

## EMERGENCY

AEY

- 2023

**AMENDING** Title XI, “Cincinnati Building Code,” by repealing Chapter 1109, “Flood Damage Reduction,” of the Cincinnati Municipal Code in its entirety; **ORDAINING** new Chapter 1109, “Flood Damage Reduction,” of the Cincinnati Building Code, for the purpose of maintaining City eligibility for the Federal Emergency Management Agency’s National Flood Insurance Program; and **MODIFYING** Chapter 1501, “Code Compliance and Hearings,” by amending Section 1501-9, “Class D Civil Offenses,” to update the City’s floodplain regulations to ensure the City’s ongoing participation in the National Flood Insurance Program.

WHEREAS, the Federal Emergency Management Agency (“FEMA”) manages the National Flood Insurance Program (“NFIP”) which makes flood insurance available to property owners in participating communities that have adopted floodplain management regulations that help mitigate the effects of flooding; and

WHEREAS, FEMA has notified the City that, in order to continue to participate in the NFIP, the City is required to adopt updated floodplain-management regulations that have been certified by the Ohio Department of Natural Resources as compliant with the standards of 44 CFR Part 60.3(d) of the NFIP regulations no later than June 7, 2023, the date when FEMA’s Revised Preliminary Flood Insurance Study report and Flood Insurance Rate Map become effective; and

WHEREAS, this ordinance is adopted to update Chapter 1109, “Flood Damage Reduction,” to comply with the updated NFIP standards and to ensure that property owners in the City may continue to purchase flood insurance under the NFIP; now, therefore,

BE IT ORDAINED by the Council of the City of Cincinnati, State of Ohio:

Section 1. That Council finds that the City of Cincinnati has special flood hazard areas that 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. Council further finds that structures that are inadequately elevated, floodproofed, or otherwise protected from flood damage also contribute to flood loss. In order to minimize the threat of such damages and

to achieve the purposes hereinafter set forth, Council is adopting new Chapter 1109, “Flood Damage Reduction,” of the Cincinnati Building Code.

Section 2. That existing Chapter 1109, “Flood Damage Reduction,” of Title XI, “Cincinnati Building Code,” of the Cincinnati Municipal Code is repealed in its entirety.

Section 3. That new Chapter 1109, “Flood Damage Reduction,” of Title XI, “Cincinnati Building Code,” of the Cincinnati Municipal Code is hereby ordained to read as follows:

### **Chapter 1109 FLOOD DAMAGE REDUCTION**

#### **Sec. 1109-1. – General Provisions.**

##### 1109-1.1. - Authorization.

Article XVIII, Section 3 of the Ohio Constitution grants municipalities the legal authority to adopt land use and control measures for promoting the health, safety, and general welfare of its citizens. The city of Cincinnati participates in the Federal Emergency Management Agency’s (“FEMA”) National Flood Insurance Program (“NFIP”), which makes flood insurance available to residents, business, and property owners. The Council of the city of Cincinnati enacts chapter 1109 of the Cincinnati Building Code (“CBC”) to maintain the city’s eligibility for the NFIP.

##### 1109-1.2. - Findings of Fact.

The city has special flood hazard areas that 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. Additionally, structures that are inadequately elevated, floodproofed, or otherwise protected from flood damage contribute to flood losses. This chapter is adopted to minimize the threat of such damages and to achieve the purposes hereinafter set forth.

##### 1109-1.3.- Statement of Purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare, and 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. Provide for a fair and efficient process for orderly development within areas of potential flooding;
- F. 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;
- G. Help maintain a stable tax base by providing for the proper use and development of areas of special flood hazard so as to protect property and minimize future flood blight areas;
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions;
- I. Minimize the impact of development on adjacent properties within and near flood prone areas;
- J. Ensure that the flood storage and conveyance functions of the floodplain are maintained;
- K. Minimize the impact of development on the natural, beneficial values of the floodplain;
- L. Prevent floodplain uses that are either hazardous or environmentally incompatible; and
- M. Meet community participation requirements of the National Flood Insurance Program.

#### 1109-1.4.- Methods of Reducing Flood Loss.

To achieve the purposes set forth in Sec. 1109-1.3, this chapter includes provisions for:

- A. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water hazards, or which result in damaging increases in flood heights or velocities;
- B. Requiring that uses vulnerable to floods, including facilities that 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, excavating, 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.

1109-1.5. - Applicability of Chapter 1109.

The provisions of this chapter shall apply to all special flood hazard areas within the jurisdiction of the city of Cincinnati, as identified in Section 1109-1.6, including any additional special flood hazard areas annexed by the city of Cincinnati. Section 1109-6.1 provides a list of defined terms used in this chapter.

1109-1.6. - Basis for Establishing Special Flood Hazard Areas.

For the purposes of this chapter, the following maps and/or studies, as may be revised from time to time, are hereby adopted by reference and declared to be part of this chapter in order to define the special flood hazard areas within the city of Cincinnati:

- A. *Flood Insurance Study Hamilton County, Ohio, and Incorporated Areas* and *Flood Insurance Rate Map Hamilton County, Ohio, and Incorporated Areas*, each effective June 7, 2023.
- B. Other studies and/or maps approved by the floodplain administrator, which may be relied upon for establishment of the flood protection elevation, delineation of the 100-year floodplain and floodways, or delineation of other areas of special flood hazard.
- C. Any hydrologic and hydraulic engineering analysis authored by a registered professional engineer in the state of Ohio which has been approved by the city of Cincinnati as required by Sec. 1109-3.3, "Subdivisions and Other New Developments."

These maps and/or studies are on file in the office of the director of buildings and inspections also referred to herein as the floodplain administrator.

1109-1.7. - 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 damage. This chapter shall not create liability on the part of the city of Cincinnati, any officer or employee thereof, or the Federal Emergency Management Agency for any flood damage that results from reliance on this chapter, or any administrative decision lawfully made thereunder.

**Sec. 1109-2.- Administration.**

1109-2.1. - Designation of the Floodplain Administrator.

The director of buildings and inspections is hereby appointed to administer and implement this chapter and is referred to herein as the floodplain administrator.

1109-2.2. - Duties and Responsibilities of the Floodplain Administrator.

