

March 31, 2023

TO: Mayor and City Council Members
FROM: Brian K. Riblet, City Manager *BKR*
SUBJECT: City Council Business Session of Wednesday, April 5, 2023

As a reminder, City Council is scheduled to meet in Business Session on Wednesday, April 5, 2023 at 6:00 p.m.

Business Session

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Special Presentation
 - a. The family of Sofia LaTorre will be presented with a Proclamation to proclaim April 16 as 4p-/Wolf-Hirschhorn Syndrome (WHS) Awareness Day
 - b. Kenney Bertz and his family will be present for his ceremonial swearing in as the City's newest sergeant
5. Guest and Residents
6. Legislation for Consideration this Evening

Pending Legislation

There is no pending legislation

Since all following legislation has been made available to the public before this evening's meeting it is moved that Council accept the legislative Agenda and read all legislation by title only.

Voice Vote

New Legislation

- a. A Resolution Advocating For The Restoration of The Local Government Fund To Pre-Recession Levels- (Mr. Suer) Information has been previously supplied on this legislation that, if approved, would formally endorse Council's support to maintain the Local Government Fund as a part of the State Budget. The Local Government Fund provides valuable resources to many communities throughout the State of Ohio, and it has been cut in half over the last 10+ years causing a considerable budget strain for many small communities. This legislation openly endorses our support for the Fund.

Move for passage of the Resolution

Explain

Roll Call Vote

- b. A Resolution Authorizing The City Manager To Accept The Opioid Settlement And Enter Into The Participation Agreement With Opioid Manufacturers Teva And Allergan And Pharmacies/Distributors CVS, Walgreens And Walmart - (Mr. Messer) Information has been previously supplied on this legislation that, if approved, would endorse the City's support to settle litigation with various opioid manufacturers and pharmacies who have been sued across the United States. The City participates through One Ohio Negotiating Committee headed by the Ohio Attorney General. This legislation authorizes us to accept the Participation Agreement and execute an appropriate Settlement and Release to secure these funds for the benefit of the State and many of its local subdivisions.

Move for passage of the Resolution

Explain

Roll Call Vote

- c. An Ordinance Amending Chapter 156.02 of The Land Usage Code, Subdivision Regulations: Requirements For Subdivision Approval - (Vice Mayor Bissmeyer-1st Reading) Information has been previously supplied on this legislation that, if approved, would authorize a series of text amendments to Chapter 156.02 Subdivision Regulations: Requirements for Subdivision Approval, to become consistent with the Hamilton County Engineers Office.

Move for passage of the first reading of the Ordinance

Roll Call Vote

The second reading of the Ordinance will be at the May 3, 2023 Business Session. The third reading will be at the June 7, 2023 Business Session with adoption requested at that meeting.

- d. An Ordinance Amending Chapter 157 of The Land Usage Code, Floodplain Management Regulations And Flood Damage Prevention, And Declaring An Emergency – (Vice Mayor Bissmeyer-1st Reading) Please see the attached correspondence from Kevin Chesar, Community Development Director, requesting that City Council consider the approval of this Ordinance that would authorize a series of text amendments to Chapter 157 Flood Damage Protection.

The Federal Emergency Management Agency (FEMA) has issued a Letter of Final Determination that contains revised Flood Insurance Study and Flood Insurance Rate Maps that will become effective on June 7, 2023. Due to this requirement by FEMA, staff is asking the third reading to be suspended and the legislation to be passed as an emergency.

Move for passage of the first reading of the Ordinance

Roll Call Vote

The second reading of the Ordinance will be held at the May 3, 2023 Business Session with the third reading suspended and adoption of the Ordinance as an emergency requested at that meeting.

7. Administration Report
8. Minutes-March 22, 2023 Work Session
9. Mayor's Court Report
10. Other Business
11. Executive Session
12. Adjournment

Should you have any questions or concerns regarding this information, please do not hesitate to contact me.

C: Connie Gaylor, Executive Assistant/Clerk of Council
Department Heads
Terry Donnellon, Law Director



CITY COUNCIL BUSINESS SESSION AGENDA

10101 Montgomery Road • Montgomery, Ohio 45242
(513) 891-2424 • Fax (513) 891-2498

April 5, 2023
City Hall
6:00 p.m.

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Special Presentation
 - a. The family of Sofia LaTorre will be presented with a Proclamation to proclaim April 16 as 4p-/Wolf-Hirschhorn Syndrome (WHS) Awareness Day
 - b. Kenney Bertz and his family will be present for his ceremonial swearing in as the City's newest sergeant
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Voice Vote

New Legislation

- a. A Resolution Advocating For The Restoration of The Local Government Fund To Pre-Recession Levels- (Mr. Suer)

Move for passage of the Resolution

Explain

Roll Call Vote

- b. A Resolution Authorizing The City Manager To Accept The Opioid Settlement And Enter Into The Participation Agreement With Opioid Manufacturers Teva And Allergan And Pharmacies/Distributors CVS, Walgreens And Walmart – (Mr. Messer)

Move for passage of the Resolution

Explain

Roll Call Vote

- c. An Ordinance Amending Chapter 156.02 of The Land Usage Code, Subdivision Regulations: Requirements For Subdivision Approval – (Vice Mayor Bissmeyer-1st Reading)

Move for passage of the first reading of the Ordinance

Roll Call Vote

The second reading of the Ordinance will be at the May 3, 2023 Business Session. The third reading will be at the June 7, 2023 Business Session with adoption requested at that meeting.

- d. An Ordinance Amending Chapter 157 of The Land Usage Code, Floodplain Management Regulations And Flood Damage Prevention, And Declaring An Emergency – (Vice Mayor Bissmeyer-1st Reading)

Move for passage of the first reading of the Ordinance

Roll Call Vote

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7. Administration Report

8. Approval of Minutes – March 22, 2023 Work Session

9. Mayor's Court Report

10. Other Business

11. Executive Session

12. Adjournment

C: Connie Gaylor, Executive Assistant/Clerk of Council
Department Heads
Terry Donnellon, Law Director



CITY OF

MONTGOMERY

Proclamation

WHEREAS, the good health and general well-being of our community is strengthened by our awareness and understanding of a genetic disorder known as 4p- syndrome, with Wolf-Hirschhorn as the main syndrome; and

WHEREAS, children with 4p- syndrome are usually born with low birth weight and develop slowly, both cognitively and physically, compared to their same-age peers, and experience medical complications while still maintaining pleasant and lovable personalities; and

WHEREAS, it is estimated that 4p- Syndrome occurs in 1 out of every 50,000 births with an estimate that 30% die within the first few years of life; however, dedicated professionals are presently involved in valuable research to explore new therapies and diagnostic tools, and to offer hope to persons with 4p- syndrome; and

WHEREAS, the 4p- Support Group estimates that approximately 1,000 individuals in the United States have 4p- syndrome, though it is thought many remain undiagnosed; and

WHEREAS, it is incumbent upon all citizens to work together as a people to increase research into understanding the syndrome, to advocate for effective diagnostic screenings, to support the development of improved therapies for early intervention and other necessary and critical treatments, as well as join in recognizing and applauding the valuable role which families and advocates of those who have 4p- syndrome play in helping our medical community to advance the knowledge and awareness of this syndrome; and

WHEREAS, the state of Ohio is pleased to join people throughout our nation in promoting a special celebration which seeks to raise awareness of 4p- syndrome, designed to have a positive and productive impact on the lives of all people with 4p- syndrome and their caregivers.


