

**City Council Regular Session
November 14, 2022**

The City Council of the City of Elizabeth City met in regular session on Monday, November 14, 2022 in Council Chambers, located on the 2nd floor of the Municipal Administration Building, 306 E. Colonial Avenue, Elizabeth City, NC.

MEMBERS PRESENT: Mayor E. Kirk Rivers
Mayor Pro Tem Kem Spence
Councilman Johnson Biggs
Councilman Joe Peel
Councilman Jarvis Gibbs
Councilwoman Rose Whitehurst
Councilwoman Katherine Felton
Councilwoman Barbara Baxter
Councilman Johnnie Walton

MEMBERS ABSENT: None

OTHERS PRESENT: City Manager Montre' Freeman
City Attorney Bill Morgan
Interim Electric Department Bob Vannoy
Interim Chief of Police J. Phillip Webster
Deputy Chief of Police James Avens
Interim Human Resources Director Monica Cole
Fire Chief Chris Carver
ECDI Director Debbie Malenfant
Finance Director Alicia Steward
Assistant Finance Director Brian Lewis
Public Utilities Director Dwan Bell
Assistant Public Utilities Director Ryan Howell
Parks and Recreation Director Sean Clark
Parks and Recreation Superintendent Darris Sawyer
Grants Management Specialist Jon Hawley
IT Director Matthew Simpson
IT Systems Analyst Pedro Holley II
City Clerk April Onley

The City Council regular session was called to order by Mayor Kirk Rivers at 7:00 p.m. Mayor Rivers welcomed everyone to the meeting and recognized Reverend John Shannon to provide the invocation, after which Councilman Biggs led the Pledge of Allegiance.

1. Agenda Adjustments and Approval:

Mayor Rivers requested the Council's pleasure regarding approval of the prepared agenda.

Mayor Rivers requested the addition of Main Street Historical District to the agenda under Mayoral Recognition as item D.

Motion was made by Mayor Pro Tem Kem Spence, seconded by Councilman Johnson Biggs to approve the agenda as amended. Those voting in favor of the motion were: Biggs, Peel, Gibbs, Whitehurst, Spence, Felton, Baxter, and Walton. Against: None. Motion carried.

2. Mayoral Recognition:

a. Proclamation for Arbor Day;

***PROCLAMATION
Arbor Day in Elizabeth City
November 18th, 2022***

WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

WHEREAS, the holiday known as Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and is now observed throughout the nation and the world; and

WHEREAS, trees can reduce erosion of our precious topsoil by wind and water, lower our heating and cooling costs, moderate temperature, clean the air, produce oxygen and provide habitat for wildlife; and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other products; and

WHEREAS, trees in our City increase property values, enhance the economic vitality of business areas and beautify our community; and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal.

NOW, THEREFORE, I, E. Kirk Rivers, Mayor of the City of Elizabeth City do hereby proclaim November 18th, 2022 as **ARBOR DAY** in Elizabeth City and urge all citizens to celebrate our urban canopy by supporting efforts to protect our trees and woodlands, and to plant and care for trees to gladden the heart and promote the well being of this and future generations.

PROCLAIMED this 14th day of November 2022.

E. Kirk Rivers
Mayor

Attest:

April D. Onley, NCCMC
City Clerk

b. Proclamation for Dr. Ricky Banks;

Mayor Rivers congratulated Dr. Banks for his achievements and told him he had quite a few City employees who were members of his church. He said it gave him great pleasure and pride to call him the 34th president, the first from northeastern NC to work up 28 years' worth of steps to get to that point and he was thrilled to provide him with a proclamation in his honor this evening.

***PROCLAMATION HONORING
REVEREND DR. RICKY L. BANKS***

WHEREAS, Reverend Dr. Ricky Banks has dedicated his life to enriching the lives of others through education and ministry; and

WHEREAS, Reverend Banks is an esteemed scholar and has received numerous prestigious awards for his outstanding service; and

WHEREAS, as an expert in religious education, theology and ministry, he has used his many gifts to strengthen the bonds of his community and touch the hearts of his fellow man; and

WHEREAS, a native of Camden County, Reverend Banks has long been a recognized name in our area and an asset to the many organizations and foundations he serves in our community; and

WHEREAS, Reverend Banks has served as the senior pastor at St. Stephens Missionary Baptist Church for more than 40 years; and

WHEREAS, on October 27th, Reverend Banks officially became the 34th president of the General Baptist State Convention of North Carolina after being formally installed during its 155th annual convention in Wilmington; and

WHEREAS, the City of Elizabeth City is extraordinarily grateful for all that Reverend Banks has contributed to our City and community and wish to congratulate him on this momentous occasion.

NOW, THEREFORE, I, E. Kirk Rivers, by virtue of the authority vested in me as Mayor and on behalf of the entire City Council and all our citizens, do hereby tender to Reverend Dr. Ricky L Banks on this, the **14th day of November, 2022**, this proclamation of public recognition, extending to him our deep appreciation for his most distinguished service.

E. Kirk Rivers
Mayor

April D. Onley, NCCMC
City Clerk

Johnson Biggs,
1st Ward Councilman

Joseph Peel
1st Ward Councilman

Javis Gibbs
2nd Ward Councilman

Rose Whitehurst
2nd Ward Councilwoman

Kem Spence
Mayor Pro Tem

Katherine Felton
3rd Ward Councilwoman

Barbara Baxter
4th Ward Councilwoman

Johnnie Walton
4th Ward Councilman

c. Eureka Lodge;

Mayor Rivers noted that as a representative from the Lodge was not present, we would deliver the certificate at another time.

d. Main Street Historical District *(Added During Agenda Adjustments);*

Mayor Rivers said that this was the first recognition of its kind because he'd just been made aware of this particular community and the efforts they've put in for the past 17 years to go above and beyond for the youth in our city during Halloween events in particular. He said this is what we want all of our communities to start doing because this is what makes Elizabeth City great. Mayor Rivers called forward the Main Street "Halloween Committee" and presented them with a certificate of recognition. The Committee said they started this tradition because they were concerned about the kids on Main Street and wanted to close the street at Halloween so everyone would be safe. They came forward to former manager Olson and it started with going door to door to get it okayed. After a few years, the closing was more or less grandfathered in and now it's a city tradition and the entire street joins in.

e. Department of the Month – Police;

Mayor Rivers recognized members of our Police Department. He noted that they continuously provide exemplary service to our community even while being short staffed. They were always out in the community, involving themselves and letting our citizens know we have a great police department. He said he was extremely proud of them and the work that they do every day.

f. Department Head of the Month – Interim Chief J. Phillip Webster;

Mayor Rivers explained that he went to a lot of events and Chief Webster turned up at just as many as he did. Chief Webster had only been here about 90 days and had already integrated himself into the community and shown outstanding leadership. He wanted to let him know that they recognized his efforts and appreciated everything he's done for the city. Chief Webster thanked the Council for the recognition and said he accepted it on behalf of the members of the Police Department because without them, he couldn't do his job.