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

- A. Evaluate applications for permits to develop in special flood hazard areas.
- B. Interpret floodplain boundaries and provide flood hazard and flood protection elevation information.
- C. Issue permits to develop in special flood hazard areas when the provisions of this Chapter 1109 have been met or refuse to issue the same in the event of noncompliance.
- D. Inspect buildings and lands to determine whether any violations of this Chapter 1109 have been committed.
- E. Make and permanently keep all records for public inspection necessary for the administration of this Chapter 1109, including FIRMs, LOMCs, records of issuance and denial of permits to develop in special flood hazard areas, determinations of whether development is in or out of special flood hazard areas for the purpose of issuing floodplain development permits, elevation certificates, floodproofing certificates, variances, and records of enforcement actions taken for violations of this Chapter 1109.
- F. Enforce the provisions of this Chapter 1109.
- G. Provide information, testimony, or other evidence as needed during variance hearings.
- H. Coordinate map maintenance activities and FEMA follow-up.
- I. Conduct substantial damage determinations to determine whether existing structures, damaged from any source and in special flood hazard areas identified by FEMA, must meet the development standards of this Chapter 1109.

### 1109-2.3. - Floodplain Development Permits.

Until a floodplain development permit is obtained from the floodplain administrator, it shall be unlawful for any person to begin construction or other development activity wholly within, partially within, or in contact with any identified special flood hazard area, as established in Sec. 1109-1.6, including but not limited to: (i) the excavation, filling, or grading of land; (ii) the construction, alteration, remodeling, or expanding of any structure; or (iii) the alteration of any watercourse. Such floodplain development permit shall show that the proposed development activity is in conformity with the provisions of this Chapter 1109. No such permit shall be issued by the floodplain administrator until the requirements of this Chapter 1109 have been met.

### 1109-2.4. - Application Required.

An application for a floodplain development permit shall be required for all development activities located wholly within, partially within, or in contact with an identified special flood hazard area. Such application shall be made by the owner of the property or the owner's authorized agent, herein referred to as the applicant, prior to the actual commencement of such construction on a form furnished by the floodplain administrator for that purpose. Where it is unclear whether a development site is in a special flood hazard area, the floodplain administrator may require a floodplain development permit application to include a survey certified by a licensed professional surveyor showing the development location. All applications shall include the following information:

- A. Site plans drawn to scale showing the nature, location, dimensions, and topography of the area in question; the location of existing and proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.
- B. Elevation of the existing, natural ground where structures are existing and proposed.
- C. Elevation of the lowest floor, including basement, of all existing and proposed structures.
- D. Such other material and information as may be requested by the floodplain administrator to determine conformance with and enable enforcement of this Chapter 1109.
- E. Technical analyses, as listed below, conducted by the appropriate design professional registered in the state of Ohio and submitted with an application for a floodplain development permit when applicable:
  1. Floodproofing certification for non-residential floodproofed structures as required in Section 1109-3.5.

2. Certification that fully enclosed areas below the lowest floor of a structure not meeting the design requirements of Section 1109-3.4(E) are designed to automatically equalize hydrostatic flood forces.
  3. Description of any watercourse alteration or relocation that the flood carrying capacity of the watercourse will not be diminished, and maintenance assurances as required in Section 1109-3.9(C).
  4. A hydrologic and hydraulic analysis 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 by more than one foot in special flood hazard areas where FEMA has provided base flood elevations but no floodway has been designated as required by Section 1109-3.9(B).
  5. A hydrologic and hydraulic engineering analysis showing impact of any development on flood heights in an identified floodway as required by Section 1109-3.9(A).
  6. Generation of base flood elevation(s) for subdivisions and other new developments as required by Section 1109-3.3.
- F. Payment of any floodplain development permit application fee set by the schedule of fees adopted by Council.
- G. For any development to be funded, financed, undertaken, or preempted by the state of Ohio, including, but not limited to (i) development activities in an existing or proposed manufactured home park that are under the authority of the Ohio Department of Commerce and subject to the flood damage reduction provisions of Ohio Administrative Code Section 4781-12; (ii) major utility facilities permitted by the Ohio Power Siting Board under R.C. Chapter 4906; and (iii) hazardous waste disposal facilities permitted by the Hazardous Waste Siting Board under R.C. Chapter 3734, the applicant shall provide documentation from such state agency stating that the development complies with the minimum NFIP criteria and any applicable local floodplain management resolution or ordinance as required by R.C. Section 1521.13.
- H. For any development activities undertaken by a federal agency and which are subject to *Federal Executive Order 11988 – Floodplain Management*, such federal agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget request reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of EO 11988. The applicant shall provide documentation to the floodplain administrator of compliance with this Section 1109-2.4(H).

## 1109-2.5. - Review and Approval of a Floodplain Development Permit Application.

### A. Review

1. After receipt of a complete application, the floodplain administrator shall review the application to ensure that the standards of this Chapter 1109 have been met. No floodplain development permit application shall be reviewed until all information required by Section 1109-2.4 has been received by the floodplain administrator.
2. The floodplain administrator shall review all floodplain development permit applications to assure that all necessary permits have been received from those federal, state, or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits as required including, without limitation, permits issued by the U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, and the Ohio Environmental Protection Agency under Section 401 of the Clean Water Act.

### B. Approval

Within thirty days after the receipt of a complete application, the floodplain administrator shall either approve or disapprove the application. If the floodplain administrator is satisfied that the development proposed in the floodplain development application conforms to the requirements of this Chapter 1109, the floodplain administrator shall issue the permit. All floodplain development permits shall be conditioned upon the commencement of work within 180 days. A floodplain development permit shall expire 180 days after issuance unless the permitted activity has been substantially begun and is thereafter pursued to completion.

## 1109-2.6. - Inspections.

The floodplain administrator shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions.

## 1109-2.7. - Post-Construction Certifications Required.

The following as-built certifications are required after a floodplain development permit has been issued:

- A. For new or substantially improved residential structures, or nonresidential structures that have been elevated, the applicant shall have a *Federal Emergency Management Agency Elevation Certificate* completed by a registered professional surveyor to record as-built elevation data.



- B. For elevated structures in Zone A and Zone AO areas without a base flood elevation, the *Federal Emergency Management Agency Elevation Certificate* may be completed by the property owner or owner's representative.
- C. For all development activities subject to the standards of Section 1109-2.10(A), a LOMR.
- D. For new or substantially improved nonresidential structures that have been floodproofed in lieu of elevation, where allowed, the applicant shall supply a completed *Floodproofing Certificate for Non-Residential Structures* completed by a registered professional engineer or architect together with associated documentation.

1109-2.8 Revoking a Floodplain Development Permit.

A floodplain development permit shall be revocable, if among other things, the actual development activity does not conform to the terms of the application and permit in question. In the event of the revocation of a permit, an appeal may be taken to the board of building appeals in accordance with Section 1109-4.

1109-2.9. - Exemption from Filing a Development Permit.

An application for a floodplain development permit shall not be required for maintenance work such as roofing, painting, and basement sealing, or for small nonstructural development activities (except for excavation, filling, and grading) valued at less than \$2500.

1109-2.10. - Map Maintenance Activities.

