

## **NOTICE**

This City of Kettering Code section is not the official version and is provided only for the convenience of the public. The only official version of the City of Kettering Code is available through the office of the Clerk of Council, located in the City of Kettering Government Center, 3600 Shroyer Road, Kettering, Ohio 45429.

This version may, occasionally, differ from the official version and should only be relied upon for general information purposes. Any errors or omissions should be reported to the Clerk of Council. In no event shall the City of Kettering be held liable for damages of any nature, direct or indirect, arising from the use of this service or reliance on this unofficial document.

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**CHAPTER 1104**  
**FLOOD DAMAGE PREVENTION**

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**SECTION 1104.101 GENERAL PROVISIONS****1104.101.1 Lands to Which These Regulations Apply**

This Chapter shall apply to all Special Flood Hazard Areas within the jurisdiction of the City of Kettering, including any additional Special Flood Hazard Areas annexed by the City of Kettering.

**1104.101.2 Basis for Establishing the Areas of Special Flood Hazard**

For the purposes of this Chapter, the following studies and/or maps are adopted:

- A. Flood Insurance Study for Montgomery County, Ohio and Incorporated Areas, effective January 6, 2005; Flood Insurance Rate Maps for Montgomery County, Ohio and Incorporated Areas, effective January 6, 2005; Flood Insurance Study for Greene County, Ohio and Incorporated Areas, effective March 17, 2011; Flood Insurance Rate Maps for Greene County, Ohio and Incorporated Areas, effective March 17, 2011.
- B. Other studies and/or maps, on file at the City of Kettering Government Center, that are relied upon or approved by the Federal Emergency Management Agency (FEMA) or the City of Kettering, for establishment of the flood protection elevation, delineation of the 100-year floodplain, floodways, or delineation of other areas of special flood hazard.
- C. Any hydrologic and hydraulic engineering analysis required by Subsection 1104.401.3.4, authored by a registered professional engineer, that has been approved by the City of Kettering.
- D. Any approved revisions to the aforementioned maps and / or studies are hereby adopted by reference and declared to be a part of these regulations. Such maps and/or studies are on file at the City of Kettering Government Center.

**1104.101.3 Abrogation and Greater Restrictions**

These regulations are not intended to replace any existing ordinances including subdivision regulations, zoning or building codes. In the event of a conflict between the provisions of this Chapter and any other chapter, the more restrictive provisions shall be followed.

**1104.101.4 Interpretation**

In the interpretation and application of these regulations, all provisions shall be:

- A. Considered as minimum requirements; and
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other municipal powers granted under the Ohio Constitution or statutes. Where a provision of this Chapter may be in conflict with general Ohio law or Federal law, such general Ohio law or Federal law shall take precedence over these regulations.

**1104.101.5 Severability**

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

**SECTION 1104.201 DEFINITIONS**

For the purposes of Chapter 1104, the following terms, phrases, words, and their derivations shall have the meanings as set forth herein. When not inconsistent with the context, words in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning. References hereafter to "Sections" or "Subsections" are, unless otherwise specified, references to Sections or Subsections in this Chapter. Defined terms remain defined terms whether or not capitalized. Words used in this Chapter may be the same as words used in other chapters and provisions of the Codified Ordinances. However, the definitions of words used in this Chapter may be different than those used in other chapters.

**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 or a request for a variance.

**BASE FLOOD**

The flood having a one percent chance (1%) of being equaled or exceeded in any given year. The base flood may also be referred to as the one percent (1%) chance annual flood or one-hundred (100) year flood.

**BASE (100-YEAR) FLOOD ELEVATION (BFE)**

The water surface elevation of the base flood in relation to the National Geodetic Vertical Datum of 1929 or the North American Vertical Datum of 1988. In Flood Risk Zone AO areas, the base flood elevation is the natural grade elevation plus the depth number (from 1 to 3 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 on the real estate, 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 1 1988 (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:

- A. The overflow of inland or tidal waters, and/or
- B. 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; base flood elevations are not determined.

**ZONES A 1-30 AND ZONE AE:**

Special flood hazard areas inundated by the 100-year flood; base flood elevations are determined.

**ZONE AO:**

Special flood hazard areas inundated by the 100-year flood; with flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths are determined.

**ZONE AH:**

Special flood hazard areas inundated by the 100-year flood; flood depths of 1 to 3 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 1 foot or with contributing drainage area less than 1 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.

