

CHAPTER 151: FLOOD DAMAGE PREVENTION

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STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE AND METHODS, DEFINITIONS

§ 151.01 STATUTORY AUTHORIZATION.

The Legislature of the State of Arizona has, in A.R.S. § 48-3610, enabled the town to adopt regulations in conformance with A.R.S. § 48-3609, designed to promote the public health, safety and general welfare of its citizenry.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17)

§ 151.02 FINDINGS OF FACT.

(A) The flood hazard areas of the town are subject to periodic inundation which may 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.

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

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17)

§ 151.03 STATEMENT OF PURPOSE.

It is the purpose of this chapter to promote the public health, safety and general welfare, by adopting regulations, including those required by federal law relating to flood conditions, and by limiting or prohibiting the use or division of property for the protection of the public's health and safety from flood conditions, and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (A) Protect human life and health;
- (B) Minimize expenditure of public money for costly flood control projects;
- (C) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (D) Minimize prolonged business interruptions;
- (E) Minimize damage to public facilities and utilities, such as water and gas mains, electric, telephone and sewer lines, streets and bridges, located in areas of special flood hazard;
- (F) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood-blight areas;
- (G) Participate and maintain eligibility for flood insurance and disaster relief.

§ 151.04 METHODS OF REDUCING FLOOD LOSSES.

These regulations take precedence over any conflicting laws, ordinances and codes that are less restrictive. In order to accomplish its purposes, this chapter includes methods and provisions for:

- (A) Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (B) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (C) Controlling the alteration of natural floodplains, stream channels and natural protective barriers, which help accommodate or channel flood waters;
- (D) Controlling filling, grading, dredging and other development which may increase flood damage; and
- (E) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17)

§ 151.05 DEFINITIONS.

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

ACCESSORY STRUCTURE, LOW COST AND SMALL. A structure that is on the same property as the principal structure.

ACCESSORY USE. A use which is incidental and subordinate to the principal use of the parcel of land on which it is located.

APPEAL. A request for a review of the Floodplain Administrator's interpretation of any provision of this chapter, or a request for a variance.

AREA OF SHALLOW FLOODING. A designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM), with a 1% or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD. The land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year. These areas are designated as Zone A, AO, AE, AO, AH, and AI-30 on the FIRM, and other areas determined by the criteria adopted by the Director of the Arizona Department of Water Resources. (See **SPECIAL FLOOD HAZARD AREA**.)

BASE FLOOD. The flood having a 1% chance of being equaled or exceeded in any given year (also called the "100-year flood").

BASE FLOOD ELEVATION (BFE). The elevation shown on the Flood Insurance Rate Map for Zones AE, AH, AI-30 that indicates the water surface elevation, or the computed elevation to which flood water is anticipated to rise, resulting from a flood that has a 1% or greater chance of being equaled or exceeded in any given year.

BASEMENT. Any area of the building having its floor sub-grade (below ground level) on all sides.

BUILDING. See **STRUCTURE**.

COMMUNITY. Any state or area, or political subdivision thereof, or any Indian tribe or authorized tribal organization, or authorized native organization which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

CUMULATIVE SUBSTANTIAL DAMAGE. The total of all repairs to a repetitive-loss structure shall not cumulatively increase the market value of the structure by more than 49% during the life of the structure. This term does not, however, include either:

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

DEVELOPMENT. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, and storage of materials and equipment.

ELEVATION CERTIFICATE. A certificate prepared by a registered land surveyor that provides information concerning the lowest floor elevation or service equipment of a structure in a special flood hazard area.

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

FLOOD or FLOODING. A general and temporary condition of partial or complete inundation of normally dry land areas from: (1) the overflow of flood waters; (2) the unusual and rapid accumulation or runoff of surface waters from any source; and/or (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels, or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined herein.

FLOOD INSURANCE RATE MAP (FIRM). The official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY (FIS). The official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Insurance Rate Map, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

FLOOD PROTECTION SYSTEM. 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 dams, reservoirs, levees or dikes. These specialized flood-modifying works are those constructed in conformance with sound engineering standards.