The map maintenance activities in this Section 1109-2.10 are required in order to meet NFIP minimum requirements for FEMA review and approval of flood data, and to ensure that the city of Cincinnati flood maps, studies, and other data identified in Section 1109-1.6 accurately represent current flooding conditions so that floodplain management criteria are based on current data.

A. Requirement to Submit New Technical Data

1. Applications for development that impacts floodway delineations or base flood elevations (as listed below) shall provide the following new technical data, which the city shall submit to FEMA within six months of receipt:
  - a. Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries;
  - b. Fill sites to be used for the placement of proposed structures where the applicant desires to remove the site from the special flood hazard area;

- c. Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts; and
  - d. Subdivision or other new development proposals requiring the establishment of base flood elevations in accordance with Section 1109-3.3.
- 2. The floodplain administrator shall require a CLOMR prior to the issuance of a floodplain development permit for:
  - a. Proposed floodway encroachments that increase the base flood elevation; and
  - b. Proposed development which increases the base flood elevation by more than one foot in riverine areas where FEMA has provided base flood elevations but no floodway.
- 3. Floodplain development permits issued by the floodplain administrator shall be conditioned upon the applicant obtaining a LOMR from FEMA for any development proposal subject to Section 1109-2.10(A)(1).
- 4. An applicant shall: (i) prepare all technical data required in accordance with this Section 1109-2.10(A) in a format required for a CLOMR or LOMR, and (ii) submit such technical data to FEMA. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.

#### B. Right to Submit New Technical Data

The floodplain administrator may request that FEMA change any of the information shown on an effective map that does not impact floodplain or floodway delineations or base flood elevations, such as labeling or planimetric details. Such a submission shall include appropriate supporting documentation made in writing by the city manager of the city of Cincinnati and may be submitted at any time.

#### C. Annexation / Detachment

Upon occurrence, the floodplain administrator shall notify FEMA in writing whenever: (i) the boundaries of the city of Cincinnati have been modified by annexation; (ii) the city has assumed authority over an area; or (iii) the city no longer has authority to adopt and enforce the provisions of this Chapter 1109 for a particular area. In order that the city of Cincinnati's FIRM accurately represents the city of Cincinnati boundaries, the floodplain administrator shall include within such notification a copy of a map of the city of Cincinnati suitable for reproduction, clearly showing the new corporate limits or the new area for which the city of Cincinnati has assumed or relinquished floodplain management regulatory authority.

#### 1109-2.11. - Data Use and Flood Map Interpretation.

The following guidelines shall apply to the use and interpretation of maps and other data showing areas of special flood hazard:

- A. In areas where FEMA has not identified special flood hazard areas, or in FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified, the floodplain administrator shall review and reasonably utilize any other flood hazard data available from a federal, state, or other source.
- B. Base flood elevations and floodway boundaries identified on FEMA flood maps and studies shall take precedence over base flood elevations and floodway boundaries identified by any other source that reflect a reduced floodway width and/or lower base flood elevations. Other sources of data showing increased base flood elevations or larger floodway areas than are shown on FEMA flood maps and studies shall be reasonably used by the floodplain administrator.
- C. The floodplain administrator shall make interpretations, where needed, as to the exact location of the flood boundaries and areas of special flood hazard. A person contesting the determination of the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 1109-4.
- D. Where an existing or proposed structure or other development is affected by multiple flood zones, by multiple base flood elevations, or both, the development activity must comply with the provisions of this chapter applicable to the most restrictive flood zone and the highest base flood elevation affecting any part of the existing or proposed structure; or for other developments, affecting any part of the area of the development.

#### 1109-2.12. - Use of Preliminary FIRM and/or Flood Insurance Study Data.

When assessing the flood hazard risk associated with a particular property in the zones specified below, the floodplain administrator shall apply the following rules:

- A. Zone A:
  - 1. Within Zone A areas designated on an effective FIRM, data from the preliminary FIRM and/or FIS shall be reasonably utilized as the best available data.
  - 2. When all appeals have been resolved and a notice of final flood elevation determination has been provided in a letter of final determination (“LFD”), base

flood elevation and floodway data from the preliminary FIRM and/or FIS shall be used for regulating development.

B. Zones AE, A1-30, AH, and AO:

1. Base flood elevation and floodway data from a preliminary FIS or FIRM restudy are not required to be used in lieu of base flood elevation and floodway data contained in an existing effective FIS and FIRM. However:
  - a. Where base flood elevations increase in a restudied area, communities have the responsibility to ensure that new or substantially improved structures are protected. Communities are encouraged to reasonably utilize preliminary FIS or FIRM data in instances where base flood elevations increase and floodways are revised to ensure that the health, safety, and property of their citizens are protected; and
  - b. Where base flood elevations decrease, preliminary FIS or FIRM data should not be used to regulate floodplain development until the LFD has been issued or until all appeals have been resolved.
2. If a preliminary FIRM or FIS has designated floodways where none had previously existed, communities should reasonably utilize this data in lieu of applying the encroachment performance standard of Section 1109-3.9(B) because the data in the draft or preliminary FIS represents the best data available.

C. Zones B, C, and X:

Use of base flood elevation and floodway data from a preliminary FIRM or FIS is not required for areas designated as Zone B, C, or X on the effective FIRM which are being revised to Zone AE, A1-30, AH, AO, VE, or V1-30. Communities are encouraged to reasonably utilize preliminary FIS or FIRM data to ensure that the health, safety, and property of their citizens are protected.

1109-2.13. - Substantial Damage Determinations.

When a structure has suffered damage, including, but not limited to damage resulting from flood, tornado, wind, snow, or fire, the property owner shall report such damage to the floodplain administrator. The floodplain administrator shall take the following steps to determine whether the structure has suffered substantial damage as defined in Section 1109-6.1:

- A. Determine whether damaged structures are located in special flood hazard areas;
- B. Conduct substantial damage determinations for damaged structures located in special flood hazard areas; and

- C. Require owners of substantially damaged structures to obtain a floodplain development permit prior to repair, rehabilitation, or reconstruction. The language of this Section 1109-2.13(C) shall not be interpreted to limit the requirements of Section 1109-2.3 as to the need to obtain a floodplain development permit for all construction or development activity in a special flood hazard area regardless of whether or not it is substantially damaged.

Additionally, the floodplain administrator may implement other measures to assist with the substantial damage determination and subsequent repair process. These measures include issuing press releases, public service announcements, and other public information materials related to the floodplain development permits and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures materials and other information related to the proper repair of damaged structures in special flood hazard areas; and assisting owners of substantially damaged structures with increased-cost-of-compliance insurance claims.

### **Sec. 1109-3. - Use and Development Standards for Flood Hazard Reduction.**

The following use and development standards apply to development wholly within, partially within, or in contact with a special flood hazard area as established in this Chapter 1109.