Mayor Rivers said he'd also like to recognize the Citizens Police Academy. He said they are volunteers who spent eight weeks learning about what goes on in the Police Department in Elizabeth City. This is how citizens interact with our government and learn about what we do. He thanked those individuals for being part of the CPA and for sharing their knowledge. Mayor Rivers asked Deputy Chief Avens to provide the Council with an overview of what the CPA did for those eight weeks. Deputy Chief Avens said the 2022 class was one of the biggest classes they'd had in a long time, with about 17 attending each Tuesday night. They learned a lot of different things about the Police Department, from use of force to traffic stops to the K-9s. He said they are welcome to come back in 2023 if they'd like as well.

3. Comments from the Public:

Mayor Rivers inquired of the Clerk whether there were any persons present who wished to speak before the Council. Upon the Clerk's reply that there was one, Mayor Rivers asked that they be called to the podium.

Susan Matousek – 108 Harbor Bay Drive, Elizabeth City, NC - Ms. Matousek opined that the County and the City were too divided and the County was misusing the ADA. She said they were terrorizing her. She said she had a case against a county employee, which was going to court in February. She explained that when she had been terrorized by the county before, Councilwoman Felton had helped her and she was glad to see that she made it to the Council.

4. Public Hearings:

a. Hold a Public Hearing – Text Amendment for Flood Plain Ordinance;

Mayor Rivers declared the public hearing open and inquired of the Clerk if there were any speakers. Upon the Clerk's reply that there were none, Mayor Rivers closed the hearing.

Motion to approve the ordinance was made by Councilman Joseph Peel, seconded by Mayor Pro Tem Kem Spence. Those voting in favor of the motion were: Biggs, Peel, Gibbs, Whitehurst, Spence, Felton, Baxter, and Walton. Against: None. Motion carried.

Chapter 154: Floods

ARTICLE 1: STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE, AND OBJECTIVES.

154.01 STATUTORY AUTHORIZATION.

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare. Article 6 of Chapter 153A; Article 8 of Chapter 160A; and Article 7, 9, and 11 of Chapter 160D of the North Carolina General Statutes, delegated to local governmental units the authority to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the City Council of The City of Elizabeth City, North Carolina, does ordain as follows:

154.02 FINDINGS OF FACT.

(A) The flood prone areas within the jurisdiction of The City of Elizabeth City are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(B) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

154.03 STATEMENT OF PURPOSE.

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

(A) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;

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

(C) Control the alteration of natural floodplains, stream channels, and natural protective barriers,

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which are involved in the accommodation of floodwaters;

(D) Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and

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

154.04 OBJECTIVES.

The objectives of this ordinance are to:

(A) Protect human life, safety, 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 losses and interruptions;
- (E) Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
- (F) Minimize damage to private and public property due to flooding;
- (G) Make flood insurance available to the community through the National Flood Insurance Program;
- (H) Maintain the natural and beneficial functions of floodplains;
- (I) Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
- (J) Ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

ARTICLE 2: DEFINITIONS

154.05 DEFINITIONS.

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

"Accessory Structure (Appurtenant Structure)" means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal
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structure. Garages, carports, and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

"Addition (to an existing building)" means an extension or increase in the floor area or height of a building or structure.

"Alteration of a watercourse" means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

"Appeal" means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.

"Area of Shallow Flooding" means a designated Zone AO or AH on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

"Area of Special Flood Hazard" see "Special Flood Hazard Area (SFHA)".

"Base Flood" means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

"Base Flood Elevation (BFE)" means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area," it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the "Freeboard," establishes the "Regulatory Flood Protection Elevation."

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Building" see "Structure".

"Chemical Storage Facility" means a building, portion of a building, or exterior area adjacent to a building used for the storage of any potentially hazardous or dangerous chemical or chemically reactive products.

"Coastal Area Management Act (CAMA)" means North Carolina's Coastal Area Management Act, this act, along with the Dredge and Fill Law and the Federal Coastal Zone Management

"Coastal A Zone (CAZ) " means an area within a special flood hazard area, landward of a V zone or landward of an open coast without mapped V zones; in a Coastal A Zone, the principal source of flooding must be astronomical tides, storm surges, seiches, or tsunamis, not riverine flooding. During the base flood conditions, the potential for wave heights shall be greater than or equal to 1.5 feet. Coastal A Zones are not normally designated on FIRMs. (See Limit of Moderate Wave Action (LiMWA))

"Coastal Barrier Resources System (CBRS)" consists of undeveloped portions of coastal and adjoining areas established by the Coastal Barrier Resources Act (CoBRA) of 1982, the Coastal Barrier Improvement Act (CBIA) of 1990, and subsequent revisions, and includes areas owned by Federal or State governments or private conservation organizations identified as Otherwise Protected Areas (OPA).

"Coastal High Hazard Area" means a Special Flood Hazard Area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM, or other adopted flood map as determined in Section 154.07 of this ordinance, as Zone VE.

"Design Flood": See "Regulatory Flood Protection Elevation."

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

"Development Activity" means any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.

"Digital Flood Insurance Rate Map (DFIRM)" means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

"Disposal" means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"Elevated Building" means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

"Encroachment" means the advance or infringement of uses, fill, excavation, buildings, structures, or development into a special flood hazard area, which may impede or alter the flow capacity of a Page 5 of 43

floodplain.