FLOODPLAIN or FLOOD-PRONE AREA. Any land area susceptible to being inundated by water from any source (see **FLOOD** or **FLOODING**).

FLOODPLAIN ADMINISTRATOR. The town official appointed to administer and enforce the floodplain management regulations.

FLOODPLAIN BOARD. The Common Council of the Town of Payson at such times as they are engaged in the enforcement of this chapter. ("Floodplain Board" as defined in A.R.S. § 48-3610 for cities and towns.)

FLOODPLAIN MANAGEMENT. The operation of an overall program of corrective and preventive measures, and preserving and enhancing, where possible, natural resources in the floodplain, for reducing flood damage, including but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

FLOODPLAIN MANAGEMENT REGULATIONS. This chapter and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control) and other applications of police power which control development in flood-prone areas. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

FLOODPROOFING. Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

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

"regulatory floodway." ("Floodway" is defined in A.R.S. § 48-3601 and "regulatory floodway" is defined in 44 CFR Ch. 1 § 59.1.)

FREEBOARD. 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, bridge openings, and the hydrological effect of urbanization of the watershed.

FUNCTIONALLY DEPENDENT USE. 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 and port facilities 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.

GOVERNING BODY. The Mayor and Common Council of the Town of Payson, Arizona, which is the local governing unit empowered to adopt and implement regulations to provide for the public health, safety and general welfare of its citizenry.

HARDSHIP. The exceptional hardship that would result from a failure to grant the requested variance. The governing body requires that the variance be exceptional, unusual and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

HIGHEST ADJACENT GRADE. The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE. Any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register.

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district.

(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(a) By an approved state program as determined by the Secretary of the Interior; or

(b) Directly by the Secretary of the Interior in states without approved programs.

LOWEST FLOOR. The lowest floor of the lowest enclosed area, including basement (see **BASEMENT**). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor; provided it is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter. (This definition is from 44 CFR Ch. 1 § 59.1)

MANUFACTURED HOME. A structure, transportable in one or more sections, 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" (see **RECREATIONAL VEHICLE**).

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

MARKET VALUE. Defined in the substantial damage and substantial improvement procedures.

MEAN SEA LEVEL. For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929, 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.

NEW CONSTRUCTION. For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, **NEW CONSTRUCTION** means structures for

which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community, and includes any subsequent improvements to such structures.

OBSTRUCTION. Includes, but is not limited to, any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, or due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

ONE HUNDRED YEAR FLOOD. The flood having a 1% chance of being equaled or exceeded in any given year (see **BASE FLOOD**).

PERSON. An individual or the individual's agent, firm, partnership, association or corporation, or agent of the aforementioned groups, or this state or its agencies or political subdivisions. ("Person" is defined in A.R.S. § 48-3601.)

RECREATIONAL VEHICLE. A vehicle which is:

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

REGULATORY FLOOD ELEVATION (BFE). An elevation one foot above the base flood elevation for a watercourse for which the base flood elevation has been determined, and shall be as determined by the criteria developed by the Director of the Arizona Department of Water Resources for all other watercourses.

REGULATORY FLOODWAY. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. ("Regulatory floodway" is defined in A.R.S. § 48-3601.)

SHEET FLOW AREA. (See **AREA OF SHALLOW FLOODING**.)

SPECIAL FLOOD HAZARD AREA (SFHA). An area in the floodplain subject to a 1% or greater chance of flooding in any given year. It is shown on a FHBM or FIRM as Zone A, AO, A1-30, AE, A99 or AH.

START OF CONSTRUCTION. Includes substantial improvement and other proposed new development, 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 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of 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. ("Start of construction" is defined in 44 CFR Ch. 1 § 59.1.)

STRUCTURE. A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred (see **CUMULATIVE SUBSTANTIAL DAMAGE**).

SUBSTANTIAL IMPROVEMENT. Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

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

(2) Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure". ("Substantial improvement" is defined in 44 CFR Ch. 1 § 59.1. It also meets the standards in A.R.S. § 48-3609.)