NOW THEREFORE, I, Craig Margolis, the 24th Mayor of the City of Montgomery, do hereby proclaim **April 16, 2023** as

4p-/WOLF-HIRSCHHORN SYNDROME AWARENESS DAY

in the City of Montgomery and urge all our citizens to observe this month in ways relevant to its importance and significance.



IN WITNESS WHEREOF, I have hereunto subscribed my name this 5th day of April, Two Thousand Twenty-Three.



Craig D. Margolis, Mayor

RESOLUTION NO. _____, 2023

**A RESOLUTION ADVOCATING FOR THE RESTORATION OF THE
LOCAL GOVERNMENT FUND TO PRE-RECESSION LEVELS**

WHEREAS, the Local Government Fund is an important revenue source for municipalities throughout the State of Ohio to support and sustain vital local services including police and fire protection; and

WHEREAS, the Local Government Fund was reduced in 2011 by 50% during Gov. Kasich's Administration from 3.68% of General Revenue Funds to its current level of 1.66% of General Revenue Funds; and

WHEREAS, in addition to reducing this needed source of revenue, past Ohio General Assemblies have continued to decrease funding and revenue sharing for local governments by eliminating in part the Estate Tax and phasing out the Tangible Personal Property Tax; and

WHEREAS, this continuing revenue loss has made it increasingly difficult to sustain basic services, rebuild infrastructure, and bolster public safety services; and

WHEREAS, when municipalities experience success in fostering safe communities, building sound infrastructure, and increasing economic development, the State of Ohio reaps the benefits as well; and

WHEREAS, a reinvestment in the Local Government Fund would aid the State in its goal of lowering taxes on all Ohioans by enabling municipalities to better manage their local tax burden.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. The Ohio General Assembly should restore the Local Government Fund to pre-recession levels, ensuring that local communities are able to provide critical services and improvements in infrastructure and public safety.

SECTION 2. This Council does hereby declare its opposition to any further cuts to the Local Government Fund or the future diversion of revenues from the Local Government Fund which would negatively impact its residents and businesses.

SECTION 3. The Clerk and City Manager are requested to send a copy of this legislation to our local State Representatives and Senators requesting their support to sustain and grow the Local Government Fund.

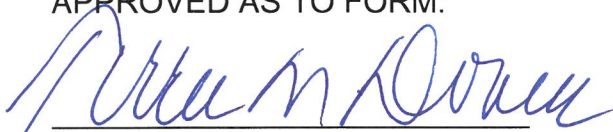
SECTION 4. This Resolution shall be in full force and effect from and after its passage.

PASSED: _____

ATTEST: _____
Connie M. Gaylor, Clerk of Council

Craig D. Margolis, Mayor

APPROVED AS TO FORM:



Terrence M. Donnellon, Law Director

RESOLUTION NO. _____, 2023

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT THE OPIOID SETTLEMENT AND ENTER INTO THE PARTICIPATION AGREEMENT WITH OPIOID MANUFACTURERS TEVA AND ALLERGAN AND PHARMACIES/DISTRIBUTORS CVS, WALGREENS AND WALMART

WHEREAS, opioid manufacturers Teva and Allergan (“Manufacturers”), and CVS, Walgreens and Walmart (“Pharmacies”) have proposed a joint settlement (“Settlement”) to various states, local subdivisions and special districts including the State of Ohio and its political subdivisions pertaining to the Manufacturers’ and Pharmacies’ shared liability for the distribution of opioids that was a significant cause of the national opioid crisis that lead to mass addiction and overdose deaths that affected both the State of Ohio and the City of Montgomery; and

WHEREAS, under the Settlement, the Manufacturers and Pharmacies will pay an amount up to an estimated \$20,000,000 to be allocated among the states including the State of Ohio and its political subdivisions, which Settlement payments will be over several years, with most of the money received being restricted in use and earmarked for abatement of the opioid epidemic; and

WHEREAS, the Ohio Attorney General has recommended the political subdivisions of the State of Ohio accept the Settlement; and

WHEREAS, the Law Director and the City Manager recommend that Council vote to accept the Settlement and enter into the Participation Agreement (“the Agreement”) with the Manufacturers and Pharmacies as described and incorporated by reference herein.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of

Montgomery, Hamilton County, Ohio, that:

SECTION 1. Council hereby accepts the recommendation of the City Manager and the Law Director and authorizes approval of the Settlement and execution of a proposed Participation Agreement and Release on behalf of the City on or before the Settlement deadline currently set for April 18, 2023.

SECTION 2. The Montgomery Council hereby directs the City Manager to enter into the Participation Agreement on behalf of the City on or before any Settlement deadline.

SECTION 3. The City Manager is hereby authorized to take all steps necessary to resolve these matters in accordance with the terms of the Settlement and Agreement.

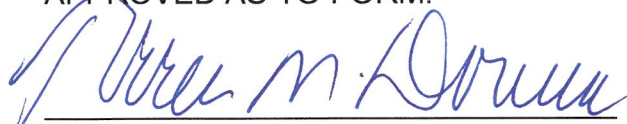
SECTION 4. This Resolution shall be in full force and effect immediately upon adoption.

PASSED: _____

ATTEST: _____
Connie M. Gaylor, Clerk of Council

Craig D. Margolis, Mayor

APPROVED AS TO FORM:



Terrence M. Donnellon, Law Director

ORDINANCE NO. , 2023

**AN ORDINANCE AMENDING CHAPTER 156.02 OF THE LAND USAGE CODE,
SUBDIVISION REGULATIONS: REQUIREMENTS FOR SUBDIVISION APPROVAL**

WHEREAS, the Community Development Department has completed a comprehensive review of Chapter 156.02 of the Code of Ordinances which establishes subdivision regulations for subdivision approval; and

WHEREAS, after such review, the Community Development Department has recommended that the attached Schedule A modifications to Chapter 156.02 be adopted which will modernize the regulations for subdivision approval consistent with the Office of the Engineer of Hamilton County, Ohio.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. The attached update to Chapter 156.02, *Subdivision Regulations: Requirements for Subdivision Approval*, are hereby adopted in their entirety as if fully rewritten herein.

SECTION 2. All Ordinances or parts of Ordinances inconsistent with these modifications are hereby repealed.

SECTION 3. All sections, subsections, parts and provisions of this Ordinance are hereby declared to be independent sections, subsections, parts and provisions, and the holding of any section, subsection, part or provision to be unconstitutional, void or ineffective for any reason shall not affect or render invalid any other section, subsection, part or provision of this Ordinance.

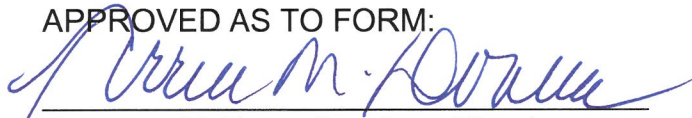
SECTION 4. This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED: _____

ATTEST: _____
Connie M. Gaylor, Clerk of Council

Craig D. Margolis, Mayor

APPROVED AS TO FORM:



Terrence M. Donnellon, Law Director

ORDINANCE NO. _____, 2023

**AN ORDINANCE AMENDING CHAPTER 157 OF THE LAND USAGE CODE,
FLOODPLAIN MANAGEMENT REGULATIONS AND FLOOD DAMAGE
PREVENTION, AND DECLARING AN EMERGENCY**

WHEREAS, the Federal Emergency Management Agency (FEMA) has updated the area flood insurance rate maps and flood insurance study for Hamilton County, Ohio to be effective June 7, 2023; and

WHEREAS, as a part of such updated studies by FEMA, the Ohio Department of Natural Resources (ODNR) has reviewed the City's flood damage prevention regulations and requested an update to be consistent with various federal, state and local guidelines; and

WHEREAS, the Community Development Director, working with representatives of ODNR, has updated current Chapter 157 of the Code of Ordinances, *Flood Damage Prevention*, and the Community Development Director recommends that such updates as detailed in the attached Schedule A be adopted.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Montgomery, Ohio, that:

SECTION 1. Adoption of Regulations. The attached regulations outlined in Schedule A are hereby adopted in their entirety by reference as if fully rewritten herein.