#### 1109-3.1. - Use Regulations.

##### A. Permitted Uses

All uses not otherwise prohibited in this section or any other applicable land use regulation adopted by the city of Cincinnati are allowed provided they meet the provisions of this Chapter 1109.

#### 1109-3.2.- Water and Wastewater Systems.

The following standards apply to all water supply, sanitary sewerage, and waste disposal systems in the absence of a more restrictive standard provided under the Ohio Revised Code or applicable state rules:

- A. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems;
- B. New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,
- C. On-site waste disposal systems shall be located to avoid impairment to or contamination from them during flooding.

### 1109-3.3. - Subdivisions and Other New Developments.

- A. All subdivision proposals and all other proposed new development shall be consistent with the need to minimize flood damage and are subject to all applicable standards in this Chapter 1109.
- B. All subdivision proposals and all other proposed new development shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.
- C. All subdivision proposals and all other proposed new development shall have adequate drainage provided to reduce exposure to flood damage.
- D. In all areas of special flood hazard where base flood elevation data are not available, the applicant shall provide a hydrologic and hydraulic engineering analysis that generates base flood elevations for all subdivision proposals and other proposed developments containing at least fifty lots or five acres, whichever is less.
- E. The applicant shall meet the requirement to submit technical data to FEMA in Section 1109-2.10(A)(1)(d) when a hydrologic and hydraulic analysis is completed that generates base flood elevations as required by Section 1109-3.3(D).

### 1109-3.4. - Residential Structures.

The requirements of this Section 1109-3.4 apply to new construction of residential structures and to substantial improvements of residential structures in zones A, A1-30, AE, AO, and AH, in special flood hazard areas designated on the city of Cincinnati's effective FIRM, or in special flood hazard areas designated on a preliminary or final FIRM issued by FEMA under the circumstances provided in Section 1109-2.12.

- A. 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. Where a structure, including its foundation members, is elevated on fill to or above the base flood elevation, the requirements for anchoring (Section 1109-3.4(A)) and construction materials resistant to flood damage (Section 1109-3.4(B)) are satisfied.
- B. New construction and substantial improvements shall be constructed with methods and materials resistant to flood damage.
- C. New construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water

from entering or accumulating within the components during conditions of flooding.

- D. New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including basement, elevated to or above the flood protection elevation. In Zone AO areas with no elevations specified, the structure shall have the lowest floor, including basement, elevated at least two feet above the highest adjacent natural grade.
- E. New construction and substantial improvements, including manufactured homes, that do not have basements and that are elevated to the flood protection elevation using pilings, columns, posts, or solid foundation perimeter walls with openings to allow the automatic equalization of hydrostatic pressure, may have an enclosure below the lowest floor provided the enclosure meets the following standards:

Be used only for the parking of vehicles, building access, or storage; and

- 1. Be designed and certified by a registered professional engineer or architect to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters; or
  - 2. Have a minimum of two openings on different walls having a total net area not less than one square inch for every square foot of enclosed area, and the bottom of all such openings being no higher than one foot above grade. The openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- F. Manufactured homes shall be affixed to a permanent foundation and anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
- G. In AO and AH Zones, new construction and substantial improvement shall have adequate drainage paths around structures on slopes to guide floodwaters around and away from the structure.

#### 1109-3.5. - Nonresidential Structures.

The requirements of this Section 1109-3.5 apply to new construction and to substantial improvements of nonresidential structures in zones A, A1-30, AE, AO, and AH, in special flood hazard areas designated on the community's effective FIRM, or in special flood hazard areas designated on a preliminary or final FIRM issued by FEMA under the circumstances provided in Section 1109-2.12.

- A. New construction and substantial improvements of any commercial, industrial, or other nonresidential structure shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Where a structure, including its foundation members, is elevated on fill to or above the base flood elevation, the requirements for anchoring in this Section 1109-3.5(A) and construction materials resistant to flood damage Section 1109-3.5(B) are satisfied.
- B. New construction and substantial improvements of any commercial, industrial, or other nonresidential structure shall be constructed with methods and materials resistant to flood damage.
- C. New construction and substantial improvements of any commercial, industrial, or other nonresidential structure shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.
- D. New construction and substantial improvements of any commercial, industrial, or other nonresidential structure, including manufactured homes, that do not have basements and that are elevated to the flood protection elevation using pilings, columns, posts, or solid foundation perimeter walls with openings to allow the automatic equalization of hydrostatic pressure may have an enclosure below the lowest floor provided the enclosure meets the following standards:
  - 1. Be used only for the parking of vehicles, building access, or storage; and
    - a. Be designed and certified by a registered professional engineer or architect to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters; or
    - b. Have a minimum of two openings on different walls having a total net area not less than one square inch for every square foot of enclosed area, and the bottom of all such openings being no higher than one foot above grade. The openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- E. Manufactured homes and manufactured structures shall be affixed to a permanent foundation and anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.



- F. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall either have the lowest floor, including basement, elevated to or above the level of the flood protection elevation; or, together with attendant utility and sanitary facilities, shall meet all of the following standards:
1. Be dry floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water to the level of the flood protection elevation;
  2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
  3. Be certified by a registered professional engineer or architect, through the use of a FEMA floodproofing certificate, that the design and methods of construction are in accordance with Sections 1109-3.5(F)(1) and (2).
- G. In Zone AO areas with no elevations specified, the structure shall have the lowest floor, including basement, elevated at least two feet above the highest adjacent natural grade.

1109-3.6. - Accessory Structures.

- A. Accessory structures that are greater than 600 square feet must comply with the requirements applicable to the principal structure.
- B. Accessory structures located within zones A, A1-30, AE, AO, and AH that are 600 square feet or less and are used exclusively for parking and/or storage are exempt from elevation and dry floodproofing standards, but must meet all of the following standards:
1. They shall not be used for human habitation;
  2. They shall be constructed of flood resistant materials;
  3. They shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters;
  4. They shall be firmly anchored to prevent flotation;
  5. Service facilities, such as electrical and heating equipment, shall be elevated or floodproofed to or above the level of the flood protection elevation; and
  6. They shall meet the opening requirements of Section 1109-3.4(E)(1)(b).

### 1109-3.7. - Recreational Vehicles.

Recreational vehicles on sites within zones A, A1-A30, AE, AO, or AH must meet one of the following standards:

- A. They shall not be located on sites in special flood hazard areas for more than 180 days; or
- B. They must be fully licensed and ready for highway use; or
- C. They must be placed on the site pursuant to a floodplain development permit issued under Sections 1109-2.3 and 2.4 and meet all standards of Section 1109-3.4.