"Existing building and existing structure" means any building and/or structure for which the "start of construction" commenced before the community entered the NFIP, dated June 20, 1973.

"Existing Manufactured Home Park or Manufactured Home Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the community entered the NFIP, dated June 20, 1973.

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (a) The overflow of inland or tidal waters; and/or
- (b) The unusual and rapid accumulation or runoff of surface waters from any source.

"Flood Insurance" means the insurance coverage provided under the National Flood Insurance Program.

"Flood Insurance Rate Map (FIRM)" means an official map of a community, issued by the FEMA, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated. (See also DFIRM)

"Flood Insurance Study (FIS)" means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the FEMA. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

"Flood Prone Area" see "Floodplain"

"Flood Zone" means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

"Floodplain" means any land area susceptible to being inundated by water from any source.

"Floodplain Administrator" is the individual appointed to administer and enforce the floodplain management regulations.

"Floodplain Development Permit" means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

"Floodplain Management" means the operation of an overall program of corrective and preventive Page 6 of 43

measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

"Floodplain Management Regulations" means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes federal, state, or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

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

"Flood-resistant material" means any building product [material, component, or system] capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials.

Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

"Floodway" means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

"Floodway encroachment analysis" means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and models.

"Freeboard" means the height added to the BFE to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge or culvert openings, and the hydrological effect of urbanization of the watershed. The BFE plus the freeboard establishes the "Regulatory Flood Protection Elevation."

"Functionally Dependent Facility" means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not Page 7 of 43

include long-term storage, manufacture, sales, or service facilities.

"Hazardous Waste Management Facility" means, as defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

"Highest Adjacent Grade (HAG)" means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

"Historic Structure" means any structure that is:

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

- (b) Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on a local inventory of historic landmarks in communities with a "Certified Local Government (CLG) Program;" or
- (d) Certified as contributing to the historical significance of a historic district designated by a community with a "Certified Local Government (CLG) Program."

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation *Officer* as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

"Letter of Map Change (LOMC)" means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

- (a) Letter of Map Amendment (LOMA): An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
- (b) Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
- (c) Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination,

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the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

- (d) Conditional Letter of Map Revision (CLOMRF): A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

"Light Duty Truck" means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

- (a) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- (b) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (c) Available with special features enabling off-street or off-highway operation and use.

"Limit of Moderate Wave Action (LiMWA)" means the boundary line given by FEMA on coastal map studies marking the extents of Coastal A Zones (CAZ).

"Lowest Adjacent Grade (LAG)" means the lowest elevation of the ground, sidewalk, or patio slab immediately next to the building, or deck support, after completion of the building.

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

"Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Map Repository" means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products carry the same authority as hard copy products. Therefore, the NCEM's Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data the NC FRIS website Page 9 of 43

(<http://FRIS.NC.GOV/FRIS>) is the map repository, and for historical flood hazard data the FloodNC website (<http://FLOODNC.GOV/NCFLOOD>) is the map repository.

"Market Value" means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

"New Construction" means structures for which the "start of construction" commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.

"Non-Encroachment Area (NEA)" means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

"Otherwise Protected Area (OPA)" see "Coastal Barrier Resources System (CBRS)."

"Post-FIRM" means construction or other development for which the "start of construction" occurred on or after April 3, 1978, the effective date of the initial Flood Insurance Rate Map.

"Pre-FIRM" means construction or other development for which the "start of construction" occurred before April 3, 1978, the effective date of the initial Flood Insurance Rate Map.

"Primary Frontal Dune (PFD)" means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

"Principally Above Ground" means that at least 51% of the actual cash value of the structure is above ground.

"Public Safety" and/or "Nuisance" means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

"Recreational Vehicle (RV)" means a vehicle, which is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;

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(c) Designed to be self-propelled or permanently towable by a light duty truck;

(d) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use, and

(e) Fully licensed and insured, and ready for highway use.

For the purpose of this ordinance, "Tiny Homes/Houses" and Park Models that do not meet the items listed above are not considered Recreational Vehicles and should meet the standards of and be permitted as Residential Structures.

"Reference Level" is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zones A, AE, AH, AO, or A99.

"Regulatory Flood Protection Elevation" means the "Base Flood Elevation" plus the "Freeboard." In "Special Flood Hazard Areas" where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet freeboard. In "Special Flood Hazard Areas" where no BFE has been established, this elevation shall be at least four (4) feet above the highest adjacent grade.

"Remedy a Violation" means to bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement

provisions of the ordinance or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

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

"Salvage Yard" means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

"Sand Dunes" means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

"Shear Wall" means walls used for structural support but not structurally joined or enclosed at the end (except by breakaway walls). Shear walls are parallel or nearly parallel to the flow of the water.

"Solid Waste Disposal Facility" means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

"Solid Waste Disposal Site" means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method. Page 11 of 43

"Special Flood Hazard Area (SFHA)" means the land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year, as determined in Section 154.07 of this ordinance.

"Start of Construction" includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 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 the building, whether or not that alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

"Substantial Damage" means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of "substantial improvement."

"Substantial Improvement" means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost 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 either:

(a) Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or

(b) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to Section 154.29 of this ordinance.

"Technical Bulletin and Technical Fact Sheet" means a FEMA publication that provides guidance Page 12 of 43

concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued

periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

It should be noted that Technical Bulletins and Technical Fact Sheets provide guidance on the minimum requirements of the NFIP regulations. State or community requirements that exceed those of the NFIP take precedence. Design professionals should contact the community officials to determine whether more restrictive State or local regulations apply to the building or site in question. All applicable standards of the State or local building code must also be met for any building in a flood hazard area.

"Temperature Controlled" means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

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

"Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 is presumed to be in violation until such time as that documentation is provided.

"Water Surface Elevation (WSE)" means the height, in relation to NAVD 1988, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

"Watercourse" means a lake, river, creek, stream, wash, channel, or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

ARTICLE 3. GENERAL PROVISIONS.

154.06 LANDS TO WHICH THIS ORDINANCE APPLIES.

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJs), of The City of Elizabeth City.