SECTION 2. Basis For Establishing the Areas of Special Flood Hazard. For the purposes of these regulations, the following studies and/or maps are adopted:

A. Flood Insurance Rate Map Hamilton County, Ohio and Incorporated Areas dated June 7, 2023. Flood Insurance Study Hamilton County, Ohio and Incorporated Areas dated June 7, 2023.

B. Any hydrologic and/or hydraulic engineering analyses authored by a registered Professional Engineer in the State of Ohio which has been approved by the City of Montgomery and accepted per its regulations.

C. Any 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 Building and Community Development Office, City of Montgomery, 10101 Montgomery Road, Montgomery, Ohio 45242.

SECTION 3. Abrogation and Greater Restrictions. These regulations are not intended to repeal any other existing Ordinances including, Subdivision Regulations, Zoning or Building Codes. In the event of a conflict between these regulations and any other Ordinance, the more restrictive shall be followed. These regulations shall not impair any deed restriction covenant or easement but the land subject to such interests shall also be governed by these regulations.

SECTION 4. Interpretation. In the interpretation and application of these regulations, 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 these regulations may be in conflict with a state or federal law, such state or federal law shall take precedence over these regulations.

SECTION 5. Warning and Disclaimer of Liability. The degree of flood protection required by these regulations 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. These regulations do 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. These regulations shall not create liability on the part of the City of Montgomery, any officer or employee thereof, or the Federal Emergency Management

Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made thereunder.

SECTION 6. Severability. Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 7. All Ordinances or parts of Ordinances inconsistent with these modified regulations are hereby repealed.

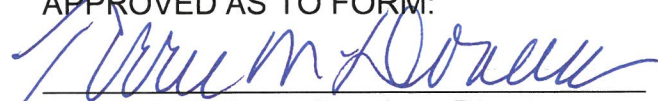
SECTION 8. In order to meet the program requirements of the National Flood Insurance Program, so as to have no gaps in coverage with the adoption of the new maps and studies effective June 7, 2023, this Ordinance is hereby declared to be an emergency measure necessary for the public health, safety and welfare, and as a result it shall be effective immediately upon passage.

PASSED: _____

ATTEST: _____
Connie M. Gaylor, Clerk of Council

Craig D. Margolis, Mayor

APPROVED AS TO FORM:



Terrence M. Donnellon, Law Director

These minutes are a draft of the proposed minutes from the City Council meeting. They do not represent the official record of proceedings until formally adopted by the City Council. Formal adoption is noted by signature of the Clerk within the minutes.

City of Montgomery
City Council Work Session Minutes
March 22, 2023

Present

Brian Riblet, City Manager
Terry Donnellon, Law Director
Tracy Henao, Asst. City Manager
Maura Gray, Finance Director
Kevin Chesar, Community Dev. Dir.
Greg Vonden Benken, Asst. Police Chief
Gary Heitkamp, Public Works Director
Paul Wright, Fire Chief
Matthew Vanderhorst, Community and Information Serv. Dir.
Amy Frederick, Communications and Engagement Coord.
Connie Gaylor, Clerk of Council
Wendy Grethel, Customer Service and Volunteer Specialist

City Council Members Present

Craig Margolis, Mayor
Lee Ann Bissmeyer, Vice Mayor
Mike Cappel
Chris Dobrozi
Ron Messer
Sasha Naiman
Ken Suer

City Council convened its Work Session for March 22, 2023 at 6:00 p.m. at City Hall with Mayor Margolis presiding.

ROLL CALL

Mayor Margolis asked for a motion to dispense with roll call as all members were present.

Mr. Cappel made a motion to dispense with roll call. Vice Mayor Bissmeyer seconded. City Council unanimously agreed.

SPECIAL PRESENTATIONS

Mr. Riblet introduced Ms. Maura Gray to City Council as the new Finance Director for the City. City Council welcomed Ms. Gray to the Montgomery family and wished her well in her new role.

Mrs. Naiman presented William and Patricia Matulewicz with a Certificate of Appreciation as the 2022 Winter Seasons of Beauty Winners. City Council thanked the Matulewicz's for their dedication in maintaining their beautiful home during the holiday season and year around.

Staff provided an update on the 2022-2026 Strategic Plan focusing on the progress of each goal from 2022 to current day as well as discussing what was to come throughout the 2023 year.

LEGISLATION FOR CONSIDERATION THIS EVENING

There was no legislation for consideration at the meeting.

ESTABLISHING AN AGENDA FOR APRIL 5, 2023 BUSINESS SESSION

PENDING LEGISLATION

There was no pending legislation.

CHAPTER 157: FLOOD DAMAGE PREVENTION

Section

General Provisions

- 157.01 Findings of fact
- 157.02 Statement of purpose
- 157.03 Methods of reducing flood loss
- 157.04 Lands to which these regulations apply
- 157.05 Basis for establishing the areas of special flood hazard
- 157.06 Abrogation and greater restrictions
- 157.07 Interpretation
- 157.08 Warning and disclaimer of liability
- 157.09 Definitions
- 157.10 Statutory Authorization

Use and Development Standards for Flood Hazard Reduction

- 157.20 Use regulations
- 157.21 Water and wastewater systems
- 157.22 Subdivisions and large developments
- 157.23 Residential structures
- 157.24 Nonresidential structures
- 157.25 Accessory structures
- 157.26 Recreational vehicles
- 157.27 Above ground gas or liquid storage tanks
- 157.28 Assurance of flood carrying capacity

Administration

- 157.40 Designation of Floodplain Administrator; duties and responsibilities
- 157.41 Floodplain development permits
- 157.42 Application required
- 157.43 Review and approval of a floodplain development permit application; inspections

- 157.44 Post-construction certifications required
- 157.45 Revoking a floodplain development permit
- 157.46 Exemption from filing a development permit
- 157.47 State and Federal Development
- 157.48 Map maintenance activities
- 157.49 Data use and flood map interpretation
- 157.50 Use of Preliminary Flood Insurance Rate Map and/or Flood Insurance Study Data
- 157.51 Substantial damage determinations

Appeals and Variances

- 157.65 Appeals Board established; powers and duties
- 157.66 Variances
- 157.67 Appeal to the court

Enforcement

- 157.80 Compliance required
- 157.81 Notice of violation
- 157.82 Violations and penalties

GENERAL PROVISIONS

§ 157.01 FINDINGS OF FACT.

The City of Montgomery 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, flood proofed, or otherwise protected from flood damage also contribute to the flood loss. In order to minimize the threat of such damages and to achieve the purposes hereinafter set forth, these regulations are adopted.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.02 STATEMENT OF PURPOSE.