### 1109-3.8. - Gas or Liquid Storage Tanks.

Within zone A, A1-A30, AE, AO, or AH, new or substantially improved above ground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement resulting from hydrodynamic and hydrostatic loads.

### 1109-3.9. - Assurance of Flood Carrying Capacity.

Pursuant to the purpose and methods of reducing flood damage stated in this Chapter 1109, the following additional standards are adopted to assure that the reduction of the flood-carrying capacity of watercourses is minimized:

#### A. Development in Floodways

- 1. Except as otherwise provided in this section, development in floodway areas shall cause no increase in flood levels during the occurrence of the base flood discharge. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that the proposed development would not result in any increase in the base flood elevation; or
- 2. Development in floodway areas causing increases in the base flood elevation is permitted provided that the applicant completes all of the following:
  - a. Satisfies the requirements to submit technical data in Section 1109-2.10(A);
  - b. Provides a credible evaluation, acceptable to the floodplain administrator, of alternatives that would not result in increased base flood elevations and an explanation why these alternatives are not feasible;
  - c. Certifies that no structures are located in areas that would be impacted by the increased base flood elevation;

- d. Demonstrates via documentation that individual notices were provided to all impacted property owners within and outside the community, explaining the impact of the proposed action on their property; and
- e. Obtains the approvals of the city manager of the city of Cincinnati and the chief executive officer of any other communities impacted by the proposed actions.

B. Development in Riverine Areas with Base Flood Elevations but No Floodways

1. In riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the base flood elevation more than one foot at any point. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that this standard has been met; or
2. In riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated, development causing more than a one foot increase in the base flood elevation may be permitted provided the applicant does all of the following:
  - a. Provides a credible evaluation, acceptable to the floodplain administrator, of alternatives that would result in a base flood elevation increase of one foot or less and an explanation why these alternatives are not feasible;
  - b. Satisfies the requirements to submit technical data in Section 1109-2.10(A);
  - c. Certifies that no structures are located in areas that would be impacted by the increased base flood elevation;
  - d. Demonstrates via documentation that individual notices were provided to all impacted property owners within and outside the community, explaining the impact of the proposed action on their property; and
  - e. Obtains the approvals of the city manager of the city of Cincinnati and the chief executive officer of any other communities impacted by the proposed actions.

### C. Alterations of a Watercourse

For the purpose of this Chapter 1109, a watercourse is altered when any change occurs within its banks. The extent of the banks shall be established by a field determination of the “bankfull stage.” The field determination of “bankfull stage” shall be based on methods presented in Chapter 7 of the *USDA Forest Service General Technical Report RM-245, Stream Channel Reference Sites: An Illustrated Guide to Field Technique* or other applicable publication available from a federal, state, or other authoritative source. For all proposed developments that alter a watercourse, the following standards apply:

1. The bankfull flood carrying capacity of the altered or relocated portion of the watercourse shall not be diminished. Prior to the issuance of a floodplain development permit, the applicant must submit a description of the extent to which any watercourse will be altered or relocated as a result of the proposed development, and a certification by a registered professional engineer that the bankfull flood carrying capacity of the watercourse will not be diminished.
2. Adjacent communities, the U.S. Army Corps of Engineers, and the Ohio Department of Natural Resources, Division of Water, must be notified prior to any alteration or relocation of a watercourse. Evidence of such notification must be submitted to FEMA.
3. The applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of said watercourse so that the flood carrying capacity will not be diminished. The floodplain administrator may require the permit holder to enter into an agreement with the city of Cincinnati specifying the maintenance responsibilities. If an agreement is required, it shall be made a condition of the floodplain development permit.
4. The applicant shall meet the requirements to submit technical data in Section 1109-2.10(A)(1)(c) when an alteration of a watercourse results in the relocation or elimination of the special flood hazard area, including the placement of culverts.

### **Sec. 1109-4. – Appeals and Variances**

#### 1109-4.1. - Appeals Board Established.

The board of building appeals established by Article XXX, Section 5 of the Cincinnati Administrative Code shall serve as the appeals board to hear and decide appeals from rulings, orders, and decisions by the floodplain administrator made under the provisions of this Chapter 1109 and may grant variances from and in accordance with the provisions of this Chapter 1109.

1109-4.2. - Powers and Duties.

- A. The board of building appeals shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision, or determination made by the floodplain administrator in the administration or enforcement of this Chapter 1109.
- B. The board of building appeals shall have authority to grant variances in specific and rare cases where the applicant has met the burden of showing clear and convincing proof in accordance with Section 1109-4.5.

1109-4.3. – Appeals and Variances.

- A. Any person affected by any notice, interpretation, ruling, order, or other official action of the floodplain administrator may appeal the ruling to the board of building appeals by filing a notice of appeal within thirty days of the date of such ruling.
- B. Any person believing that, owing to unique physical conditions affecting that person's property, strict compliance with the use and development standards of this Chapter 1109 would cause it or surrounding property owners to suffer unnecessary hardship may file an application for a variance.

1109-4.4.- Form of Notices of Appeal and Variance Applications; Public Hearing.

- A. Notices of appeal and applications for variances shall be in writing, signed by the applicant, or agent thereof, and include: (i) the name, address, email, and telephone number of the applicant; (ii) a legal description of the property; (iii) a parcel map; (iv) a description of the existing use of the property; (v) a description of the proposed use, if applicable; and (vi) the location of the floodplain. All notices of appeal and applications for variances shall be filed with the board of building appeals, with a copy provided to the floodplain administrator. Upon receipt of the notice of appeal, the floodplain administrator shall transmit said notice and all pertinent information on which the floodplain administrator's decision was made to the board of building appeals.
- B. Notices of appeal shall additionally set forth in writing: (i) the interpretation, ruling, order, or other action appealed from; (ii) the provisions of the CBC and Ohio Building Code and related laws and ordinances involved; (iii) the reason the notice, interpretation, ruling, order, or other official action is claimed to be erroneous with reference to the standard set forth in Section 1109-4.5; and (iv) the prescribed filing fee.
- C. Applications for variances shall additionally set forth in writing: (i) a description of the variance sought; (ii) the reason for the variance request with references to the standards and factors set forth in Section 1109-4.5; (iii) supporting evidence and documentation; and (iv) the prescribed filing fee.
- D. The board of building appeals shall schedule and hold a public hearing upon receiving a notice of appeal or application for a variance, which notice shall be published in the City Bulletin at least ten days before the date of the hearing. All testimony shall be given

under oath. A complete record of the proceedings, except confidential deliberations of the board, shall be kept, including all documents presented and a record of the testimony of all witnesses. The floodplain administrator may present evidence or testimony in opposition to the appeal or variance. All witnesses shall be subject to cross-examination by the adverse party or that party's counsel. Evidence that is not admitted may be proffered and shall become part of the record for appeal. Within a reasonable time following the conclusion of the hearing, the board shall issue a written decision, containing supporting conclusions of fact.