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

VIOLATION. The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided. (See Section 3.3.6.2 of *Handbook for Arizona Communities on Floodplain Management* for further information regarding violations.)

WATER SURFACE ELEVATION. 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.

WATERCOURSE. A lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically. **WATERCOURSE** includes specifically designated areas in which substantial flood damage may occur.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17)

GENERAL PROVISIONS

§ 151.10 LANDS TO WHICH CHAPTER APPLIES.

This chapter shall apply to all areas of special flood hazard within the corporate limits of the town.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17)

§ 151.11 BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.

The area of special flood hazard identified by the Federal Emergency Management Agency (FEMA), in a scientific and engineering report entitled "The Flood Insurance Study for the Town of Payson, Gila County", dated December 4, 2007, with accompanying Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), dated December 4, 2007, and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this chapter. The Flood Insurance Study (FIS) and attendant mapping is the minimum area of applicability of this chapter, and may be supplemented by studies for other areas which allow implementation of this chapter and which are recommended to the Floodplain Board by the Floodplain Administrator. The Floodplain Board, within its area of jurisdiction, shall delineate (or may by rule require developers of land to delineate) for areas where development is ongoing or imminent, and thereafter as development becomes imminent, floodplains consistent with the criteria developed by FEMA and the Director of the Arizona Department of Water Resources. The Flood Insurance Study, FIRMs and FBFMs are on file at 303 North Beeline Highway, Payson, Arizona, in the office of the Town Engineer.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17)

§ 151.12 COMPLIANCE.

All development of land, construction of residential, commercial or industrial structures or future development within delineated floodplain areas is subject to the terms of this chapter and other applicable regulations.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res.

Statutory reference:

This provision is required by A.R.S. § 48-3609

§ 151.13 ABROGATION AND GREATER RESTRICTIONS.

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

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17)

§ 151.14 INTERPRETATION.

In the interpretation and application of this chapter, 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 state statutes.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17)

§ 151.15 WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the town, any officer or employee thereof, the State of Arizona, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17)

§ 151.16 STATUTORY EXEMPTIONS.

(A) In accordance with A.R.S § 48-3609H, unless expressly provided, this and any regulation adopted pursuant to this chapter do not affect:

(1) Existing legal uses of property or the right to continuation of such legal use. However, if a nonconforming use of land or a building or structure is discontinued for 12 months, or destroyed to the extent of 50% of its value, as determined by a competent appraiser, any further use shall comply with this chapter and regulations of the town.

(2) Reasonable repair or alteration of property for the purposes for which the property was legally used on August 3, 1984, or any regulations affecting such property takes effect, except that any alteration, addition or repair to a nonconforming building or structure which would result in increasing its flood damage potential by 50% or more shall be either floodproofed or elevated to or above the regulatory flood elevation.

(3) Reasonable repair of structures constructed with the written authorization required by A.R.S. § 48-3613.

(4) Facilities constructed or installed pursuant to a certificate of environmental compatibility issued pursuant to A.R.S. Title 40,

(B) Before any authorized construction begins for the exceptions listed below, the responsible person must submit plans for the construction to the Floodplain Board for review and comment. In accordance with A.R.S. § 48-3613, written authorization shall not be required, nor shall the Floodplain Board prohibit:

(1) The construction of bridges, culverts, dikes and other structures necessary to the construction of public highways, roads and streets intersecting or crossing a watercourse.

(2) The construction of storage dams for watering livestock or wildlife, structures on banks of a watercourse to prevent erosion of or damage to adjoining land if the structure will not divert, retard or obstruct the natural channel of the watercourse or dams for the conservation of flood waters, as permitted by A.R.S. Title 45, Chapter 6.

(3) Construction of tailing dams and waste disposal areas for use in connection with mining and metallurgical operations. This paragraph does not exempt those sand and gravel operations which will divert, retard or obstruct the flow of waters in any watercourse from complying with, and acquiring authorization from the Floodplain Board pursuant to regulations adopted by the Board under this chapter.

(4) Other construction upon determination by the Floodplain Board that written authorization is unnecessary.