154.07 BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS. Page 13 of 43

The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its FIS dated December 21, 2018, for Pasquotank County and associated DFIRM panels, including any digital data developed as part of the FIS, which are adopted by reference and declared a part of this ordinance, and all revisions thereto. Future revisions to the FIS and DFIRM panels that do not change flood hazard data within the jurisdictional authority of The City of Elizabeth City are also adopted by reference and declared a part of this ordinance. Subsequent Letter of Map Revisions (LOMRs) and/or Physical Map Revisions (PMRs) shall be adopted by the City within 3 months of notification by FEMA.

154.08 ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT.

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with the provisions of Section 154.07 of this ordinance.

154.09 COMPLIANCE.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

154.10 ABROGATION AND GREATER RESTRICTIONS.

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

154.11 INTERPRETATION.

In the interpretation and application of this ordinance, all provisions shall be:

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

154.12 WARNING AND DISCLAIMER OF LIABILITY.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does Page 14 of 43

not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of The City of Elizabeth City or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

ARTICLE 4. ADMINISTRATION.

154.25 DESIGNATION OF FLOODPLAIN ADMINISTRATOR.

The Zoning Administrator, hereinafter referred to as the "Floodplain Administrator," is hereby appointed to administer and implement the provisions of this ordinance. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this ordinance, the Floodplain Administrator shall be responsible for the coordination and community's overall compliance with the National Flood Insurance Program and the provisions of this ordinance.

154.26 FLOODPLAIN DEVELOPMENT APPLICATION, PERMIT, AND CERTIFICATION REQUIREMENTS.

(1) Application Requirements. Application for a Floodplain Development Permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator as part of a floodplain development permit:

(a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

(i) The nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;

(ii) The boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Section 154.07, or a statement that the entire lot is within the Special Flood Hazard Area;

(iii) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section 154.07;

(iv) The boundary of the floodway(s) or non-encroachment area(s) as determined in Section 154.07;

(v) The Base Flood Elevation (BFE) where provided as set forth in Section
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154.07; Section 154.27; or Section 154.43;

(vi) The old and new location of any watercourse that will be altered or relocated as a result of proposed development; and

(vii) The boundary and designation date of the Coastal Barrier Resource System (CBRS) area or Otherwise Protected Areas (OPA), if applicable; and

(viii) (vii) The certification of the plot plan by a registered land surveyor or professional engineer may be required at the discretion of the Floodplain Administrator.

(b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:

(i) Elevation in relation to NAVD 1988 of the proposed reference level (including basement) of all structures;

(ii) Elevation in relation to NAVD 1988 to which any non-residential structure in Zones A, AE, AH, AO, A99 will be floodproofed; and

(iii) Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed.

(c) If floodproofing, a Floodproofing Certificate (FEMA Form 086-0-34) with supporting data, an operational plan, and an inspection and maintenance plan that include, but are not limited to, installation, exercise, and maintenance of floodproofing measures.

(d) A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:

(i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls); and

(ii) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with Section 154.41(4)(d) when solid foundation perimeter walls are used in Zones A, AE, AH, AO, A99.

(e) Usage details of any enclosed areas below the lowest floor.

(f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage.

(g) Certification that all other Local, State and Federal permits required prior to floodplain development permit issuance have been received.

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(h) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure that the provisions of Section 154.41, subsections (6) and (7) of this ordinance are met.

(i) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(2) Permit Requirements. The Floodplain Development Permit shall include, but not be limited to:

(a) A complete description of all the development to be permitted under the floodplain development permit (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.).

(b) The Special Flood Hazard Area determination for the proposed development in accordance with available data specified in Section 154.07.

(c) The Regulatory Flood Protection Elevation required for the reference level and all attendant utilities.

(d) The Regulatory Flood Protection Elevation required for the protection of all public utilities.

(e) All certification submittal requirements with timelines.

(f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse unless the requirements of Section 154.45 have been met.

(g) The flood openings requirements, if in Zones A, AE, AH, AO, A99.

(3) Certification Requirements.

(a) Elevation Certificates

(i) An Elevation Certificate (FEMA Form 086-0-33) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation,

it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to NAVD 1988. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted

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to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.

(ii) A final Finished Construction Elevation Certificate (FEMA Form 086-0-33) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

(b) Floodproofing Certificate

(i) A final Finished Construction Floodproofing Certificate (FEMA Form 086- 0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a Floodplain Development Permit. Failure to construct in accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy.

(c) If a manufactured home is placed within Zones A, AE, AH, AO, or A99 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required in accordance with the provisions of Section 154.41(3)(b).

(d) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

(e) Certification Exemptions. The following structures, if located within Zones A, AE, AH, AO, A99, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:

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(i) Recreational Vehicles meeting requirements of Section 154.41(6)(a);

(ii) Temporary Structures meeting requirements of Section 154.41(7); and

(iii) Accessory Structures that are 600 square feet or less or \$3,000 or less in cost and which meet the requirements of Section 154.41(8).

(4) Determinations for existing buildings and structures.

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

(a) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;

(b) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

(c) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and

(d) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

154.27 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.

The Floodplain Administrator shall perform, but not be limited to, the following duties:

(1) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.

(2) Review all proposed development within Special Flood Hazard Areas to assure that all necessary local, state and federal permits have been received, including any required under Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334. Page 19 of 43

(3) Notify adjacent communities and the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

(4)) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained.

(5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Section 154.45 are met.

(6) Obtain actual elevation (in relation to NAVD 1988) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Section 154.26(3).

(7) Obtain actual elevation (in relation to NAVD 1988) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Section 154.26(3).

(8) Obtain actual elevation (in relation to NAVD 1988) of all public utilities in accordance with the provisions of Section 154.26(3).

(9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of Section 154.26(3) and Section 154.41(2).

(10) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

(11) When BFE data has not been provided in accordance with the provisions of Section 154.07, obtain, review, and reasonably utilize any BFE data, along with floodway data or non-encroachment area data available from a federal, state, or other source, including data developed pursuant to Section 154.43(2)(c), in order to administer the provisions of this ordinance.

(12) When BFE data is provided but no floodway or non-encroachment area data has been provided in accordance with the provisions of Section 154.07, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a federal, state, or other source in order to administer the provisions of this ordinance.