#### 1109-4.5. Standards and Factors for Reviewing Appeals and Approving Variances.

- A. In its review of a notice of appeal, the board of building appeals shall consider whether the notice, interpretation, ruling, order, or other official action of the floodplain administrator under review is illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of the substantial, reliable, and probative evidence presented by the applicant and other parties at the public hearing.
- B. In its review of variance applications, the board of building appeals shall consider whether the applicant has demonstrated by clear and convincing evidence that, owing to unique physical conditions affecting its property, strict compliance with the use and development standards of this Chapter 1109 would cause it or surrounding property owners to suffer unnecessary hardship. In making this determination, the board of building appeals shall consider the following factors and all other relevant factors and standards specified in other sections of this Chapter 1109:
  - 1. Any increased risk that materials may be swept onto other lands to the injury of others.
  - 2. Any increased risk to life and property due to flooding or erosion damage.
  - 3. Any increased 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 availability of alternative locations or construction alternatives for the proposed use that are not subject to flooding or erosion damage.
  - 6. The necessity to the facility of a waterfront location, where applicable.
  - 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 times of flood for ordinary and emergency vehicles.
  10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
  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.
- C. In addition to its consideration of the standard and factors contained in Section 1109-4.5(B), the board may only issue a variance(s) upon finding all of the following:
1. A showing of good and sufficient cause for the variance(s).
  2. Clear and convincing evidence demonstrating unique and unnecessary hardship to the owner or surrounding properties.
  3. A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property. Financial hardship, inconvenience, or aesthetic concerns of meeting the requirements of this Chapter 1109 do not constitute an exceptional hardship to the applicant.
  4. A determination that the granting of a variance will not result in increased flood heights beyond that which is allowed in this Chapter 1109; additional threats to public safety; extraordinary public expense, nuisances, fraud on or victimization of the public; or conflict with existing local laws.
  5. A determination that the structure or other development is protected by methods to minimize flood damages.
  6. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  7. A determination that granting the variance would comply with the NFIP regulations in 44 CFR Section 60.6(a).

D. Conditions for Variances

1. Upon granting a variance, the board of building appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Chapter 1109.

2. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
3. 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, providing items in Sections 1109-4.5(B)(1 to 11) have been fully considered and a favorable finding as to all of Sections 1109-4.5(C)(1 to 7). As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
4. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and the cost of flood insurance will be commensurated with the increased risk resulting from the reduced lowest floor elevation.

#### 1109-4.6. - Appeal to the Court.

Those aggrieved by the decision of the board of building appeals as to this Chapter 1109 may appeal such decision to the Hamilton County Court of Common Pleas, pursuant to R.C. Chapter 2506.

### **Sec. 1109-5. – Enforcement.**

#### 1109-5.1. - Compliance Required.

- A. No structure or land shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged, or altered without full compliance with the terms of this Chapter 1109 and all other applicable regulations which apply to uses within the jurisdiction of this Chapter 1109, unless specifically exempted from filing for a development permit as stated in Section 1109-2.9.
- B. Failure to obtain a floodplain development permit shall be a violation of this Chapter 1109 and shall be punishable in accordance with Section 1109-5.2.
- C. Floodplain development permits issued on the basis of plans and applications approved by the floodplain administrator authorize only the use and arrangement of structures and other approved features of a development set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction contrary to that authorized shall be deemed a violation of this Chapter 1109 and punishable in accordance with Section 1109-5.2.



1109-5.2. - Violations and Penalties.

- A. Violation of the provisions of this Chapter 1109 or failure to comply with any of its requirements shall be deemed to be a strict liability offense and shall constitute a first-degree misdemeanor.
- B. Violations may also be cited as a Class D civil offense in accordance with CMC Title XV Code Compliance and Hearings.
- C. The director of buildings and inspections shall give notice of violations of the provisions of this Chapter 1109 in accordance with Section 1101-61.
- D. Each day a violation continues shall be considered a separate offense.
- E. Nothing herein contained shall prevent the city of Cincinnati from taking such other lawful action as is necessary to prevent or remedy any violation. The city of Cincinnati shall prosecute any violation of this Chapter 1109 in accordance with the penalties stated herein.

**Sec. 1109-6. - Definitions and Interpretation.**

1109-6.1. – Definitions. Unless specifically defined elsewhere in this Chapter 1109, the words or phrases used in this Chapter 1109 shall have the meanings defined below, regardless of whether or not the words and phrases are capitalized and shall be interpreted so as to give them the meaning they have in common usage and to give this Chapter 1109 the most reasonable application. When the definitions contained herein conflict with the identical terms contained in 44 CFR Section 59.1, the conflict shall be resolved by giving precedence to the definition creating the more stringent interpretation of this Chapter 1109.

*Accessory Structure:* A structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure.

*Appeal:* A request for review of the floodplain administrator’s interpretation of any provision of this Chapter 1109 or a request for a variance.

*Base Flood:* The flood having a one percent chance of being equaled or exceeded in any given year. The base flood may also be referred to as the 1% chance annual flood or 100 year flood.

*Base (100-Year) Flood Elevation (BFE):* The water surface elevation of the base flood in relation to a specified datum, usually the National Geodetic Vertical Datum of 1929 or the North American Vertical Datum of 1988, and usually expressed in Feet Mean Sea Level (MSL). In Zone AO areas, the base flood elevation is the lowest adjacent natural grade elevation plus the depth number (from one to three feet).

*Basement:* Any area of the building having its floor subgrade (below ground level) on all sides.

*Development:* Any manmade 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 or storage of equipment or materials.

*Enclosure Below the Lowest Floor:* See “Lowest Floor.”

*Executive Order 11988 (Floodplain Management):* Issued by President Carter in 1977, this order requires that no federally assisted activities be conducted in or have the potential to affect identified special flood hazard areas, unless there is no practicable alternative.

*Federal Emergency Management Agency (FEMA):* The agency with the overall responsibility for administering the National Flood Insurance Program.

*Fill:* A deposit of earth material placed by artificial means.

*Flood or Flooding:* A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters, and/or
2. The unusual and rapid accumulation or runoff of surface waters from any source.

*Flood Hazard Boundary Map (FHBM):* Usually the initial map produced by the Federal Emergency Management Agency or U.S. Department of Housing and Urban Development for a community depicting approximate special flood hazard areas.

*Flood Insurance Rate Map (FIRM):* An official map on which the Federal Emergency Management Agency or the U.S. Department of Housing and Urban Development has delineated the areas of special flood hazard.