It is the purpose of these regulations 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) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- (F) Help maintain a stable tax base by providing for the proper use and development of areas of special flood hazard so as to protect property and to minimize future flood blight areas;
- (G) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions;
- (H) Minimize the impact of development on adjacent properties within and near flood prone areas;
- (I) Ensure that the flood storage and conveyance functions of the floodplain are maintained;
- (J) Minimize the impact of development on the natural, beneficial values of the floodplain;
- (K) Prevent floodplain uses that are either hazardous or environmentally incompatible; and
- (L) Meet community participation requirements of the National Flood Insurance Program.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.03 METHODS OF REDUCING FLOOD LOSS.

In order to accomplish its purposes, these regulations include methods and 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 which serve such uses, be protected against flood damage at the time of initial construction;

(C) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

(D) Controlling filling, grading, dredging, 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.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.04 LANDS TO WHICH THESE REGULATIONS APPLY.

These regulations shall apply to all areas of special flood hazard within the jurisdiction of the City of Montgomery as identified in § 157.05, including any additional areas of special flood hazard annexed by the City of Montgomery.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

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

For the purposes of these regulations, the following studies and/or maps are adopted:

(A) Flood Insurance Rate Map and Flood Insurance Study, Hamilton County, Ohio and Incorporated Areas dated June 7, 2023.

(B) Other studies and/or maps, which may be relied upon 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 authored by a registered Professional Engineer in the State of Ohio which has been approved by the City of Montgomery as required by Section 157.22 Subdivisions and Other New Developments.

Any 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 Community and Development Department Office, City of Montgomery, 10101 Montgomery Road, Montgomery, Ohio 45242

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.06 ABROGATION AND GREATER RESTRICTIONS.

These regulations are not intended to repeal any existing ordinances, including subdivision regulations, zoning or building codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall be followed. These regulations are not

intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. However, where this ordinance and another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.07 INTERPRETATION.

In the interpretation and application of these regulations, 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 these regulations may be in conflict with a state or federal law, such state or federal law shall take precedence over these regulations.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.08 WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by these regulations 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. These regulations do 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. These regulations shall not create liability on the part of the City of Montgomery, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made thereunder.

(A) Severability - Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof, other than the part so declared to be unconstitutional or invalid.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.09 DEFINITIONS.

For the purpose of this chapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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 these regulations or a request for a variance.

BASE FLOOD. The flood having a 1% 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 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, 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:

- (1) **Zone A.** Special flood hazard areas inundated by the 100-year flood in any given year; base flood elevations are not determined.
- (2) **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.
- (3) **Zone AO.** Special flood hazard areas inundated by the 100-year flood in any given year; with flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths are determined.
- (4) **Zone AH.** Special flood hazard areas inundated by the 100-year flood in any given year; flood depths of 1 to 3 feet (usually areas of ponding); base flood elevations are determined.
- (5) **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.
- (6) **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.
- (7) **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 2 feet 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.

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

FLOODWAY. 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; or

(3) Individually listed on the State of Ohio's inventory of historic places maintained by the Ohio Historic Preservation Office.

(4) Individually listed on the inventory of historic places maintained by the City of Montgomery 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.

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.

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. LOMCs are broken down into the following categories:

(1) 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.

(2) 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 elevations and is, therefore, excluded from the special flood hazard area.

- (3) 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 Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies.

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 R.C. Chapter 4781.

MANUFACTURED HOME PARK. As specified in the Ohio Adm. Code 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.

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 Flood Insurance Rate Map 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. Structures for which the “start of construction” commenced on or after the effective date of a floodplain regulation adopted by the City of Montgomery and includes any subsequent improvements to such structures. For the purposes of determining flood insurance rates, structures for which the “start of construction” commenced on or after the effective date of initial FIRM [June 25, 1976], and includes any subsequent improvements to such structures.

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 the Ohio Rev. Code 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 Ohio Rev. Code 4703.01 and 4703.19.

REGISTERED PROFESSIONAL ENGINEER. A person registered as a professional engineer pursuant to Ohio Rev. Code Chapter 4733.

REGISTERED PROFESSIONAL SURVEYOR. A person registered as a professional surveyor pursuant to Ohio Rev. Code Chapter 4733.

SPECIAL FLOOD HAZARD AREA. Also known as "Areas of Special Flood Hazard", it is the land in the floodplain subject to a 1% 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, AI-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. 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 its before damaged condition would equal or exceed 50% 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:

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

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

VARIANCE. A grant of relief from the standards of these regulations.

§ 157.10 STATUTORY 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. Therefore, the City Council of the City of Montgomery, State of Ohio, does ordain as follows:

USE AND DEVELOPMENT STANDARDS FOR FLOOD HAZARD REDUCTION

§ 157.20 USE REGULATIONS.

The following use and development standards in this subchapter apply to development wholly within, partially within, or in contact with any special flood hazard area as established in § 157.05 or § 157.49(A).

(A) Permitted uses. All uses not otherwise prohibited in this section or any other applicable land use regulation adopted by the City of Montgomery are allowed provided they meet the provisions of these regulations.

§ 157.21 WATER AND WASTEWATER SYSTEMS.

The following standards apply to all water supply, sanitary sewerage and waste disposal systems in the absence of any 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 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.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.22 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 the regulations;

(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; and

(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 50 lots or 5 acres, whichever is less.

(E) The applicant shall meet the requirement to submit technical data to FEMA in § 157.48(A)(1)(d) when a hydrologic and hydraulic analysis is completed that generates base flood elevations as required by division (D) above of this section.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.23 RESIDENTIAL STRUCTURES.

The requirements of §157.23 apply to new construction of residential structures and to substantial improvements of residential structures in zones A, A1-30, AE, AO, and AH, when designated on the community's effective FIRM, and when designated on a preliminary or final FIRM issued by FEMA under the circumstances provided in §157.50.

(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 (this division (A)) and construction materials resistant to flood damage (division (B) below of this section) 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. Where flood protection data are not available, the

structure shall have the lowest floor, including basement, elevated at least 2 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:

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

(2) 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

(3) Have a minimum of 2 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) 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 this § 157.23.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.24 NONRESIDENTIAL STRUCTURES.

The requirements of Section 157.24 apply to new construction and to substantial improvements of nonresidential structures in Zones A, A1-30, AE, AO, and AH, when designated on the community's effective FIRM, and when designated on a preliminary or final FIRM issued by FEMA under circumstances provided in Section 157.50.

(A) New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet the requirements of § 157.23(A) - (C) and (E) - (G).

(B) 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 Federal Emergency Management Floodproofing Certificate, that the design and methods of construction are in accordance with divisions (B)(1) and (2) above of this section.

(C) Where flood protection elevation data are not available, the structure shall have the lowest floor, including basement, elevated at least 2 feet above the highest adjacent natural grade.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.25 ACCESSORY STRUCTURES.

Structures that are 600 square feet or less which are used for parking and storage only are exempt from elevation or dry floodproofing standards within Zones A, A1-30, AE, AO, and AH designated on the community's FIRM. Such structures must meet the following standards:

(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 floodproofed to or above the level of the flood protection elevation; and

(F) They shall meet the opening requirements of Section 157.23 (E)(3).

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.26 RECREATIONAL VEHICLES.

Recreational vehicles on sites within Zones A, A1-30, AE, AO, or AH must meet at least 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 157.41 and 157.42, and meet all standards of Section 157.23.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.27 GAS OR LIQUID STORAGE TANKS.