(13) When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel in a Special Flood Hazard Area is above the BFE, may advise the property
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owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. The Floodplain Administrator is to maintain a copy of the LOMA issued by FEMA in the floodplain development permit file.

(14) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended.

(15) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the Floodplain Administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.

(16) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the Floodplain Administrator may order the work to be immediately stopped. The stopwork order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a Class 1 misdemeanor, punishable pursuant to Section 154.99.

(17) Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.

(18) Make periodic inspections throughout the Special Flood Hazard Areas within the jurisdiction of the community. The Floodplain Administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

(19) Follow through with corrective procedures of Section 154.28.

(20) Review, provide input, and make recommendations for variance requests.

(21) Maintain a current map repository to include, but not limited to, historical and effective FIS Report, historical and effective FIRM and other official flood maps and studies adopted in accordance with
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the provisions of Section 154.07 of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify appropriate State officials and FEMA of mapping needs.

(22) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-Fs) and Letters of Map Revision (LOMRs).

154.28 CORRECTIVE PROCEDURES.

(1) Violations to be corrected: When the Floodplain Administrator finds violations of applicable state and local laws; it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

(2) Actions in Event of Failure to Take Corrective Action: If the owner of a building or property shall fail to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

(a) That the building or property is in violation of the floodplain management regulations;

(b) That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and

(c) That following the hearing, the Floodplain Administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as applicable.

(3) Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, he or she shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than least one-hundred-eighty (180) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he or she may order that corrective action be taken in such lesser period as may be feasible.

(4) Appeal: Any owner who has received an order to take corrective action may appeal the order to the City's Board of Adjustment by giving notice of appeal in writing to the Floodplain Administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The City's Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

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(5) Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58 and shall be punished at the discretion of the court.

154.29 VARIANCE PROCEDURES.

- (1) The Board of Adjustment as established by The City of Elizabeth City, hereinafter referred to as the "appeal board," shall hear and decide requests for variances from the requirements of this ordinance.
 - (2) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.
 - (3) Variances may be issued for:
 - (a) The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure;
 - (b) Functionally dependent facilities if determined to meet the definition as stated in Article 2 of this ordinance, provided provisions of Section 154.29(9)(b), (c), and (e) have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety; or
 - (c) Any other type of development provided it meets the requirements of this Section.
 - (4) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:
 - (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 necessity to the facility of a waterfront location as defined under Article 2 of this ordinance as a functionally dependent facility, where applicable;
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- (f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (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 floodwaters and the effects of wave action, if applicable, expected at the site; and
 - (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.
- (5) A written report addressing each of the above factors shall be submitted with the application for a variance.
 - (6) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this ordinance.
 - (7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the BFE and the elevation to which the structure is to be built and that such

construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE may result in increased premium rates for flood insurance up to \$25 per \$100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

(8) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the FEMA and the State of North Carolina upon request.

(9) Conditions for Variances:

(a) Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.

(b) Variances shall not be issued within any designated floodway or nonencroachment area if the variance would result in any increase in flood levels during the base flood discharge.

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

(d) Variances shall only be issued prior to development permit approval.

(e) Variances shall only be issued upon:

(i) A showing of good and sufficient cause;

(ii) A determination that failure to grant the variance would result in exceptional hardship; and

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

(10) A variance may not be issued for new solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas.

ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION.

154.40 GENERAL STANDARDS.

In all Special Flood Hazard Areas, the following provisions are required:

(1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.

(2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage in accordance with the FEMA Technical Bulletin 2, *Flood Damage-Resistant Materials Requirements*.

(3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.

(4) All new electrical, heating, ventilation, plumbing, air conditioning equipment, and other service equipment shall be located at or above the RFPE or designed and installed to prevent water from entering or accumulating within the components during the occurrence of the base flood. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, water heaters, and electric outlets/switches.

(a) Replacements part of a substantial improvement, electrical, heating, ventilation, plumbing,
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air conditioning equipment, and other service equipment shall also meet the above provisions.

(b) Replacements that are for maintenance and not part of a substantial improvement, may be installed at the original location provided the addition and/or improvements only comply with the standards for new construction consistent with the code and requirements for the original structure.

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

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

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

(8) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the Regulatory Flood Protection Elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.

(9) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted and a variance shall not be allowed. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the Regulatory Flood Protection Elevation and certified in accordance with the provisions of Section 154.26(3).

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

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

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

(13) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

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(14) When a structure is partially located in a Special Flood Hazard Area, the entire structure shall meet the requirements for new construction and substantial improvements.

(15) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest BFE shall apply.

154.41 SPECIFIC STANDARDS.

In all Special Flood Hazard Areas where BFE data has been provided, as set forth in Section 154.07, or Section 154.43, the following provisions, in addition to the provisions of Section 154.40, are required:

(1) Residential Construction. New construction and substantial improvement of any existing residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance.

(2) Non-Residential Construction. New construction and substantial improvement of any existing commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance. Structures located in Zones A, AE, AH, AO, A99 may be floodproofed to the Regulatory Flood Protection Elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with Article 5, Section I (2). A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 154.26(3), along with the operational plan and the inspection and maintenance plan.

(3) Manufactured Homes.

(a) New and replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the Regulatory Flood Protection Elevation, as defined in Article 2 of this ordinance.

(b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to Page 27 of 43

NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.

(c) All enclosures or skirting below the lowest floor shall meet the requirements of Section 154.41(4).

(d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the Floodplain Administrator and the local Emergency Management Coordinator.

(4) Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

(a) Shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

(b) Reserved.

(c) Shall be constructed entirely of flood resistant materials at least to the Regulatory Flood Protection Elevation; and

(d) Shall include, in Zones A, AE, AH, AO, A99 flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria:

(i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;

(ii) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;

(iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;

(iv) The bottom of all required flood openings shall be no higher than one (1) foot above the higher of the interior or exterior adjacent grade;

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(v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

(vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

(5) Additions/Improvements.

(a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

(i) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more nonconforming than the existing structure.

(ii) A substantial improvement, with modifications/rehabilitations/ improvements to the existing structure or the common wall is structurally modified more than installing a doorway, both the existing structure and the addition must comply with the standards for new construction.