**FLOOD PROTECTION ELEVATION**

The Flood Protection Elevation, or FPE, is the base flood elevation plus one (1.0) 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:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listings on the National Register; or
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or

- C. Individually listed on the State of Ohio's inventory of historic places maintained by the Ohio Historic Preservation Office; or
- D. Individually listed on the inventory of historic places maintained by the City of Kettering whose historic preservation program has been 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 Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, and Flood Insurance Studies. LOMC's 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 Flood Insurance Rate Map 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 formal review and comment by FEMA as to whether a proposed project complies with the minimum National Flood Insurance Program floodplain management criteria. A CLOMR does not amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies.

**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 these regulations 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 these regulations, a manufactured home includes manufactured homes and mobile homes as defined in Chapter 3733 of the Ohio Revised Code.

**MANUFACTURED HOME PARK**

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.

**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**

Structures for which the "start of construction" commenced on or after the initial effective date of the City of Kettering Flood Insurance Rate Map, October 15, 1980, and includes any subsequent improvements to such structures.

**PERSON**

Includes any individual or group of individuals, corporation, partnership, association, or any other entity, including, unless explicitly exempted by applicable law, federal, state, and local governments and agencies such as any board, department, division, commission, bureau, society, council, institution, state college or university, community college district, technical college district, or state community college.

**RECREATIONAL VEHICLE**

Any vehicular type portable structure, without permanent foundation, which can be towed, hauled, or driven and which is primarily designed as temporary living accommodation for recreational, camping, and travel use including, but not limited to, camping trailers, converted vans, self-propelled motor homes, tent trailers, travel trailers, or truck campers.



**REGISTERED PROFESSIONAL ARCHITECT**

A person registered with the state of Ohio to engage in the practice of architecture under the provisions of sections 4703.01 to 4703.19 of the Revised Code.

**REGISTERED PROFESSIONAL ENGINEER**

A person registered with the state of Ohio as a professional engineer under Chapter 4733 of the Revised Code.

**REGISTERED PROFESSIONAL SURVEYOR**

A person registered with the state of Ohio as a professional surveyor under Chapter 4733 of the Revised Code.

**SPECIAL FLOOD HAZARD AREA**

Also known as "Areas of Special Flood Hazard", it is 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 the Federal Emergency Management Agency on Flood Insurance Rate Maps, Flood Insurance Studies, Flood Boundary and Floodway Maps and Flood Hazard Boundary Maps as Zones A, AE, AH, AO, A1-30, and 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. 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 structure is anything permanently constructed, the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground.

**SUBSTANTIAL DAMAGE**

Damage of any origin sustained by a structure if the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT**

Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent 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:

- A. Any improvement to a structure which is considered "new construction;"
- B. 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 prior to the application for a development permit and which are the minimum necessary to assure safe living conditions; or
- C. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure".

**VARIANCE**

A grant of relief from the standards of these regulations consistent with the variance conditions herein.

**VIOLATION**

The failure of a structure or other development to be fully compliant with these regulations.

**SECTION 1104.301 ADMINISTRATION****1104.301.1 Designation of the Floodplain Administrator**

The City of Kettering Floodplain Administrator shall administer and implement these regulations and is referred to herein as the Floodplain Administrator. The City Manager shall appoint the Floodplain Administrator.

**1104.301.2 Duties and Responsibilities of the Floodplain Administrator**

The duties and responsibilities of the Floodplain Administrator shall include, but are not limited to, the following:

- 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 these regulations 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 these regulations have been committed.
- E. Make all records necessary for the administration of these regulations including Flood Insurance Rate Maps, Letters of Map Amendment and Revision, 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, variances, and records of enforcement actions taken for violations of these regulations. Any records necessary to demonstrate the City of Kettering's compliance with the requirements of the National Flood Insurance Program shall be permanently retained. All other records may be permanently retained or shall be kept in conformance with applicable law.
- F. Enforce the provisions of these regulations.
- 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 these regulations.

#### **1104.301.3 Floodplain Development Permits**

No person shall cause Development wholly within, partially within, or in contact with a Special Flood Hazard Area without first obtaining a floodplain development permit. No floodplain development permit shall be issued until all requirements of this Chapter have been met. Issuance of a floodplain development permit shows that the proposed development activity meets the requirements of this Chapter.