Within Zone A, A1-30, 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.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.28 ASSURANCE OF FLOOD CARRYING CAPACITY.

Pursuant to the purpose and methods of reducing flood damage stated in these regulations, 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) 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

(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 § 157.48(A);

(b) An evaluation of alternatives which would not result in increased base flood elevations and an explanation why these alternatives are not feasible;

(c) Certification that no structures are located in areas which would be impacted by the increased base flood elevation;

(d) Documentation of individual legal notices to all impacted property owners within and outside the community, explaining the impact of the proposed action on their property; and

(e) Concurrence of the City Manager of City of Montgomery 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 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,

(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) Division (A)(2), items (a) and (c)-(e) above of this section.

(C) Alterations of a watercourse. For the purpose of these regulations, 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 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 the Federal Emergency Management Agency.

(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 City of Montgomery 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 § 157.48(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.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

ADMINISTRATION

§ 157.40 DESIGNATION OF FLOODPLAIN ADMINISTRATOR; DUTIES AND RESPONSIBILITIES.

(A) Designation of the Floodplain Administrator. The Zoning Administrator is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator.

(B) Duties and responsibilities of the Floodplain Administrator. The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

- (1) Evaluate applications for permits to develop in special flood hazard areas.
- (2) Interpret floodplain boundaries and provide flood hazard and flood protection elevation information.
- (3) 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.
- (4) Inspect buildings and lands to determine whether any violations of these regulations have been committed.
- (5) Make and permanently keep all records for public inspection 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 purpose of issuing floodplain development permits, elevation certificates, floodproofing certificates, variances, and records of enforcement actions taken for violations of these regulations.
- (6) Enforce the provisions of these regulations.
- (7) Provide information, testimony, or other evidence as needed during variance hearings.
- (8) Coordinate map maintenance activities and FEMA follow-up.
- (9) 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.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.41 FLOODPLAIN DEVELOPMENT PERMITS.

It shall be unlawful for any person to begin construction or other development activity including but not limited to filling; grading; construction; alteration, remodeling, or expanding any structure; or alteration of any watercourse wholly within, partially within or in contact with any identified special flood hazard area, as established in §§ 157.05, until a floodplain development permit is obtained from the Floodplain Administrator. Such floodplain development permit shall show that the proposed development activity is in conformity with the provisions of these regulations. No such permit shall be issued by the Floodplain Administrator until the requirements of these regulations have been met.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.42 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 his or her authorized agent, herein referred to as the applicant, prior to the actual commencement of such construction on a form furnished for that purpose. Where it is unclear whether a development site is in a special flood hazard area, the Floodplain Administrator may require an application for a floodplain development permit to determine the development's location. Such applications shall include, but not be limited to:

(A) Site plans drawn to scale showing the nature, location, dimensions, and topography of the area in question; the location of existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.

(B) Elevation of the existing, natural ground where structures are proposed.

(C) Elevation of the lowest floor, including basement, of all proposed structures.

(D) Such other material and information as may be requested by the Floodplain Administrator to determine conformance with, and provide enforcement of these regulations.

(E) Technical analyses 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 structure as required in § 157.24.

(2) Certification that fully enclosed areas below the lowest floor of a structure not meeting the design requirements of § 157.23(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 § 157.28(C).

(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 § 157.28(B).

(5) A hydrologic and hydraulic engineering analysis showing impact of any development on flood heights in an identified floodway as required by § 157.28(A).

(6) Generation of base flood elevation(s) for subdivision and other new developments as required by § 157.22.

(F) A floodplain development permit application fee.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.43 REVIEW AND APPROVAL OF A FLOODPLAIN DEVELOPMENT PERMIT APPLICATION; INSPECTIONS.

(A) Review.

(1) After receipt of a complete application, 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 § 157.42 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 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 (30) days after 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 ordinance, the Floodplain Administrator shall issue the permit. All floodplain development permits shall be conditional 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.

(C) Inspections. The Floodplain Administrator shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.44 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. For elevated structures in Zone A and Zone AO areas without a base flood elevation, the elevation certificate may be completed by the property owner or owner's representative.

(B) For all development activities subject to the standards of § 157.48(A), a Letter of Map Revision.

(C) 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.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.45 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 granted thereon. In the event of the revocation of a permit, an appeal may be taken to the Board of Zoning Appeals in accordance with §§ 157.65 through 157.67 of these regulations.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.46 EXEMPTION FROM FILING A DEVELOPMENT PERMIT.

(A) 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 filling and grading) valued at less than \$2500.:

§ 157.47 STATE AND FEDERAL DEVELOPMENT

(A) Development that is funded, financed, undertaken, or preempted by state agencies shall comply with minimum NFIP criteria.

(B) Before awarding funding or financing or granting a license, permit, or other authorization for a development that is or is to be located within a 100-year floodplain, a state agency shall require the applicant to demonstrate to the satisfaction of the agency that the development will comply with minimum NFIP criteria and any applicable local floodplain management resolution or ordinance as required by Ohio Revised Code Section 1521.13. This includes, but is not limited to:

(1) 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 the Ohio Administrative Code Section 4781-12.

(2) Major utility facilities permitted by the Ohio Power Siting Board under Section 4906 of the Ohio Revised Code.

(3) Hazardous waste disposal facilities permitted by the Hazardous Waste Siting Board under Section 3734 of the Ohio Revised Code.

(C) Development activities undertaken by a federal agency and which are subject to Federal Executive Order 11988 – Floodplain Management.

(1) Each 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.

§ 157.48 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 Montgomery flood maps, studies and other data identified in § 157.05 accurately represent flooding conditions so appropriate floodplain management criteria are based on current data, the following map maintenance activities are identified:

(A) Requirement to submit new technical data.

(1) For all development proposals that impact floodway delineations or base flood elevations, the community 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 other new development proposals requiring the establishment of base flood elevations in accordance with § 157.22.

(2) It is the responsibility of the applicant to have technical data, required in accordance with this division (A), 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.

(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 riverine areas where FEMA has provided base flood elevations but no floodway.

(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 division (A)(1) above of this section.

(B) 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 Montgomery, and may be submitted at any time.

(C) Annexation/Detachment. Upon occurrence, the Floodplain Administrator shall notify FEMA in writing whenever the boundaries of the City of Montgomery 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 that the City of Montgomery's Flood Insurance Rate Map accurately represent the City of Montgomery boundaries, include within such notification a copy of a map of the City of Montgomery suitable for reproduction, clearly showing the new corporate limits or the new area for which the City of Montgomery has assumed or relinquished floodplain management regulatory authority.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.49 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 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.

(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 157.65-157.67, Appeals and Variances.

(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 ordinance 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.

Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.50 USE OF PRELIMINARY FLOOD INSURANCE RATE MAP AND/OR FLOOD INSURANCE STUDY DATA

(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 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), BFE 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) BFE and floodway data from a preliminary FIS or FIRM restudy are not required to be used in lieu of BFE and floodway data contained in an existing effective FIS and FIRM. However,

(a) Where BFEs 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 BFEs increase and floodways are revised to ensure that the health, safety, and property of their citizens are protected.

(b) Where BFEs 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 § 157.28(B) since the data in the draft or preliminary FIS represents the best data available.

(C) Zones B, C, and X:

(1) Use of BFE and floodway data from a preliminary FIRM or FIS are 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, or AO. Communities are encouraged to reasonably utilize preliminary FIS or FIRM data to ensure that the health, safety, and property of their citizens are protected.