(b) Additions to pre-FIRM or post-FIRM structures that are a substantial improvement with no modifications/rehabilitations/improvements to the existing structure other than a standard door in the common wall, shall require only the addition to comply with the standards for new construction.

(c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

(i) Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction consistent with the code and requirements for the original structure.

(ii) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(d) Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a one (1) year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started must comply with the standards for new construction. For each building or structure, the one (1) year period begins on the date of the first improvement or repair of that building or structure subsequent to the effective date of this ordinance. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The requirement does not, however, include either:

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(i) Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assume safe living conditions.

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

(6) Recreational Vehicles. Recreational vehicles shall either:

(a) Temporary Placement

(i) Be on site for fewer than 180 consecutive days; or

(ii) Be fully licensed and ready for highway use. (A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions.)

(b) Permanent Placement. Recreational vehicles that do not meet the limitations of Temporary Placement shall meet all the requirements for new construction.

(7) Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval:

(a) A specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;

(b) The name, address, and phone number of the individual responsible for the removal of the temporary structure;

(c) The time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

(d) A copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and

(e) Designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.

(8) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

(a) Accessory structures shall not be used for human habitation (including working, sleeping, Page 30 of 43

living, cooking or restroom areas);

(b) Accessory structures shall not be temperature-controlled;

(c) Accessory structures shall be designed to have low flood damage potential;

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

(e) Accessory structures shall be firmly anchored in accordance with the provisions of Section 154.40(1);

(f) All service facilities such as electrical shall be installed in accordance with the provisions of Section 154.40(4); and

(g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below Regulatory Flood Protection Elevation in conformance with the provisions of Section 154.41(4)(d).

An accessory structure with a footprint less than 600 square feet or that cost \$3,000 or less and satisfies the criteria outlined above is not required to meet the elevation or floodproofing

standards of Section 154.41(2). Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section 154.26(3).

(9) Tanks. When gas and liquid storage tanks are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

(a) Underground tanks. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty;

(b) Above-ground tanks, elevated. Above-ground tanks in flood hazard areas shall be elevated to or above the Regulatory Flood Protection Elevation on a supporting structure that is designed to prevent flotation, collapse, or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area;

(c) Above-ground tanks, not elevated. Above-ground tanks that do not meet the elevation requirements of Section 154.41(2) of this ordinance shall be permitted in flood hazard areas provided the tanks are designed, constructed, installed, and anchored to resist all flood-related and other loads, including the effects of buoyancy, during conditions of the design flood and without release of contents in the floodwaters or infiltration by floodwaters into the tanks. Tanks shall be designed, constructed, installed, and anchored to resist the potential buoyant and other flood forces acting on an empty tank during

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design flood conditions.

(d) Tank inlets and vents. Tank inlets, fill openings, outlets and vents shall be:

(i) At or above the Regulatory Flood Protection Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and

(ii) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

(10) Other Development.

(a) Fences in regulated floodways and NEAs that have the potential to block the passage of floodwaters, such as stockade fences and wire mesh fences, shall meet the limitations of Section 154.45 of this ordinance.

(b) Retaining walls, sidewalks, and driveways in regulated floodways and NEAs. Retaining walls and sidewalks and driveways that involve the placement of fill in regulated floodways shall meet the limitations of Section 154.45 of this ordinance.

(c) Roads and watercourse crossings in regulated floodways and NEAs. Roads and watercourse crossings, including roads, bridges, culverts, low-water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, that encroach into regulated floodways shall meet the limitations of Section 154.45 of this ordinance.

154.42 RESERVED.

154.43 STANDARDS FOR FLOODPLAINS WITHOUT ESTABLISHED BASE FLOOD ELEVATIONS.

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Section 154.07, where no BFE data has been provided by FEMA, the following provisions, in addition to the provisions of Section 154.40, shall apply:

(1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank

or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

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(2) The BFE used in determining the Regulatory Flood Protection Elevation shall be determined based on the following criteria:

(a) When BFE data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Sections 154.40 and 154.41.

(b) When floodway or non-encroachment data is available from a Federal, State, or other source, all new construction and substantial improvements within floodway and non-encroachment areas shall also comply with the requirements of Sections 154.41 and 154.45.

(c) All subdivision, manufactured home park and other development proposals shall provide BFE data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such BFE data shall be adopted by reference in accordance with Section 154.07 and utilized in implementing this ordinance.

(d) When BFE data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the Regulatory Flood Protection Elevation, as defined in Article 2. All other applicable provisions of Section 154.41 shall also apply.

154.44 STANDARDS FOR RIVERINE FLOODPLAINS WITH BASE FLOOD ELEVATIONS BUT WITHOUT ESTABLISHED FLOODWAYS OR NON-ENCROACHMENT AREAS.

Along rivers and streams where BFE data is provided by FEMA or is available from another source but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

(1) Standards of Sections 154.40 and 154.41; and

(2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

154.45 FLOODWAYS AND NON-ENCROACHMENT AREAS.

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Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Section 154.07. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Sections 154.40 and 154.41, shall apply to all development within such areas:

(1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless:

(a) It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood discharge, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit; or

(b) A Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained within six months of completion of the proposed encroachment.

(2) If Section 154.45(1) is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.

(3) Manufactured homes are prohibited and may not be granted a variance.

ARTICLE 6: LEGAL STATUS PROVISIONS.

154.60 EFFECT ON RIGHTS AND LIABILITIES UNDER THE EXISTING FLOOD DAMAGE PREVENTION ORDINANCE.

This ordinance in part comes forward by re-enactment of some of the provisions of the Flood Damage Prevention Ordinance enacted 1-1-1975 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit, or proceeding instituted or pending. All provisions of the Flood Damage Prevention Ordinance of The City of Elizabeth City enacted on 1-1-1975, as amended, which are not reenacted herein, are repealed.

The date of the initial Flood Damage Prevention Ordinance for Pasquotank County is January 23, 1976.

154.61 EFFECT UPON OUTSTANDING FLOODPLAIN DEVELOPMENT PERMITS. Page 34 of 43

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a floodplain development permit has been granted by the Floodplain Administrator or his or her authorized agents before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

ARTICLE 7: PENALTIES

154.99 PENALTIES FOR VIOLATION.

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a Class 1 misdemeanor pursuant to NC G.S. § 143-215.58. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$100.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent The City of Elizabeth City from taking such other lawful action as is necessary to prevent or remedy any violation.