*Flood Insurance Risk Zones:* Zone designations on FHBMs and FIRMs that indicate the magnitude of the flood hazard in specific areas of a community. Following are the zone definitions:

*Zone A:* Special flood hazard areas inundated by the 100-year flood in any given year; base flood elevations are not determined.

*Zones A1-30 and Zone AE:* Special flood hazard areas inundated by the 100-year flood in any given year; base flood elevations are determined.

*Zone AO:* Special flood hazard areas inundated by the 100-year flood in any given year; with flood depths of one to three feet (usually sheet flow on sloping terrain); average depths are determined.

*Zone AH:* Special flood hazard areas inundated by the 100-year flood in any given year; flood depths of one to three feet (usually areas of ponding); base flood elevations are determined.

*Zone A99:* Special flood hazard areas inundated by the 100-year flood to be protected from the 100-year flood by a federal flood protection system under construction; no base flood elevations are determined.

*Zone B and Zone X (shaded):* Areas of 500-year flood; areas subject to the 100-year flood with average depths of less than one foot or with contributing drainage area less than one square mile; and areas protected by levees from the base flood.

*Zone C and Zone X (unshaded):* Areas determined to be outside the 500-year floodplain.

*Flood Insurance Study (FIS):* The official report in which the Federal Emergency Management Agency or the U.S. Department of Housing and Urban Development has provided flood profiles, floodway boundaries (sometimes shown on flood boundary and floodway maps), and the water surface elevations of the base flood.

*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.

*Flood Protection Elevation (FPE):* The Flood Protection Elevation is the base flood elevation plus one foot of freeboard. In areas where no base flood elevations exist from any authoritative source, the flood protection elevation can be historical flood elevations, or base flood elevations determined and/or approved by the floodplain administrator.

*Floodway:* A floodway is the channel of a river or other watercourse and the adjacent land areas that have been reserved in order to pass the base flood discharge. A floodway is typically determined through a hydraulic and hydrologic engineering analysis such that the cumulative increase in the water surface elevation of the base flood discharge is no more than a designated height. In no case shall the designated height be more than one foot at any point within the community. The floodway is an extremely hazardous area and is usually characterized by any of the following: Moderate to high velocity flood waters, high potential for debris and projectile impacts, and moderate to high erosion forces.

*Freeboard:* A factor of safety usually expressed in feet above a flood level for the 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, obstructed bridge openings, debris and ice jams, and the hydrologic effect of urbanization in a watershed.

*Historic structure:* Any structure that is:

1. 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 listings 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 the State of Ohio's inventory of historic places maintained by the Ohio Historic Preservation Office; or
4. Individually listed on the inventory of historic places maintained by the city of Cincinnati's historic preservation program, which program is certified by the Ohio Historic Preservation Office.

*Hydrologic and hydraulic engineering analysis:* An analysis performed by a professional engineer, registered in the state of Ohio, in accordance with standard engineering practices as accepted by FEMA, used to determine flood elevations and/or floodway boundaries.

*Letter of Map Change (LOMC):* A Letter of Map Change is an official FEMA determination, by letter, to amend or revise effective FIRMs, Flood Boundary and Floodway Maps, and FISes. LOMCs are broken down into the following categories:

*Letter of Map Amendment (LOMA):* A revision based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective FIRM and establishes that a specific property is not located in a special flood hazard area.

*Letter of Map Revision (LOMR):* A revision based on technical data that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain, and floodway delineations, and planimetric features. One common type of LOMR, a LOMR-F, is a determination concerning whether a structure or parcel has been elevated by fill above the base flood elevation and is, therefore, excluded from the special flood hazard area.

*Conditional Letter of Map Revision (CLOMR):* A comment by FEMA regarding a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the special flood hazard area. A CLOMR does not amend or revise effective FIRMs, Flood Boundary and Floodway Maps, or FISes.

*Lowest floor:* The lowest floor of the lowest enclosed area (including basement) of a structure. This definition excludes an “enclosure below the lowest floor” which is an unfinished or flood resistant enclosure usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, provided that such enclosure is built in accordance with the applicable design requirements specified in this Chapter 1109 for enclosures below the lowest floor.

*Manufactured home:* A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle.” For the purposes of this Chapter 1109, a manufactured home includes manufactured homes and mobile homes as defined in R.C. Chapter 4781.

*Manufactured home park:* As specified in the Ohio Adm. Code Section 4781-12-01(K), a manufactured home park means any tract of land upon which three or more manufactured homes, used for habitation, are parked, either free of charge or for revenue purposes, and includes any roadway, building, structure, vehicle, or enclosure used or intended for use as part of the facilities of the park. A tract of land that is subdivided and the individual lots are not for rent or rented, but are for sale or sold for the purpose of installation of manufactured homes on the lots, is not a manufactured home park, even though three or more manufactured homes are parked thereon, if the roadways are dedicated to the local government authority. Manufactured home park does not include any tract of land used solely for the storage or display for sale of manufactured homes.

*Market value of the structure:* The “market improvement value” as determined by the Hamilton County auditor or by a current appraisal of the fair market value of the improvements (not including the land value of the parcel).

*Mean sea level:* For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community’s FIRM are referenced.

*National Flood Insurance Program (NFIP):* The NFIP is a federal program enabling property owners in participating communities to purchase insurance protection against losses from flooding. This insurance is designed to provide an insurance alternative to disaster assistance to meet the escalating costs of repairing damage to buildings and their contents caused by floods. Participation in the NFIP is based on an agreement between local communities and the federal government that states if a community will adopt and enforce floodplain management regulations to reduce future flood risks to all development in special flood hazard areas, the federal government will make flood insurance available within the community as a financial protection against flood loss.

*New construction:* For floodplain management purposes, new construction refers to structures for which the “start of construction” commenced on or after the effective date of a floodplain ordinance adopted by the city of Cincinnati and includes any subsequent improvements to such structures. For the purposes of determining insurance rates, structures for which the “start of

construction" commenced on or after the effective date of the initial city of Cincinnati FIRM of October 15, 1982, whichever is later, and includes any subsequent improvements or alterations to such structures regardless of whether the work was performed with or without permits.

*Person:* Includes any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies. An agency is further defined in R.C. Section 111.15(A)(2) as any governmental entity of the state and includes, but is not limited to, any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or state community college. "Agency" does not include the general assembly, the controlling board, the adjutant general's department, or any court.

*Recreational vehicle:* A vehicle which is (1) built on a single chassis, (2) 400 square feet or less when measured at the largest horizontal projection, (3) designed to be self-propelled or permanently towable by a light duty truck, and (4) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

*Registered Professional Architect:* A person registered to engage in the practice of architecture pursuant to R.C. Chapter 4703.

*Registered Professional Engineer:* A person registered as a professional engineer pursuant to R.C. Chapter 4733.