§ 157.51 SUBSTANTIAL DAMAGE DETERMINATIONS.

(A) Damages 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:

- (1) Determine whether damaged structures are located in special flood hazard areas;
- (2) Conduct substantial damage determinations for damaged structures located in special flood hazard areas; and
- (3) Require owners of substantially damaged structures to obtain a floodplain development permit prior to repair, rehabilitation, or reconstruction.

(B) 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.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

APPEALS AND VARIANCES

§ 157.65 APPEALS BOARD ESTABLISHED; POWERS AND DUTIES.

(A) Appeals Board established. The Board of Zoning Appeals as established per § 150.1006(A) and (C) of the Montgomery Codified Ordinances shall serve as the Appeals Board for the administration of this Chapter. Records of the Appeals Board shall be kept and filed at the Community and Development Department Office, City of Montgomery, 10101 Montgomery Road, Montgomery, Ohio 45242.

(B) Powers and duties.

(1) The Appeals Board 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 these regulations.

(2) Authorize variances in accordance with § 157.66 of these regulations.

(C) Appeals. Appeals will be heard pursuant to the procedures established in Chapter 150.20, §§ 150.2001 through 150.2009.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.66 VARIANCES.

Any person believing that the use and development standards of these regulations would result in unnecessary hardship may file an application for a variance. The Appeals Board shall have the power to authorize, in specific cases, such variances from the standards of these regulations, not inconsistent with Federal regulations, as will not be contrary to the public interest where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations would result in unnecessary hardship.

(A) Application for a Variance

(1) Any owner, or agent thereof, of property for which a variance is sought shall make an application for a variance by filing it with the Floodplain Administrator, who upon receipt of the variance shall transmit it to the Appeals Board.

(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; description of the variance sought; and reason for the variance request

(B) Notice for Public Hearing

The Appeals Board shall schedule and hold a public hearing within thirty (30) days after the receipt of an application for a variance from the Floodplain Administrator. Prior to the hearing, a notice of such hearing shall be given in one (1) or more newspapers of general circulation in the community at least ten (10) days before the date of the hearing.

(C) Criteria for determination of variances.

(1) The applicant shall present such statements and evidence as the Appeals Board requires. In considering such variance applications, the Appeals Board shall consider and make findings of fact on all evaluations, all relevant factors, standards specified in other sections of these regulations 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 facility and its contents to flood damage and the effect of such damage on the individual owner.
- (d) The importance of the services provided by the proposed facility to the community.
- (e) The 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.

(2) Variances shall only be issued upon:

- (a) A showing of good and sufficient cause.
- (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 these regulations does not constitute an exceptional hardship to the applicant.

(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.

(3) Upon consideration of the above factors and the purposes of these regulations, the Appeals Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of these regulations.

(D) Other conditions for variances.

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

(2) 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 § 157.66(A)(1)(a) through (k) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

(3) 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 commensurate with the increased risk resulting from the reduced lowest floor elevation.

(E) Procedure at Hearings

(1) All testimony shall be given under oath.

(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.

(3) The applicant shall proceed first to present evidence and testimony in support of the appeal or variance.

(4) The administrator may present evidence or testimony in opposition to the appeal or variance.

(5) All witnesses shall be subject to cross-examination by the adverse party or their counsel.

(6) Evidence that is not admitted may be proffered and shall become part of the record for appeal.

- (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.
- (8) The Board shall prepare conclusions of fact supporting its decision. The decision may be announced at the conclusion of the hearing and thereafter issued in writing or the decision may be issued in writing within a reasonable time after the hearing.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.67 APPEAL TO THE COURT.

Those aggrieved by the decision of the Appeals Board may appeal such decision to the Hamilton County Court of Common Pleas, pursuant to Ohio Rev. Code Chapter 2506.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

ENFORCEMENT

§ 157.80 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 these regulations and all other applicable regulations which apply to uses within the jurisdiction of these regulations, unless specifically exempted from filing for a development permit as stated in § 157.46.

(B) Failure to obtain a floodplain development permit shall be a violation of these regulations and shall be punishable in accordance with § 157.82.

(C) 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, arrangement, or construction contrary to that authorized shall be deemed a violation of these regulations and punishable in accordance with § 157.82.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.81 NOTICE OF VIOLATION.

Whenever the Floodplain Administrator determines that there has been a violation of any provision of these regulations, he shall give notice of such violation to the person

responsible therefore and order compliance with these regulations as hereinafter provided. Such notice and order shall:

- (A) Be put in writing on an appropriate form;
- (B) Include a list of violations, referring to the section or sections of these regulations that have been violated, and order remedial action which, if taken, will effect compliance with the provisions of these regulations;
- (C) Specify a reasonable time for performance;
- (D) Advise the owner, operator, or occupant of the right to appeal;
- (E) Be served on the owner, occupant, or agent in person. However, this notice and order shall be deemed to be properly served upon the owner, occupant, or agent if a copy thereof is sent by registered or certified mail to the person's last known mailing address, residence, or place of business, and/or a copy is posted in a conspicuous place in or on the dwelling affected.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

§ 157.82 VIOLATIONS AND PENALTIES.

Violation of the provisions of these regulations or failure to comply with any of its requirements shall be deemed to be a strict liability offense, and shall constitute a misdemeanor of the first degree. Any person who violates these regulations or fails to comply with any of its requirements shall upon conviction thereof be fined or imprisoned as provided by the laws of the City of Montgomery. Each day such violation continues, shall be considered a separate offense. Nothing herein contained shall prevent the City of Montgomery from taking such other lawful action as is necessary to prevent or remedy any violation. The City of Montgomery shall prosecute any violation of these regulations in accordance with the penalties stated herein.

(Ord. 5-2004, passed 5-5-04; Am. Ord. 7-2004, passed 6-2-04)

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City Council Work Session Minutes

March 22, 2023

Page 2

55 **NEW LEGISLATION**

56

57 **A Resolution Advocating For The Restoration of The Local Government Fund To Pre-Recession Levels**

58

59 Mayor Margolis assigned the legislation to Mr. Suer.

60

61 Mr. Donnellon explained that, if approved, this Resolution will formally endorse Council's support to maintain the
62 Local Government Fund as a part of the State Budget. The Local Government Fund provides valuable resources to
63 many communities throughout the State of Ohio, and it has been cut in half over the last 10+ years causing a
64 considerable budget strain for many small communities. Mr. Donnellon added that at this time the legislature is
65 still debating this issue and did not anticipate a decision for several months. He stated that this legislation openly
66 endorses City Council's support for the Fund.

67

68 Mrs. Naiman asked if there were specific individuals at the State level who would champion for the restoration of
69 the local government fund.

70

71 Mr. Donnellon replied that The Montrose Group is lobbying at the State level to reinstate the fund.

72

73 Vice Mayor Bissmeyer asked if our District 28 representatives were on board.

74

75 Mr. Donnellon replied that both Representative Miranda and Senator Blessing are on board of reinstating the fund.

76

77 Mr. Messer asked if there was a rough estimate of how much the city could receive if reinstated.

78

79 Mr. Riblet replied that we only receive around \$150,000 or less and that we have not included those funds in our
80 budget revenues since its decline. He stated that it was imperative for smaller jurisdictions and that is why the City
81 should support reinstating the fund.