#### **1104.301.4 Application Required**

If a floodplain development permit is required, the owner of the real property, or the owner's authorized agent, on which the proposed Development will occur shall make application for the permit on a form prescribed by the Floodplain Administrator. Floodplain development permit applications shall include, but not be limited to:

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- A. An application fee. The amount of the fee shall be set by the City Manager to recover the City's costs in administering this Chapter.
  - B. The development's location in the Flood Insurance Risk Zone.
  - C. Site plans drawn to scale showing the nature, location, dimensions, and topography of the area in question and the location of existing or proposed structures, development, fill, storage of materials, and drainage facilities.
  - D. Elevation of the existing, natural ground where structures are proposed.
  - E. Elevation of the lowest floor, including basement, of all proposed structures.
  - F. Such other material and information as may be requested by the Floodplain Administrator to determine conformance with, and provide enforcement of these regulations.
  - G. Proof that all required permits from other agencies, such as 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, have been acquired or clear and convincing evidence that no such permit is required.
  - H. When required by the Flood Plain Administrator, any or all of the following technical analyses conducted by a Registered Professional Architect, a Registered Professional Engineer, or a Registered Professional Surveyor:
    - 1. Flood-proofing certification for non-residential flood-proofed structure as required in Subsection 1104.401.5.
    - 2. Certification that fully enclosed areas below the lowest floor of a structure not meeting the design requirements of Subsection 1104.401.4.5 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 Subsection 1104.401.9.3.
    - 4. A hydrologic and hydraulic analysis demonstrating that the cumulative effect of 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 the Federal Emergency Management Agency has provided base flood elevations but no floodway as required by Subsection 1104.401.9.2.

5. A hydrologic and hydraulic engineering analysis showing impact of any development on flood heights in an identified floodway as required by Subsection 1104.401.9.1.
6. Generation of base flood elevation(s) for all development as required by Subsection 1104.401.3.

#### **1104.301.5 Review and Approval of a Floodplain Development Permit Application**

##### **1104.301.5.1 Review**

- A. After receipt of an application complying with Subsection 1104.301.4, the Floodplain Administrator shall review the application to ensure that the standards of these regulations have been met. No floodplain development permit application shall be reviewed until all information required in Subsection 1104.301.4 and the required fee have been received by the Floodplain Administrator.
- B. The Floodplain Administrator shall review all floodplain development permit applications using the Floodplain Administrator's best efforts 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 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 or demonstrating by clear and convincing evidence that no such permit is required.

##### **1104.301.5.2 Approval**

After the receipt and review of an application complying with Subsection 1104.301.4, the Floodplain Administrator shall either approve or disapprove the application. If an application is approved, a floodplain development permit shall be issued. All floodplain development permits shall be conditional upon the commencement of work within one (1) year from the permit's issuance date. A floodplain development permit shall expire one (1) year after issuance unless the permitted activity has been substantially begun and is thereafter continuously and diligently pursued to completion.

**1104.301.6 Inspections**

The Floodplain Administrator shall make periodic inspections throughout the period of construction in order to monitor compliance with permit conditions.

**1104.301.7 Post-Construction Certifications Required**

All persons required to obtain a floodplain development permit under this Chapter shall also acquire both of the following as-built certifications 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 surveyor to record as-built elevation data.
- B. For all development activities subject to the standards of Subsection 1104.301.10.1, a Letter of Map Revision.

**1104.301.8 Revoking a Floodplain Development Permit**

A floodplain development permit shall be revocable if the actual development activity does not conform to the terms of the floodplain development permit application and the resulting permit. Development performed without a valid and unrevoked permit shall constitute a nuisance. In the event of the revocation of a permit, an appeal may be taken to the Board of Zoning Appeals in accordance with Section 1104.501.

**1104.301.9 Exemption from Filing a Development Permit**

An application for a floodplain development permit shall not be required for:

- A. Maintenance work such as roofing, painting, and basement sealing, or for small nonstructural development activities (except for filling and grading) valued at less than \$5,000.
- B. Development activities in an existing or proposed manufactured home park that are under the authority of the Ohio Department of Health and subject to the flood damage reduction provisions of the Ohio Administrative Code Section 3701.
- C. Major utility facilities permitted by the Ohio Power Siting Board under Section 4906 of the Ohio Revised Code.