(5) Any flood control district, county, city, town or other political subdivision from exercising powers granted to it under A.R.S. Title 48, Chapter 21, Article 1.

(6) The construction of streams, waterways, lakes and other auxiliary facilities in conjunction with development of public parks and recreation facilities by a public agency or political subdivision.

(7) The construction and erection of poles, towers, foundations, support structures, guy wires and other facilities related to power transmission as constructed by any utility, whether a public service corporation or a political subdivision.

(C) In addition to other penalties or remedies otherwise provided by law, this state, a political subdivision or a person who may be damaged or has been damaged as a result of the unauthorized diversion, retardation or obstruction of a watercourse has the right to commence, maintain and prosecute any appropriate action, or pursue any remedy to enjoin, abate or otherwise prevent any person from violating or continuing to violate this section, or regulations adopted pursuant to this section. If a person is found to be in violation of this section, the court shall require the violator to either comply with this section if authorized by the Board, or remove the obstruction and restore the watercourse to its original state. The court may also award such monetary damages as are appropriate to the injured parties resulting from the violation, including reasonable costs and attorney fees.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17) Penalty, see § 151.99

§ 151.17 DECLARATION OF PUBLIC NUISANCE.

All development located or maintained within any area of special flood hazard after August 8, 1973, in violation of this chapter is a public nuisance per se, and may be abated, prevented or restrained by action of this political subdivision.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17)

Statutory reference:

For a similar state statute, see A.R.S. § 48-3614

§ 151.18 ABATEMENT OF VIOLATIONS.

Within 30 days of discovery of a violation of this chapter, the Floodplain Administrator shall submit a report to the Floodplain Board, which shall include all information pertinent to the violation that is available to the Floodplain Administrator. Within 30 days of receipt of this report, the Floodplain Board shall either:

(A) Take any necessary action to effect the abatement of such violation; or

(B) Issue a variance to this chapter in accordance with the provisions of § 151.52 herein; or

(C) Order the owner of the property upon which the violation exists to provide whatever additional information may be required for its determination. Such information must be provided within 30 days of such order to the Floodplain Administrator, who shall submit an amended report to the Floodplain Board within 20 days. At its next regularly scheduled public meeting, the Floodplain Board shall either order the abatement of the violation, or it shall grant a variance in accordance with the provisions of § 151.52 herein; or

(D) Submit to the Administrator of Federal Insurance Administration a declaration for denial of insurance, stating that the property is in violation of a cited state or local law, regulation or ordinance, pursuant to § 1316 of the National Flood Insurance Act of 1968, as amended.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17) Penalty, see § 151.99

§ 151.19 UNLAWFUL ACTS.

Except as otherwise provided in A.R.S. § 48-3613, no person shall engage in any development or divert, retard or obstruct the flow of waters in any watercourse, whenever it creates a hazard to life or property, without securing the written authorization required by A.R.S. § 48-3613. Where the watercourse is a delineated floodplain, it is unlawful to excavate or build any structure affecting the flow of waters without securing written authorization required by A.R.S. § 48-3613.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17) Penalty, see § 151.99

Statutory reference:

For a similar state statute, see A.R.S. § 48-3613

ADMINISTRATION

§ 151.30 ESTABLISHMENT OF DEVELOPMENT PERMIT.

(A) A development permit shall be obtained before construction or development begins, including placement of manufactured homes, within any area of special flood hazard established in § 151.11. Application for a development permit shall be made on forms furnished by the Floodplain Administrator, and may include, but not be limited to, plans in duplicate, drawn to scale, showing the nature, location, dimensions, and elevation of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing.

(B) Specifically, the following information is required:

(1) Proposed elevation, in relation to mean sea level, of the lowest floor (including basement) of all structures; in Zone AO, elevation of existing highest adjacent natural grade and proposed elevation of lowest floor of all structures.

(2) Proposed elevation, in relation to mean sea level, to which any nonresidential structure will be floodproofed;

(3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in § 151.40(C)(2); and

(4) Base flood elevation for subdivision proposals or other development greater than 50 lots or 5 acres, whichever is less; and

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

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17) Penalty, see § 151.99

§ 151.31 DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR.