82

83 **A Resolution Authorizing The City Manager To Accept The Opioid Settlement And Enter Into The**
84 **Participation Agreement With Opioid Manufacturers Teva And Allergan And Pharmacies/Distributors**
85 **CVS, Walgreens And Walmart**

86

87 Mayor Margolis assigned the legislation to Mr. Messer.

88

89 Mr. Donnellon explained that, if approved, this Resolution, like previous legislation, endorses the City's
90 support to settle litigation with various opioid manufacturers and pharmacies who have been sued across the
91 United States. He explained that the City participates through One Ohio Negotiating Committee headed by
92 the Ohio Attorney General. This legislation authorizes us to accept the Participation Agreement and execute
93 an appropriate Settlement and Release to secure these funds for the benefit of the State and many of its local
94 subdivisions.

95

96 Mr. Messer asked if there was an idea of how much could be received through this settlement.

97

98 Mr. Donnellon replied that it was hard to estimate due to the allocations of the settlement being divided by
99 the State, Hamilton County and then the local government. He added that the payout would also be based on
100 the size of the local government.

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104 **An Ordinance Amending Chapter 156.02 of The Land Usage Code, Subdivision Regulations:**
105 **Requirements For Subdivision Approval**

106
107 Mayor Margolis assigned the legislation to Vice Mayor Bissmeyer.

108
109 Mr. Chesar explained that, if approved, this Ordinance will authorize a series of text amendments to Chapter 156.02
110 Subdivision Regulations: Requirements for Subdivision Approval, to become consistent with the Hamilton County
111 Engineers Office. He stated that minor updates to the Subdivision Regulations are proposed to modernize the
112 regulations for consistency with Hamilton County Engineers Office as well as correcting minor reference links.
113 Community Development and Public Works Staff have cooperatively worked to review and proposed legislative
114 changes.

115
116 **An Ordinance Amending Chapter 157 of The Land Usage Code, Floodplain Management Regulations And**
117 **Flood Damage Prevention, And Declaring An Emergency**

118
119 Mayor Margolis assigned the legislation to Vice Mayor Bissmeyer.

120
121 Mr. Chesar explained that, if approved, this Ordinance will authorize a series of text amendments to Chapter 157
122 Flood Damage Protection. He added that the Federal Emergency Management Agency (FEMA) has issued a Letter
123 of Final Determination to the city that contains revised Flood Insurance Study and Flood Insurance Rate Maps that
124 will become effective on June 7, 2023. He explained that this means that all National Flood Insurance Program
125 (NFIP) participating communities affected by the revised mapping in Hamilton County will be required to update
126 their locally adopted floodplain management regulations, so they are effective by this date. As such, the City of
127 Montgomery is required to update locally adopted floodplain ordinance/resolution to be fully compliant with NFIP
128 minimum criteria. The updated maps and associated language changes periodically occur with the last text update
129 in 2004 and map updates in approximately 2010.

130
131 Mr. Messer asked when the last time was that the City had to utilize the flood insurance rate maps.

132
133 Mr. Heitkamp replied that occasionally staff will refer back to the maps when a property has a FEMA flood plain
134 identification on it. He stated that was pretty rare. He explained that by updating the maps and adopting the text
135 amendments that those properties located within a flood plain could obtain insurance through a federally backed
136 program.

137
138 Ms. Henao added that years ago Ohio National were required to get permission for the installation of a generator
139 due to the location and elevation of the floodway.

140
141 Mr. Cappel stated that since it was a national standard, effectively council would have no choice but to pass it.

142
143 Mr. Chesar replied that Mr. Cappel was correct and if the City did not comply then residents would not be able to
144 obtain flood plain insurance.

145
146 **ADMINISTRATION REPORT**

147
148 Mr. Riblet reported the following items:

- 149
- 150 • The next City Council Business Session is scheduled for Wednesday, April 5 at 6:00 p.m.
 - 151
 - 152 • The Financial Planning Committee will meet on Monday, April 3 4:30 p.m. The Law and Safety and
153 Planning, Zoning and Landmarks Committees have cancelled their meetings for April.

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154

155

- The Committee meetings for Monday, April 10 will be confirmed at the April 5 meeting.

156

157

- Thank you to City Staff and City Council who worked to make MCLA the great success it was this year.

158

159

- Barrett Paving has resumed construction of the Pfeiffer / Deerfield Roundabout project and are making quick work on the northeast corner of the intersection by removing existing pavement, excavating soft sub-surface material, and installing roadway base (geogrid, geofabric, and gravel).

160

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163

- Public Works staff continues to replace existing street name signs with ones implementing the City's new logo, including the installation of new internally illuminated street name signs on the traffic signal mast arms at the Pfeiffer / Storybook and Cooper / Delray intersections. A process is being setup to sell old signs to residents.

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- A Zoom meeting with Braver Angels was held including Council members Naiman and Messer to review and plan for the April 20 "Managing Difficult Conversations" workshop. Mr. Messer added that both he and Vice Mayor Bissmeyer had been accepted into the FBI Academy and would not be available on April 20. He explained they were just informed that day. Mr. Riblet replied he would look into the availability of another day with the Braver Angels facilitator and let Council know.

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173

- This past Sunday, an advertisement seeking Request for Qualifications (RFQ) for a Construction Manager at Risk (CMAR) for Stage II of the Montgomery Quarter Project was ran. Mr. Riblet asked for a motion to support the following as the selection committee: Law Director Terry Donnellon, Assistant City Manager Tracy Henao, Public Works Director Gary Heitkamp and himself. Mr. Cappel made a motion of support of the selection committee as defined by Mr. Riblet. Mr. Messer seconded. City Council unanimously agreed.

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180

- On Monday, the City received four submissions from interested firms to conduct a Community Comprehensive Plan process. Mr. Riblet explained that as staff finalizes the steering committee to work through the process, he would like to include three council members. He stated that he would need a final decision by the end of the week. Mr. Suer, Mr. Dobrozsi and Vice Mayor Bissmeyer expressed interest in being on the committee.

181

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185

- It is the time of the year for the Boards and Commission Chair updates with Council. There are now 11 updates to be scheduled at 15 minute intervals, in order to fit all updates in would Council prefer to schedule these prior to Council meetings or to have the reports to be submitted electronically as we did during the pandemic. If meeting in person, how would Council like to schedule the meetings in order to accommodate all updates. Council expressed that they would like to meet in person and discussed the variation of times to begin the updates and the Council meeting according to the availability of Council members. A decision would be confirmed at the next council meeting.

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Human Resources

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195

- Firefighter/Paramedic Trevor Myers started on Tuesday, March 21. Prior to joining us, Trevor worked part-time at Springfield Township.

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198

- Firefighter/Paramedic Dan Thatcher starts on Friday, March 24. Dan comes to us from the City of Norwood where he worked 11 years.

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204 Events

205

206 • This year's Tree City USA event will be held on Thursday, April 20 at the Fairfield Community Arts
207 Center. This is typically a 11:00 a.m. to 1:00 p.m. luncheon and awards. If you would like to attend,
208 please let Mike Rogers know and he will be happy to get you registered.

209

210 • As a reminder, the Development Team has extended an invitation to City Council and Senior Staff for
211 a hard-had tour of the apartments on Friday, May 5 from 3:00 to 4:00 p.m.

212

213 • You all may have seen your Save the Date email from Amy Fredericks today for the MQ Celebration
214 scheduled for Friday, May 19 at the MQ site. This event will run from 6:00 to 9:30 pm and will
215 celebrate the accomplishments of many years of work between the City and the Development Team.
216 Please mark your calendars to attend this special event.