- D. Hazardous waste disposal facilities permitted by the Hazardous Waste Siting Board under Section 3734 of the Ohio Revised Code.
- E. Development activities undertaken by a federal agency and which are subject to Federal Executive Order 11988 – Floodplain Management.

#### **1104.301.10 Map Maintenance Activities**

To meet National Flood Insurance Program minimum requirements to have flood data reviewed and approved by FEMA, and to ensure that the City of Kettering's flood maps, studies and other data identified in Subsection 1104.101.2 accurately represent flooding conditions so appropriate floodplain management criteria are based on current data, the following map maintenance activities are required:

##### **1104.301.10.1 Requirement to Submit New Technical Data**

**1104.301.10.1.1** For all development proposals that impact floodway delineations or base flood elevations, the Floodplain Administrator shall ensure that technical data reflecting such changes be submitted to FEMA within six months of the date such information becomes available. These development proposals include:

- 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 large scale development proposals requiring the establishment of base flood elevations in accordance with Subsection 1104.401.3.

**1104.301.10.1.2** Applicants shall have technical data, required in accordance with Subsection 1104.301.10, prepared in a format required for a Conditional Letter of Map Revision or Letter of Map Revision, and submitted to FEMA. Submittal and processing fees for these map revisions shall be the responsibility of the Applicant.

**1104.301.10.1.3** The Floodplain Administrator shall require a Conditional Letter of Map Revision 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 areas where FEMA has provided base flood elevations but no floodway.

**1104.301.10.1.4** Floodplain development permits issued by the Floodplain Administrator shall be conditioned upon the applicant obtaining a Letter of Map Revision from FEMA for any development proposal subject to Subsection 1104.301.10.1.1.

**1104.301.10.2 Right to Submit New Technical Data**

The Floodplain Administrator may request changes to 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 Kettering, and may be submitted at any time.

**1104.301.10.3 Annexation / Detachment**

The Floodplain Administrator shall notify FEMA in writing whenever the boundaries of the City of Kettering have been modified by annexation, or the community has assumed authority over an area, or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order for the City of Kettering's Flood Insurance Rate Map to accurately represent the City of Kettering's boundaries, included within a notification of boundary change shall be a copy of a map of the City of Kettering suitable for reproduction, clearly showing the new corporate limits or the new area for which the City of Kettering has assumed or relinquished floodplain management regulatory authority.

**1104.301.11 Data Use and Flood Map Interpretation**

**1104.301.11.1** 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 credible source.

- B. Base flood elevations and floodway boundaries produced on FEMA flood maps and studies shall take precedence over base flood elevations and floodway boundaries 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 and/or larger floodway areas than are shown on FEMA flood maps and studies, shall be reasonably used by the Floodplain Administrator.

**1104.301.11.2 .** When Preliminary Flood Insurance Rate Maps and / or Flood Insurance Study have been provided by FEMA:

- A. Upon the issuance of a Letter of Final Determination by the FEMA, the preliminary flood hazard data shall be used and replace all previously existing flood hazard data provided from FEMA for the purposes of administering these regulations.
- B. Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall only be required where no base flood elevations and /or floodway areas exist or where the preliminary base flood elevations or floodway area exceed the base flood elevations and/or floodway widths in existing flood hazard data provided from FEMA. Such preliminary data may be subject to change and / or appeal to FEMA.

**1104.301.11.3.** 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 may appeal the interpretation as provided in Section 1104.501.

**1104.301.11.4.** Where a map boundary showing an area of special flood hazard and field elevations disagree, the base flood elevations or flood protection elevations (as found on an elevation profile, floodway data table, established high water marks, etc.) shall prevail.

**1104.301.12. Substantial Damage Determinations**

**1104.301.12.1** Damage to structures may result from a variety of causes including flood, tornado, wind, heavy snow, fire, etc. After such a damage event, the Floodplain Administrator shall:

- 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. Make reasonable attempt to notify owners of substantially damaged structures of the need to obtain a floodplain development permit prior to repair, rehabilitation, or reconstruction.

**1104.301.12.2** 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 assist owners of substantially damaged structures with Increased Cost of Compliance insurance claims.

## **SECTION 1104.401 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 any special flood hazard area as established in Subsections 1104.101.2 or 1104.301.11.1.