[End of SECTION A]

SECTION B. Modifications to CHAPTER 159: UNIFIED DEVELOPMENT.

Replace Chapter 154: Unified Development, Article XII, Environmental and Special Purpose Regulations, Section 12-2, Flood Hazard District Overlay Requirements, Subsection 12-2.1 Definitions, in its entirety with the following text.

12-2.1 Definitions

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

(A) "Accessory Structure (Appurtenant Structure)" means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports, and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

(B) "Addition (to an existing building)" means an extension or increase in the floor area or height of a building or structure.

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- (C) "Alteration of a watercourse" means a dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.
- (D) "Appeal" means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance.
- (E) "Area of Shallow Flooding" means a designated Zone AO or AH on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.
- (F) "Area of Special Flood Hazard" see "Special Flood Hazard Area (SFHA)".
- (G) "Base Flood" means the flood having a one (1) percent chance of being equaled or exceeded in any given year.
- (H) "Base Flood Elevation (BFE)" means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area," it may be obtained from engineering studies available from a Federal, State, or other source using FEMA approved engineering methodologies. This elevation, when combined with the "Freeboard," establishes the "Regulatory Flood Protection Elevation."
- (I) "Basement" means any area of the building having its floor subgrade (below ground level) on all sides.
- (J) "Building" see "Structure".
- (K) "Chemical Storage Facility" means a building, portion of a building, or exterior area adjacent to a building used for the storage of any potentially hazardous or dangerous chemical or chemically reactive products.
- (L) "Coastal Area Management Act (CAMA)" means North Carolina's Coastal Area Management Act, this act, along with the Dredge and Fill Law and the Federal Coastal Zone Management Act, is managed through North Carolina Department of Environmental Quality (NCDEQ) Division of Coastal Management (DCM).
- (M) "Coastal A Zone (CAZ)" means an area within a special flood hazard area, landward of a V zone or landward of an open coast without mapped V zones; in a Coastal A Zone, the principal source of flooding must be astronomical tides, storm surges, seiches, or tsunamis, not riverine flooding. During the base flood conditions, the potential for wave heights shall be greater than or equal to 1.5 feet. Coastal A Zones are not normally designated on FIRMs. (See Limit of Moderate Wave Action (LiMWA))
- (N) "Coastal Barrier Resources System (CBRS)" consists of undeveloped portions of coastal and adjoining areas established by the Coastal Barrier Resources Act (CoBRA) of 1982, the Coastal Barrier Improvement Act (CBIA) of 1990, and subsequent revisions, and includes areas owned by Federal or State governments or private conservation organizations identified as Otherwise

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Protected Areas (OPA).

- (O) "Coastal High Hazard Area" means a Special Flood Hazard Area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on a FIRM, or other adopted flood map as determined in Section 154.07 of this ordinance, as Zone VE.
- (P) "Design Flood": See "Regulatory Flood Protection Elevation."
- (Q) "Development" means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.
- (R) "Development Activity" means any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.
- (S) "Digital Flood Insurance Rate Map (DFIRM)" means the digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.
- (T) "Disposal" means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(U) "Elevated Building" means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

(V) "Encroachment" means the advance or infringement of uses, fill, excavation, buildings, structures, or development into a special flood hazard area, which may impede or alter the flow capacity of a floodplain.

(W) "Existing building and existing structure" means any building and/or structure for which the "start of construction" commenced before the community entered the NFIP, dated June 20, 1973.

(X) "Existing Manufactured Home Park or Manufactured Home Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the community entered the NFIP, dated June 20, 1973.

(Y) "Flood" or "Flooding" means 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.

(Z) "Flood Insurance" means the insurance coverage provided under the National Flood Insurance Program.

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(AA) "Flood Insurance Rate Map (FIRM)" means an official map of a community, issued by the FEMA, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated. (See also DFIRM)

(BB) "Flood Insurance Study (FIS)" means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the FEMA. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

(CC) "Flood Prone Area" see "Floodplain"

(DD) "Flood Zone" means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

(EE) "Floodplain" means any land area susceptible to being inundated by water from any source.

(FF) "Floodplain Administrator" is the individual appointed to administer and enforce the floodplain management regulations.

(GG) "Floodplain Development Permit" means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

(HH) "Floodplain Management" means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

(II) "Floodplain Management Regulations" means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power. This term describes federal, state, or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

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

(KK) "Flood-resistant material" means any building product [material, component, or system] capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than lowcost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not floodresistant Pressure-treated lumber or naturally decay-resistant lumbers are acceptable flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not acceptable. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, Flood Damage-Resistant Materials

Requirements, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

(LL) "Floodway" means the channel of a river or other watercourse, including the area above a bridge

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or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

(MM) "Floodway encroachment analysis" means an engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and models.

(NN) "Freeboard" means the height added to the BFE to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge or culvert openings, and the hydrological effect of urbanization of the watershed. The BFE plus the freeboard establishes the "Regulatory Flood Protection Elevation."

(OO) "Functionally Dependent Facility" means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

(PP) "Hazardous Waste Management Facility" means, as defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

(QQ) "Highest Adjacent Grade (HAG)" means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

(RR) "Historic Structure" means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a local inventory of historic landmarks in communities with a "Certified Local Government (CLG) Program;" or
4. Certified as contributing to the historical significance of a historic district designated by a community with a "Certified Local Government (CLG) Program."

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

(SS) "Letter of Map Change (LOMC)" means an official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map

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Change include:

1. Letter of Map Amendment (LOMA): An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain, but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
2. Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
3. Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the BFE and is, therefore, no longer located within the

special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

4. Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

(TT) "Light Duty Truck" means any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less as defined in 40 CFR 86.082-2 and is:

1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or

2. Designed primarily for transportation of persons and has a capacity of more than 12 persons; or

3. Available with special features enabling off-street or off-highway operation and use.

(UU) "Limit of Moderate Wave Action (LiMWA)" means the boundary line given by FEMA on coastal map studies marking the extents of Coastal A Zones (CAZ).