*Registered Professional Surveyor:* A person registered as a professional surveyor pursuant to R.C. Chapter 4733.

*Residential building:* A non-commercial building designed for habitation by one or more families or a mixed-use building that includes a single family, two-to-four family, or other residential use. Hotels, motels, and dormitories shall be included under this definition.

*Special Flood Hazard Area:* Also known as "Areas of Special Flood Hazard." The land in the floodplain subject to a one percent or greater chance of flooding in any given year. Special flood hazard areas are designated by FEMA on FIRMs, FISes, Flood Boundary and Floodway Maps and FHBMs as Zones A, AE, AH, AO, A1-30, or A99. Special flood hazard areas may also refer to areas that are flood prone and designated from other federal, state, or local sources of data including but not limited to historical flood information reflecting high water marks, previous flood inundation areas, and flood prone soils associated with a watercourse.

*Start of construction:* 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 a building.

*Structure:* A walled and roofed building, manufactured home, or gas or liquid storage tank that is principally above ground.

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

*Substantial Improvement:* Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure before the “start of construction” of the improvement. This term includes improvement of structures, which have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include:

1. Any improvement to a structure that falls under the definition of “new construction” in this Chapter 1109.
2. 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
3. Any alteration of or addition to an “historic structure,” provided that the alteration or addition would not preclude the structure’s continued designation as a “historic structure.”

*Variance:* A grant of relief from the standards of this Chapter 1109.

*Violation:* The failure of a structure or other development to be fully compliant with this Chapter 1109.

1109-6.2. - Abrogation and Greater Restrictions.

This Chapter 1109 is not intended to repeal any existing ordinances including subdivision regulations, zoning, or building codes. In the event of a conflict between this Chapter 1109 and any other ordinance, the more restrictive shall be followed. This Chapter 1109 is not intended to repeal, abrogate, or impair any existing ordinance, easement, covenant, or deed restrictions.

However, where this Chapter 1109 and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

1109-6.3. – Interpretation.

In the interpretation and application of this Chapter 1109, 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. Where a provision of this Chapter 1109 may be in conflict with a state or federal law, such state or federal law shall take precedence over this Chapter 1109.

1109-6.4. – Severability.

Should any section or provision of this Chapter 1109 be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Chapter 1109 as a whole, or any part other than that declared to be unconstitutional or invalid.

Section 4. That Section 1501-9, “Class D Civil Offenses,” of Chapter 1501, “Code Compliance and Hearings,” is hereby amended to read as follows:

**Sec. 1501-9. - Class D Civil Offenses.**

A person who violates a standard of conduct set forth in a provision of the Cincinnati Municipal Code listed below is liable for the civil fine specified in § 1501-99 for a Class D Civil Offense. If the provision is listed under paragraph (a) below, the otherwise applicable civil fine is reduced by 50% if the person charged shows in accordance with § 1501-15 that the violation has been corrected. If a person has previously been found to have violated the same provision of the Cincinnati Municipal Code within one year that person may be charged as a second offender and on being found to have committed a second or subsequent offense is liable for the civil fine for the subsequent offense provided below, which fine is specified in § 1501-99 and is not subject to reduction for correction of the violation.

(a) Class D Civil Offenses with Civil Fines Subject to 50% Reduction for Correction of Violation:

			Civil Fine for Subsequent Offense
(1)	§ 720-13	Private Facilities	Class E
(2)	§ 720-45	Notice of Violations	Class E
(3)	§ 720-69	Notice to Correct Drainage	Class E



			Civil Fine for Subsequent Offense
(4)	Chapter 855	Rooming Houses	Class D
(5)	Chapter 895	Outdoor Advertising Signs	Class D
(6)	Chapter 1101	Administration, Cincinnati Building Code	Class E
(7)	Chapter 1106	General and Specialty Contractors	Class E
(8)	Chapter 1107	Elevator and Conveyer Equipment	Class E
(9)	Chapter 1117	Housing Code	Class E
(10)	Chapter 1119	Building Hazard Abatement Code	Class E
(11)	Chapter 1127	General Inspection Programs Code	Class E
(12)	Title XIV	Zoning Code	Class E
(13)	§ 1201-21	Maintenance	Class D
(14)	§ 1201-33	Evacuation	Class D
(15)	§ 1201-35	Spills and Leaks	Class D
(16)	Chapter 1235	Detectors, Early Fire Warning Systems	Class D
(17)	§ 1123-11(a)	Vacant Foreclosed Property Registration - Failure to register a vacant, foreclosed property.	Class E
(18)	§ 874-07(a)	Failure to Register Residential Rental Property	Class D
(19)	<u>Chapter 1109</u>	<u>Flood Damage Reduction</u>	<u>Class E</u>

(b) Class D Civil Offenses With Civil Fines Not Subject to 50% Reduction for Correction of Violation:

			Civil Fine for Subsequent Offense
(1)	§ 718-25	Secret Street Uses	Class E
(2)	§ 721-59	Taking Material from Streets	Class E
(3)	§ 729-71(c)(2)	Personal Property Left Abandoned on Streets and Sidewalks - 4 or more items	Class D
(4)	§ 761-14	Eviction or Retaliation by Landlord	Class E
(5)	Chapter 891	Home Improvement	Class E
(6)	§ 1201-47	Failure to Comply with Orders	Class D
(7)	§ 1219-21	Causing Fire Through Negligence	Class D
(8)	Chapter 1251	Fire Starting Apparatus	Class D
(9)	§ 759-4	Use of a Motor Vehicle to Facilitate a Drug Related Crime	Class D
(10)	Chapter 722	Management and Control of the Use of the City Right-of-Way	Class E
(11)	Chapter 730	Commercial Waste Franchises	
(12)	§ 856-25(c)	Violation of Limitations on Operators or Operation of Short Term Rentals	Class D
(13)	§ 1125-17(1)	Failure to Register a Vacant Building	Class E
(14)	§ 1601-57	Enforcement of Emergency Orders	Class D
(15)	§ 1601-59	Enforcement of Health Orders	Class D
(16)	Chapter 811	e-Scooter Rental Franchises	Class D

Section 4. That this ordinance shall be an emergency measure necessary for the preservation of the public peace, health, safety, and general welfare and shall, subject to the terms of Article II, Section 6, be effective immediately. The reason for the emergency is the immediate necessity to adopt National Flood Insurance Program (NFIP) compliant floodplain management regulations to allow sufficient time for Ohio Department of Natural Resources review and approval before the June 7, 2023 deadline, so that flood-prone properties in the City

may continue to be eligible to purchase flood insurance from the National Flood Insurance Program.

Passed: \_\_\_\_\_, 2023

\_\_\_\_\_  
Aftab Pureval, Mayor

Attest: \_\_\_\_\_  
Clerk