The Town Engineer, or designee, is hereby appointed to administer, implement and enforce this chapter by granting or denying development permits in accordance with its provisions.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17)

§ 151.32 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.

Duties of the Floodplain Administrator shall include, but not be limited to:

(A) *Permit review.* Review all development permits to determine that:

- (1) The permit requirements of this chapter have been satisfied;
- (2) All other required state and federal permits have been obtained;
- (3) The site is reasonably safe from flooding; and

(4) The proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this chapter, *ADVERSELY AFFECTS* means 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 at any point.

(B) *Substantial improvement and substantial damage procedures.*

(1) Develop detailed procedures for identifying and administering requirements for substantial improvement and substantial damage, to include defining "market value".

(2) Assure procedures are coordinated with other departments and divisions, and implemented by community staff.

(C) *Use of other base flood data.* When base flood elevation data has not been provided in accordance with § 151.11, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation data available from a federal, state or other source, in order to administer §§ 151.40 through 151.46, inclusive. Any such information shall be consistent with the requirements of the Federal Emergency Management Agency and the Director of the Arizona Department of Water Resources, and shall be submitted to the Floodplain Board for adoption.

(D) *Obtain and maintain for public inspection.*

- (1) The certified regulatory flood elevation required in § 151.40(C)(1);
- (2) The floodproofing certification required in § 151.40(C)(2);
- (3) The flood vent certification required in § 151.40(C)(3)(a);
- (4) The elevation certification required for additional development standards, including subdivisions, in § 151.43(A)(2);
- (5) The floodway encroachment certification required in § 151.46(A);

(6) A record of all variance actions, including justification for their issuance, and report such variances issued in the Floodplain Administrator's biennial report to the Federal Emergency Management Agency;

(7) Obtain and maintain improvement calculations.

(E) *Notification of other entities.*

(1) *Alteration or relocation of a watercourse.* Whenever a watercourse is to be altered or relocated:

(a) Notify adjacent communities and the Arizona Department of Water Resources prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency through appropriate notification means; and

(b) Assure that the flood-carrying capacity of the altered or relocated portion of the watercourse is maintained.

(2) *Base flood elevation and rate of flow due to physical alterations.*

(a) Base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the Floodplain Administrator shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data in accordance with 44 CFR § 65.3. Such a submission is necessary so that, upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

(b) Within 120 days after completion of construction of any flood control protective works which changes the rate of flow during the flood or the configuration of the floodplain upstream or downstream from or adjacent to the project, the person or agency responsible for installation of the project shall provide to the governing bodies of all jurisdictions affected by the project a new delineation of all floodplains affected by the project. The new delineation shall be done according to the criteria adopted by the Director of the Arizona Department of Water Resources.

(3) *Corporate boundary changes.* Notify the Federal Emergency Management Agency and the Arizona Department of Water Resources of acquisition, by means of annexation, incorporation or otherwise, of additional areas of jurisdiction.

(F) *Map determinations.* Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in § 151.51.

(G) *Remedial actions.* Take actions on violations of this chapter as required in § 151.18 herein.

(H) *Biennial report.* Complete and submit a biennial report to the Federal Emergency Management Agency.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17)

PROVISIONS FOR FLOOD HAZARD REDUCTION

§ 151.40 STANDARDS OF CONSTRUCTION.

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

(A) *Anchoring.*

(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy; and

(2) All manufactured homes shall meet the anchoring standards of § 151.44(B).

(B) *Construction materials and methods.*

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

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

(3) All new construction, substantial improvement and other proposed new development shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(4) Within Zones AH or AO, require that adequate drainage paths around structures on slopes guide flood waters around and away from proposed or existing structures.

(C) *Elevation and floodproofing.*

(1) *Residential construction.*

(a) Residential construction, new or substantial improvement, shall have the lowest floor, including basement:

1. In an AO Zone, elevated to or above the regulatory flood elevation, or elevated at least two feet above the highest grade if

no depth number is specified.