217

218 Mr. Riblet requested an Executive Session for matters related to potential or imminent court action and to consider
219 confidential information of an applicant for economic development assistance.

220

221 CITY COUNCIL REPORTS

222

223 Mr. Cappel

224

225 Mr. Cappel reported that at the Public Works Committee meeting staff provided an update on the Huntersknoll
226 Water Management project. He stated that an updated design and cost estimate came in at a much higher cost than
227 anticipated so the Committee supported deferring the project to 2024.

228

229 Mr. Cappel reported that cardboard recycling was held on March 18 and was much better due to the switch to a
230 locking recycling dumpster to prevent contaminated items being comingled into the dumpster.

231

232 Vice Mayor Bissmeyer

233

234 Vice Mayor Bissmeyer reported that the Planning Commission met and approved the three applications that were
235 presented to them: an Attached Single Family application, Sycamore Schools and Bethesda North for a new entrance
236 to the emergency room building.

237

238 Mr. Dobrozsi

239

240 Mr. Dobrozsi reported that the at the Government Affairs Committee meeting the following items were discussed:

241

- 242 • Police and Public Works items were declared surplus;
- 243 • Hopewell Cemetery Expansion was discussed, and approval was given to pursue a scope and fee agreement
244 with KZF Designs to obtain updated information regarding estimated construction costs, renderings and
245 estimated return on investment;
- 246 • The Service to the Community Grant was discussed and awards will go to Montgomery Farmers Market,
247 You to the Rescue and the Jose Cerda Foundation.

247

248 Mr. Dobrozsi reported that at the Arts Commission meeting the following items were discussed:

249

- 250 • Photo Contest will be held on April 2;
- 251 • A Cultural Arts Survey is being conducted and will close at the end of April;
- 252 • The Commission discussed a new event incorporating a restaurant tour.

252

253

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254 Mr. Dobrozsi reported the Sister Cities Commission discussed the following items:

- 255 • Soiree En Blanc is scheduled for June 3 and will be held at the Montgomery Quarter;
256 • Bastille Day planning.

257

258 Mr. Dobrozsi attended a Children’s Hospital Donor Event in which Shand DiGiovanni was recognized as a
259 “Superstar Employee.” He reported that sadly Shane is battling cancer at this time.

260

261 **Mrs. Naiman**

262

263 Mrs. Naiman reported that at the Parks and Recreation Commission the following topics were discussed:

- 264 • Park connectivity and increased attendance;
265 • Next Movie in the Park;
266 • Pickleball.

267

268 Mrs. Naiman reported that at the Parks and Recreation Committee meeting a decision was made to restrict the hours
269 at Dulle and Swaim tennis/pickleball courts from 8:00 a.m. to 7:00 p.m. She added that staff will be looking into
270 installing locking gates and noise reduction acoustical walls. She stated there would be ongoing conversations for
271 the future of pickleball courts.

272

273 Mrs. Naiman reported that at the last Diversity and Inclusion Commission meeting there was a presentation by Lucy
274 Del Gadio on the use of pronouns.

275

276 Mrs. Naiman reported the Beautification and Tree Commission discussed the following topics:

- 277 • Summer Garden Tour with an artist at each home sketching the home and then displaying the art
278 somewhere in Montgomery;
279 • B & T Talks-creating a structure for sponsorship of the talks.

280

281 Mrs. Naiman stated the Zoom meeting with Braver Angels was very informative and she felt that the City is ahead
282 of other communities by having these communications.

283

284 **Mr. Suer**

285

286 Mr. Suer provided feedback on the Braver Angels presentation to the MCLA class and felt they did not provide
287 tools that the students could use. He stated that he would like to make sure there are practical applications as take
288 aways moving forward. He hoped the upcoming meeting would provide that.

289

290 Mr. Suer stated that he felt as staff revived this year’s MCLA class after a two year break, they did a tremendous
291 job.

292

293 **Mr. Messer**

294

295 Mr. Messer stated that he also felt MCLA was an excellent program this year.

296

297 Mr. Messer added that he felt the Braver Angels Zoom meeting was effective and he took away from the meeting
298 that the training would entail “How to listen more effectively” and “How to ensure you are being heard” as focus
299 points.

300

301

302

303

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304 **Mayor Margolis**

305

306 Mayor Margolis stated that residents see the cost of living in Montgomery when they see their property tax bills
307 however when they participate in MCLA, they see the value.

308

309 Mr. Margolis reported on the ODNR Tree Academy graduation held at Terwilliger Lodge.

310

311 **MINUTES**

312

313 Mr. Cappel moved to accept the March 1, 2023 Business Session minutes as written. Vice Mayor Bissmeyer
314 seconded. City Council unanimously agreed.

315

316 **MAYORS COURT REPORT**

317

318 Mayor Margolis asked for a motion to disburse Mayors Court revenue for the month of February in the amount of
319 \$8,145.

320

321 Mr. Cappel made a motion to disburse the Mayors Court revenue for the month of February in the amount of \$8,145.
322 Vice Mayor Bissmeyer seconded. City Council unanimously agreed.

323

324 **OTHER BUSINESS**

325

326 Mr. Riblet reminded Council of the out of service ambulance that was kept for purposes of being a mobile
327 information vehicle. He presented a concept picture of the ambulance with vinyl wrapping that featured the City
328 lamppost image included in the graphics to obtain feedback of the concept. He explained that staff took the vehicle
329 to a custom food truck vendor to get a quote and was pleased to receive a quote for \$12,000 for the conversion of
330 the ambulance into a mobile unit that will have a refrigerator and freezer inside, a 3' concession style window,
331 cabinetry and the custom graphic wrap on the exterior. He stated that \$20,000 was budgeted for the conversion
332 which would also leave funds for a sound/speaker system and other modifications. Mr. Riblet stated the vehicle
333 was on course to be done by the end of May or beginning of June once the design was confirmed.

334

335 Mr. Riblet stated that a survey with staff was being conducted to submit four names that would then go out as a
336 survey to the community to choose from. He stated this would be a wonderful engagement tool for the community.

337

338 **EXECUTIVE SESSION**

339

340 Mayor Margolis asked for a motion to go into Executive Session for matters related to potential or imminent court
341 action and to consider confidential information of an applicant for economic development assistance. Mr. Cappel
342 made a motion to adjourn into Executive Session for matters related to potential or imminent court action and to
343 consider confidential information of an applicant for economic development assistance. Vice Mayor Bissmeyer
344 seconded.

345

346 The roll was called and showed the following vote:

347

348 AYE: Cappel, Bissmeyer, Dobrozsi, Margolis, Naiman, Suer, Messer (7)

349 NAY: (0)

350

351 Mayor Margolis stated there would be no further items discussed nor votes taken when Public Session was
352 reconvened.

353

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354 Council adjourned into Executive Session at 7:58 p.m.

355

356 Council reconvened into Public Session at 9:03 p.m.

357

358 **ADJOURNMENT**

359

360 Mayor Margolis asked if there was any further business to discuss in Public Session. There being none he asked for
361 a motion to adjourn.

362

363 Mr. Cappel moved to adjourn. Vice Mayor Bissmeyer seconded. City Council unanimously agreed.

364

365 City Council adjourned at 9:03 p.m.

366

367

368

369

370

Connie Gaylor, Clerk of Council