### **1104.401.1 Use Regulations**

#### **1104.401.1.1 Permitted Uses**

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

#### **1104.401.1.2 Prohibited Uses**

The following uses are prohibited in any special flood hazard area:

- A. Private water supply systems as defined in Ohio Revised Code Section 3701.344.
- B. Treatment facilities for “hazardous waste” or “infectious waste” as those terms are defined in Ohio Revised Code Chapter 3734.

**1104.401.2 Water and Wastewater Systems**

The following standards apply to all water supply, sanitary sewerage and waste disposal systems not otherwise regulated by the Ohio Revised Code:

- A. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters 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.

**1104.401.3 Development Standards**

**1104.401.3.1** All development proposals shall be consistent with the need to minimize flood damage and are subject to all applicable standards in these regulations.

**1104.401.3.2** All development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

**1104.401.3.3** All development proposals shall have adequate drainage provided to reduce exposure to flood damage.

**1104.401.3.4** 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, from a registered professional engineer, that generates base flood elevations for all proposed development.

**1104.401.3.5** The applicant shall meet the requirement to submit technical data to FEMA in Subsection 1104.301.10.1.1(d) when a hydrologic and hydraulic analysis is completed that generates base flood elevations as required by Subsection 1104.401.3.4.

**1104.401.4 Residential Structures**

**1104.401.4.1** 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 (1104.401.3.4) and construction materials resistant to flood damage (1104.401.4.2) are satisfied.

**1104.401.4.2** New construction and substantial improvements shall be constructed with methods and materials resistant to flood damage.

**1104.401.4.3** 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.

**1104.401.4.4** 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.

**1104.401.4.5** 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 sufficient to allow unimpeded movement of flood waters may have an enclosure below the lowest floor provided the enclosure meets the following standards:

- A. Be used only for the parking of vehicles, building access, or storage; and
- B. Be designed and certified by a registered professional engineer or registered architect to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters; or
- C. 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.

**1104.401.4.6** 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.

1104.401.4.7 Repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and design of the structure, shall be exempt from the development standards of Subsection 1104.401.4.

#### **1104.401.5 Nonresidential Structures**

1104.401.5.1 New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet the requirements of Subsections 1104.401.4.1 – 1104.401.4.3 and Subsections 1104.401.4.5 – 1104.401.4.7.

1104.401.5.2 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:

- A. Be dry flood-proofed so that the structure is watertight with walls substantially impermeable to the passage of water to the level of the flood protection elevation;
- 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 registered professional architect, through the use of a Federal Emergency Management Flood-proofing Certificate, that the design and methods of construction are in accordance with Subsection 1104.401.5.2 (A) and (B).

#### **1104.401.6 Accessory Structures**

Relief from the elevation or dry flood-proofing standards found in Subsection 1104.401.5.2 may be granted by the Floodplain Administrator for accessory structures containing no more than 600 square feet. Such structures must meet all of the following standards in order to qualify for relief:

- A. They shall not be used for human habitation;
- B. They shall be constructed of flood resistant materials;
- C. They shall be constructed and placed on the lot to offer the minimum resistance to the flow of flood waters;

- D. They shall be firmly anchored to prevent flotation;
- E. Service facilities such as electrical and heating equipment shall be elevated or flood-proofed to or above the level of the flood protection elevation; and
- F. They shall meet the opening requirements of Subsection 1104.401.4.5(C);

#### **1104.401.7 Recreational Vehicles**

Recreational vehicles shall comply with all of the following standards:

- A. Recreational vehicles shall not be parked or left in the floodway;
- B. Recreational vehicles may be parked or left in special flood hazard areas which are not in the floodway if all of the following criteria are met:
  - 1. The recreational vehicle is validly licensed, registered, and operational;
  - 2. The recreational vehicle shall be anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
  - 3. The recreational vehicle shall comply with all other requirements of applicable law.

#### **1104.401.8 Above Ground Gas or Liquid Storage Tanks**

All above ground gas or liquid storage tanks shall be securely anchored to prevent flotation or lateral movement resulting from hydrodynamic and hydrostatic loads.