2. In an A Zone where a BFE has not been determined, elevated to or above the regulatory flood elevation, or elevated in accordance with the criteria developed by the Director of the Arizona Department of Water Resources.

3. In Zones AE, AH and A1-30, elevated to or above the regulatory flood elevation.

(b) Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered professional engineer or surveyor, and verified by the community's building inspector to be properly elevated. Such certification and verification shall be provided to the Floodplain Administrator.

(2) *Nonresidential construction.* Nonresidential construction, new or substantial improvement, shall either be elevated to conform with § 151.40(C)(1), together with attendant utility and sanitary facilities:

(a) Be floodproofed below the regulatory flood elevation under § 151.40(C)(1) so that the structure is watertight, with walls substantially impermeable to the passage of water;

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

(c) Be certified by a registered professional engineer or architect that the standards of this section are satisfied. Such certifications shall be provided to the Floodplain Administrator.

(3) *Flood openings.* All new construction and substantial improvements with fully enclosed areas below the lowest floor (excluding basements) that are useable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must meet or exceed the following criteria:

(a) Have a minimum of two openings on different sides of each enclosed area, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding. The bottom of all openings shall be no higher than one foot above grade.

(b) If it is not feasible or desirable to meet the openings criteria stated above, a registered engineer or architect may design and certify the openings.

(4) *Manufactured homes.* Manufactured homes shall meet the standards in § 151.44.

(5) *Garages and low cost accessory structures.*

(a) *Attached garages.*

1. A garage attached to a residential structure, constructed with the garage floor slab below the regulatory flood elevation, must be designed to allow for the automatic entry of flood waters. See § 151.40(C)(3). Areas of the garage below the regulatory flood elevation must be constructed with flood-resistant materials. See § 151.40(B).

2. A garage attached to a nonresidential structure must meet the above requirements or be dry floodproofed.

(b) *Detached garages and accessory structures.*

1. An "accessory structure" used solely for parking or storage may be constructed so that its floor is below the regulatory flood elevation; provided the structure is designed and constructed in accordance with the following requirements:

a. Use of the accessory structure must be limited to parking or storage;

b. The portions of the accessory structure located below the regulatory flood elevation must be built using flood-resistant materials;

c. The accessory structure must be adequately anchored to prevent flotation, collapse and lateral movement;

d. Any mechanical and utility equipment in the accessory structure must be elevated or floodproofed to or above the regulatory flood elevation;

e. The accessory structure must be designed to allow for the automatic entry of flood waters in accordance with § 151.40(C)(3).

2. Detached garages and accessory structures not meeting the above standards must be constructed in accordance with all

applicable standards in § 151.40.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17) Penalty, see § 151.99

§ 151.41 STANDARDS FOR STORAGE OF MATERIALS AND EQUIPMENT.

(A) The storage or processing of materials that are or could be injurious to human, animal or plant life, if released due to damage from flooding, is prohibited in special flood hazard areas.

(B) Storage of other material or equipment may be allowed if not subject to damage by floods, and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17) Penalty, see § 151.99

§ 151.42 STANDARDS FOR WATER SUPPLY AND WASTE DISPOSAL SYSTEMS.

(A) All new or replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from systems into flood waters.

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

(C) Waste disposal systems shall not be installed in a regulatory floodway, as required by A.R.S. § 48-3609.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17) Penalty, see § 151.99

§ 151.43 ADDITIONAL DEVELOPMENT STANDARDS, INCLUDING SUBDIVISIONS.

(A) All new subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is less, shall:

(1) Identify the special flood hazard area and the elevation of the base flood.

(2) Identify on the final plans the elevation(s) of the proposed structure(s) and pads. If the site is filled above the base flood elevation, the final lowest floor and grade elevations shall be certified by a registered professional engineer or surveyor and provided to the Floodplain Administrator.

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

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

(D) All subdivision proposals and other proposed development shall provide adequate drainage to reduce exposure to flood hazards.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17) Penalty, see § 151.99

§ 151.44 STANDARDS FOR MANUFACTURED HOMES.

