade for hire, members of the commission are allowed to contract their services to an applicant for a certificate of appropriateness, and, when doing so must expressly disqualify themselves from the commission during all discussions and voting for that application. In such cases, the city shall, upon the request of the chairman of the commission or the vice-chairman in his stead, appoint a substitute member who is qualified in the same field as the disqualified member and who will serve for that particular case only. If no qualified resident of the city is able to substitute for the disqualified member, the city may appoint, in this case only, a qualified substitute who is a resident. If any member of the commission must be disqualified due to a conflict of interest on a regular and continuing basis, the chairman or the vice-chairman, in his stead, shall encourage the member to resign his commission seat. Failing this resignation, and if the commission member continues to enter into conflict of interest situations with the commission the chairman or vice-chairman of the commission shall encourage the city to replace the member. Likewise, any member of the commission who has an interest in the property in question or in property within three hundred feet of such a property, or who is employed with a firm that has been hired to aid the applicant in any matter whatsoever, or who has any proprietary, tenancy, or personal interest in a matter to be considered by the commission shall be disqualified from participating in the consideration of any request for a certificate of appropriateness involving such a property. In such cases, a qualified substitute shall be appointed as provided above. (as added by Ord. #2004-07, April 2004)