#### **1104.401.9 Assurance of Flood Carrying Capacity**

The following standards shall be followed to assure that the reduction of the flood carrying capacity of watercourses is minimized:

##### **1104.401.9.1 Development in Floodways**

**1104.401.9.1.1** In floodway areas, development 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

**1104.401.9.1.2** Development in floodway areas causing increases in the base flood elevation may be permitted provided all of the following are completed by the applicant:

- A. Meet the requirements to submit technical data in Subsection 1104.301.10.1;
- B. An evaluation of alternatives that would not result in increased base flood elevations and an credible evidence demonstrating that the alternatives are not feasible;
- C. Certification that no structures are located in areas that would be impacted by the increased base flood elevation;
- D. Credible evidence that written legal notices explaining the impact of the proposed action on their property were served on all impacted property owners within and outside the City of Kettering; and
- E. Concurrence of the City Manager of the City of Kettering and the Chief Executive Officer of any other communities impacted by the proposed actions.

**1104.401.9.2 Development in Riverine Areas with Base Flood Elevations but No Floodways**

**1104.401.9.2.1** 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 1.0 (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,

**1104.401.9.2.2** Development in riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated causing more than one foot increase in the base flood elevation may be permitted provided all of the following are completed by the applicant:

- A. An evaluation of alternatives which would result in an increase of one foot or less of the base flood elevation and an explanation why these alternatives are not feasible;
- B. Subsection 1104.401.9.1.2, items (A) and (C)-(E).

#### 1104.401.9.3 Alterations of a Watercourse

For the purpose of this Chapter, 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:

- A. 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 certification by a registered professional engineer that the bankfull flood carrying capacity of the watercourse will not be diminished.
- B. 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 the Federal Emergency Management Agency.
- C. 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 Kettering specifying the maintenance responsibilities. If an agreement is required, it shall be made a condition of the floodplain development permit.
- D. The applicant shall meet the requirements to submit technical data in Subsection 1104.301.10.1.1(C) when an alteration of a watercourse results in the relocation or elimination of the special flood hazard area, including the placement of culverts.



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**SECTION 1104.501 APPEALS AND VARIANCES****1104.501.1 Appeal Board**

**1104.501.1.1** The Board of Zoning Appeals as established by City Charter and Chapter 1173 of the Codified Ordinances of the City of Kettering shall hear and decide appeals and requests for variances from the requirements of this Chapter.

**1104.501.1.2** The Board of Zoning Appeals 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.

**1104.501.1.3** Upon consideration of the purposes of this ordinance, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

**1104.501.1.4** The Floodplain Administrator shall maintain the records of all appeal actions and report any granted variances to the Federal Emergency Management Agency upon request.

**1104.501.2 Appeals****1104.501.2.1 Appeal Requirements**

Any person adversely impacted by any notice, order, or other official action of the Floodplain Administrator may file an appeal with the Board of Zoning Appeals. The appeal shall:

- A. be filed within 10 (ten) days of the date of such notice, order, or other official action was made;
- B. Cite specific provisions of this Chapter that are alleged to have been interpreted in error or the specific decision or action being appealed and the grounds on which the appeal is being made;
- C. Include any required fee in an amount set by the City of Kettering;
- D. Include such other information as the City of Kettering or any of its Boards, Commissions, Departments or Officers may reasonably require; and
- E. A statement as to why the appellant has standing to pursue the appeal from the administrative action by a statement of the way in which the administrative action adversely impacts the appellant.

Upon receipt of the appeal and payment of the fee, the Floodplain Administrator shall transmit said notice and all pertinent information on which the Floodplain Administrator's decision was made to the Board of Zoning Appeals. Upon receipt of the notice of appeal, unless the hearing is waived in writing by the appellant, the Board of Zoning Appeals shall set a date and time for hearing the appeal, give notice in writing to parties in interest, and decide the appeal within a reasonable time after it is submitted.

#### **1104.501.2.2 Appeal Standards**

The Board of Zoning Appeals may find that the notice, order, or other official action being appealed is arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the Board of Zoning Appeals may affirm, reverse, or vacate the notice, order, or other official action.

#### **1104.501.3 Variances**

A property owner believing that application of this Chapter would result in exceptional hardship to the property owner may file an application for a variance. In specific cases where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of this Chapter would result in exceptional hardship, the Board of Zoning Appeals shall have the power, as specified in this Section, to authorize variances from this Chapter which are not inconsistent with Federal regulations or contrary to the public interest.

##### **1104.501.3.1 Application for a Variance**

**1104.501.3.1.1** A property owner seeking a variance under this Chapter shall apply for a variance by filing an application with the Floodplain Administrator and pay the prescribed application fee. The application form shall be prescribed by the Floodplain Administrator.