All manufactured homes that are placed or substantially improved shall:

(A) Be elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at or above the regulatory flood elevation; and

(B) Be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in

addition to applicable state and local anchoring requirements for resisting wind forces.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17) Penalty, see § 151.99

§ 151.45 STANDARDS FOR RECREATIONAL VEHICLES.

All recreational vehicles placed on site will either:

(A) Be on site for fewer than 180 consecutive days; and

(B) Be fully licensed and ready for highway use. A recreational vehicle is **READY FOR HIGHWAY USE**, if it is on its wheels or its jacking system is attached to the site only by quick, disconnect-type utilities and security devices, and has no permanently attached additions); or

(C) Meet the permit requirements of § 151.30 of this chapter and the elevation and anchoring requirements for manufactured homes in § 151.44.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17) Penalty, see § 151.99

§ 151.46 FLOODWAYS.

Located within areas of special flood hazard established in § 151.11 are areas designated as floodways. Because the floodway is an extremely hazardous area, due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following requirements from 44 CFR Ch. 1 § 60.1 and A.R.S. § 48-3609B.4 apply:

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

(B) If this section is satisfied, all new construction and substantial improvements shall comply with all other applicable flood hazard reduction provisions of §§ 151.40 through 151.46, inclusive.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17) Penalty, see § 151.99

VARIANCE PROCEDURE

§ 151.50 NATURE OF VARIANCES.

(A) The variance criteria set forth in this section are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this chapter would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

(B) It is the duty of the town to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below the regulatory flood elevation are so serious that variances from the flood elevation or from other requirements in this chapter are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this chapter are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17)

§ 151.51 APPEAL BOARD.

(A) The Floodplain Board shall hear and decide appeals and requests for variances from the requirements of this chapter.

(B) The Floodplain Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this chapter.

(C) In passing upon such applications, the Floodplain Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger of life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage, and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) The safety of access to the property in time of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters expected at the site; and
- (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(D) Upon consideration of the factors of division (C) of this section and the purposes of this chapter, the Floodplain Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(E) Any applicant to whom a variance is granted shall be given written notice, over the signature of a community official, that:

(1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage;

(2) Such construction below the base flood level increases risks to life and property; and

(3) The land upon which the variance is granted shall be ineligible for exchange of land pursuant to the flood relocation and land exchange program provided by A.R.S. Title 26, Chapter 2, Article 2. A copy of the notice shall be recorded in the Office of the Gila County Recorder in a manner so that it appears in the chain of title of the affected parcel of land.

(F) The Floodplain Administrator shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Emergency Management Agency.

(Res. 1579, passed 1-10-02; Am. Ord. 603, passed 2-28-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17)

§ 151.52 CONDITIONS FOR VARIANCES.

(A) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one half acre or less in size, contiguous to and surrounded by lots with existing structures constructed below the base flood level; provided the procedures of §§ 151.30 through 151.46, inclusive, of this chapter have been fully considered. As the lot size increases beyond one half acre, the technical justification required for issuing the variance increases.

(B) Variances may be issued for the repair, rehabilitation or restoration of structures listed in the National Register of Historic Places or the State Inventory of Historic Places, upon a determination that the proposed repair or rehabilitation will not preclude the

structure's continued designation as a historic structure, and the variance is the minimum necessary to preserve the historic character and design of the structure.

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

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

(E) Variances shall only be issued upon a:

(1) Showing of good and sufficient cause;

(2) Determination that failure to grant the variance would result in exceptional hardship to the applicant;

(3) Showing that the use cannot perform its intended purpose unless it is located or carried out in close proximity to water. This includes only facilities listed in § 151.05 in the definition of "functionally dependent use"; and

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

(Res. 1579, passed 1-10-02; Am. Ord. 759, passed 4-2-09; Am. Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17)

§ 151.99 PENALTY.

Except as otherwise provided in A.R.S. § 48-3613, any person found guilty of violating any provision of this chapter shall be punished as set forth in § 10.99 of this code.

(Ord. 759, passed 4-2-09; Res. 2477, passed 4-2-09; Am. Ord. 889, passed 5-18-17; Am. Res. 3024, passed 5-18-17)