**1104.501.3.1.2** Such application at a minimum shall contain the following information: Name, address, and telephone number of the applicant; legal description of the property; parcel map; description of the existing use; description of the proposed use; location of the floodplain and special flood hazard area; location of the proposed development in relation to the floodplain and special flood hazard area; description of the variance sought; reason for the variance request; Specific section(s) of this Chapter to be varied, explanation of variance need and reasons for variance; any other information reasonably required by the Floodplain Administrator.

**1104.501.3.2 Public Hearing**

Unless waived in writing by the applicant, the Board of Zoning Appeals shall hold a public hearing on the variance application. At such hearing the applicant and Floodplain Administrator shall be given an opportunity to present evidence relevant to the application. Notice of the hearing shall be given in accordance with Kettering Codified Ordinance Subsection 1175.10 (C).

**1104.501.4 VARIANCE STANDARDS**

**1104.501.4.1** In considering variance applications, the Board of Zoning Appeals shall consider the evidence presented, the purposes and standards of this Chapter, and the following factors:

- A. The danger that materials may be swept onto other lands to the injury of others.
- B. The danger to life and property due to flooding or erosion damage.
- C. The susceptibility of the proposed development and its contents to flood damage and the effect of such damage on the individual owner.
- D. The importance to the community of the services provided by the proposed facility.
- E. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage.
- F. The necessity to the facility of a waterfront location, where applicable.
- G. The compatibility of the proposed use with existing and anticipated development.
- H. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
- I. The safety of access to the property in times of flood for ordinary and emergency vehicles.
- J. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site.

- K. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

**1104.501.4.2** Variances shall only be issued when all of the following criteria are met:

- A. A showing of good and sufficient cause in light of the factors listed in Subsection 1104.501.4.1.
- B. A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of this Chapter does not constitute an exceptional hardship. The exceptional hardship cannot be self-created or caused.
- C. A determination that the granting of a variance will not result in increased flood heights beyond that which is allowed in these regulations; additional threats to public safety; extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws.
- D. A determination that the structure or other development is protected by methods to minimize flood damages.
- E. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

Upon consideration of the above factors and the purposes of this Chapter, the Board of Zoning Appeals may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Chapter.

**1104.501.4.3 Other Conditions for Variances**

- A. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- B. 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 Subsection 1104.501.6 have been fully considered and determined to all fully support granting the requested variance. As the lot size increases

beyond one-half acre, the technical justification required for issuing the variance increases.

- C. Any applicant to whom a variance is granted should 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 commensurate with the increased risk resulting from the reduced lowest floor elevation.

#### **1104.501.5 Procedure at Hearings**

**1104.501.5.1** All testimony shall be given under oath.

**1104.501.5.2** A complete record of the proceedings shall be kept, except confidential deliberations of the Board, but including all documents presented and a verbatim record of the testimony of all witnesses.

**1104.501.5.3** The applicant shall proceed first to present evidence and testimony in support of the appeal or variance.

**1104.501.5.4** The Floodplain Administrator may present evidence or testimony in opposition to the appeal or variance.

**1104.501.5.5** All witnesses shall be subject to cross-examination by the adverse party or their counsel.

**1104.501.5.6** Evidence that is not admitted may be proffered and shall become part of the record for appeal.

**1104.501.5.7** The Board shall issue subpoenas upon written request for the attendance of witnesses. A reasonable deposit to cover the cost of issuance and service shall be collected in advance.

#### **1104.501.6 Board of Zoning Appeals' Decisions**

Decisions may be announced at the conclusion of the hearing and thereafter issued in writing or decisions may be issued in writing within a reasonable time after the hearing. The Board of Zoning Appeals shall not be required to hear any case which has been the subject of an appeal or variance request during the previous twelve (12) months.

#### **1104.501.7 Appeal of Board of Zoning Appeals' Decisions**

Those aggrieved by a decision made under this Chapter by the Board of Zoning Appeals may appeal such decision to the Court of Common Pleas, as provided in Ohio Revised Code

Chapter 2506. The appellant shall pay all costs associated with preparing the record for appeal. Payment shall be due on preparation of the record.

## **SECTION 1104.601 ENFORCEMENT**

### **1104.601.1 Compliance Required**

**1104.601.1.1** No structure or development shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged or altered without full compliance with the terms of this Chapter, unless specifically exempted from filing for a development permit as stated in Subsection 1104.301.9.

**1104.601.1.2** Failure to obtain a floodplain development permit shall be a violation of these regulations and shall be punishable in accordance with Subsection 1104.601.5.

**1104.601.1.3** Floodplain development permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the use, and arrangement, set forth in such approved plans and applications or amendments thereto. Use, development, or construction contrary to that authorized shall be deemed a violation of this Chapter and punishable in accordance with Subsection 1104.601.5.

### **1104.601.2 Unlawful Acts**

It shall be unlawful for any person, firm or corporation to be in conflict with or in violation of any of the provisions of this Chapter. No person shall fail or refuse to comply with any decision or order of the Floodplain Administrator or any provision of this Chapter.

### **1104.601.3 Notice of Violation**

The Floodplain Administrator shall serve any notice of violation or order in accordance with Subsection 1104.601.8.

### **1104.601.4 Prosecution of Violation**

If a notice of violation is not complied with or an order of the Floodplain Administrator is issued for failure to comply, then the Floodplain Administrator may institute or cause to be instituted a legal proceeding to restrain, correct, or abate such violation, or to require the removal or termination of the unlawful structure or development in violation of the provisions of this Chapter or of the order or direction made pursuant thereto, including penalties for violation of failure to comply.

**1104.601.5 Violation Penalties**

Whoever is convicted of or pleads guilty to a violation of any provision of this Code, shall be guilty of a minor misdemeanor. Any such violation shall be a strict liability offense (*malum prohibitum*) and no proof of intent shall be necessary. Each day that a violation continues after notice has been served shall be deemed a separate offense.

**1104.601.6 Habitual Offender**

Any person who commits a violation of this Chapter, after having previously been convicted by the Court for committing a violation of this Chapter within a thirty-six (36) month period, shall be guilty of a fourth degree misdemeanor.

**1104.601.7 Abatement of Violation**

The imposition of the penalties herein prescribed shall not preclude the Kettering Law Director or the Law Director's designee from instituting appropriate action to restrain, correct, or abate a violation, or to stop illegal development.

**1104.601.8 Notices And Orders****1104.601.8.1 Notice To Owner or To Responsible Person(s).**

Whenever the Floodplain Administrator determines that there has been a violation of this Code or has grounds to believe that a violation has occurred, then notice shall be given to the owner or the person(s) (tenant, occupant, user, owner, etc.) responsible therefore in the manner prescribed in Subsections 1104.601.8.2 and 1104.601.8.3.

**1104.601.8.2 Form**

Such notice prescribed in Subsection 1104.601.8.1 shall:

- A. Be in writing; and
- B. Include a description of the property sufficient for identification; and
- C. Include a statement of the violation or violations and why the notice is being issued; and
- D. Include a correction order allowing a reasonable time to bring the development, building, structure, equipment, premises or property, as the case may be, into compliance with the provisions of this Chapter; and

- D. Include a correction order allowing a reasonable time to bring the development, building, structure, equipment, premises or property, as the case may be, into compliance with the provisions of this Chapter; and
- E. Inform the owner or the person(s) to whom the notice of violation is issued of the right to appeal.

#### 1104.601.8.3 Method of Service

Any notice or order of the Floodplain Administrator shall be deemed to have been properly served if a copy thereof is:

- A. Delivered personally; or
- B. Left at the usual place of abode of the person to whom it is to be served upon and with someone who is 18 years of age or older; or
- C. Sent by certified, preposted U.S. mail to the last known address; or
- D. If the notice is attempted to be served by certified, preposted U.S. mail and then returned showing that the notice (letter) was not delivered, or the certified letter is not returned within fourteen (14) days after the date of mailing, then notice may be sent by regular, preposted, first-class U.S. mail to the last known address; or
- E. If the notice is attempted to be served by regular, first class U.S. mail, postage prepaid, and within fourteen (14) days after the date of mailing the letter is then returned showing that the letter was not delivered, or is not returned within fourteen (14) days after the date of mailing, then notice shall be posted in a conspicuous place in or about the development, structure, building, premises or property affected by such notice.

**Legislative History:** Ord. 2913-80; passed 9-23-80. Ord. 3015-82; passed 7-27-82. Ord. 3331-88; passed 6-14-88. Ord. 3990-04; passed 12-14-04. Ord. 4167-11; passed 3-8-11.