(VV) "Lowest Adjacent Grade (LAG)" means the lowest elevation of the ground, sidewalk, or patio slab immediately next to the building, or deck support, after completion of the building.

(WW) "Lowest Floor" means the lowest floor of the lowest enclosed area (including basement).

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

(XX) "Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when

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connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

(YY) "Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

(ZZ) "Map Repository" means the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products carries the same authority as hard copy products. Therefore, the NCEM's Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data the NC FRIS website (<http://FRIS.NC.GOV/FRIS>) is the map repository, and for historical flood hazard data the FloodNC website (<http://FLOODNC.GOV/NCFLOOD>) is the map repository.

(AAA) (AAA) "Market Value" means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

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

(CCC) "Non- Encroachment Area (NEA)" means the channel of a river or other watercourse, including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

(DDD) "Otherwise Protected Area (OPA)" see "Coastal Barrier Resources System (CBRS)".

(EEE) "Post-FIRM" means construction or other development for which the "start of construction" occurred on or after April 3, 1978, the effective date of the initial Flood Insurance Rate Map.

(FFF) "Pre-FIRM" means construction or other development for which the "start of construction" occurred before April 3, 1978, the effective date of the initial Flood Insurance Rate Map.

(GGG) "Primary Frontal Dune (PFD)" means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major

coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

(HHH) "Principally Above Ground" means that at least 51% of the actual cash value of the structure is above ground.

(III) "Public Safety" and/or "Nuisance" means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

(JJJ) "Recreational Vehicle (RV)" means a vehicle, which is:

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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;
4. Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use, and
5. Fully licensed and insured, and ready for highway use.

For the purpose of this ordinance, "Tiny Homes/Houses" and Park Models that do not meet the items listed above are not considered Recreational Vehicles and should meet the standards of and be permitted as Residential Structures.

(KKK) "Reference Level" is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zones A, AE, AH, AO, or A99.

(LLL) "Regulatory Flood Protection Elevation" means the "Base Flood Elevation" plus the "Freeboard." In "Special Flood Hazard Areas" where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet freeboard. In "Special Flood Hazard Areas" where no BFE has been established, this elevation shall be at least four (4) feet above the highest adjacent grade.

(MMM) "Remedy a Violation" means to bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.

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

(OOO) "Salvage Yard" means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

(PPP) "Sand Dunes" means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

(QQQ) "Shear Wall" means walls used for structural support but not structurally joined or enclosed at the end (except by breakaway walls). Shear walls are parallel or nearly parallel to the flow of the water.

(RRR) "Solid Waste Disposal Facility" means any facility involved in the disposal of solid waste, as defined in NCGS 130A-290(a)(35).

(SSS) "Solid Waste Disposal Site" means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

(TTT) "Special Flood Hazard Area (SFHA)" means the land in the floodplain subject to a one percent

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(1%) or greater chance of being flooded in any given year, as determined in Chapter 154, Section 154.07 of this Code.

(UUU) "Start of Construction" includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 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 the building, whether or not that alteration affects the external dimensions of the building.

(VVV) "Structure" means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

(WWW) "Substantial Damage" means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed SO percent of the market value of the structure before the damage occurred. See definition of "substantial improvement."

(XXX) "Substantial Improvement" means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds SO 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 either:

1. Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or
2. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to Chapter 154, Section 154.29 of this Code.

(YYY) (YYY) "Technical Bulletin and Technical Fact Sheet" means a FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

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It should be noted that Technical Bulletins and Technical Fact Sheets provide guidance on the minimum requirements of the NFIP regulations. State or community requirements that exceed those of the NFIP take precedence. Design professionals should contact the community officials to determine whether more restrictive State or local regulations apply to the building or site in question. All applicable standards of the State or local building code must also be met for any building in a flood hazard area.

(ZZZ) "Temperature Controlled" means having the temperature regulated by a heating and/or cooling system, built-in or appliance.

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

(BBBB) "Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Articles 4 and 5 of Chapter 154 of this Code, is presumed to be in violation until such time as that documentation is provided.

(CCCC) "Water Surface Elevation (WSE) means the height, in relation to NAVO 1988, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

(DDDD) "Watercourse" means a lake, river, creek, stream, wash, channel, or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

5. Consent Agenda:

Mayor Rivers read the Consent Agenda items into the record, as follows:

a. Consideration – Authorize Live Fire Training at 111 Franklin Street;

- b. Consideration – Accept Final Bid for 606 Witherspoon Street;**
- c. Consideration – Accept Bid for Demolition of 707 Southern Avenue;**
- d. Consideration – Approval of October 24, 2022 Work Session Minutes;**

Mayor Rivers requested the Council's pleasure on the Consent Agenda.

Motion was made by Mayor Pro Tem Kem Spence, seconded by Councilman Joseph Peel to approve the consent agenda. Those voting in favor of the motion were: Biggs, Peel, Gibbs, Whitehurst, Spence, Felton, Baxter and Walton. Against: None. Motion carried.

6. Regular Agenda:

a. Any Item Pulled from the Consent Agenda;

No items were removed from the Consent Agenda.

b. Discussion / Presentation – DMS;

Mayor Rivers recognized Tina Cannon of Dwelling Management Solutions (DMS). Ms. Cannon advised that she owned a mold remediation company and has tried to assist the tenants at Rivers Landing. She was working with a mold tester in town who was willing to do mold testing in the units. The residents are paying their part of the rent for the subsidized housing. Councilman Peel asked where was this in the agreement again? Ms. Cannon directed him to Section 42 in the real estate agreement between the landlord and the tenants.

She highlighted some photos of mold growing in carpets and ventilation systems. She said they were trying to correct the mold problem, and in order to do that, carpet and some walls need to be torn out. Unfortunately, Rivers Landing did not perform the tear-out properly. She said the apartment's maintenance company was doing this treatment incorrectly in her opinion. When you have mold in your flooring and the carpet, it will start moving up the wall. She showed a monitor that identifies the moisture behind the walls, most of which are showing trapped water, which will breed more mold. Many of the walls themselves need to be removed; they cannot just be sprayed for remediation. There is mold coming out of the vents. Mold is airborne, so it can come up out of the HVAC units. She also showed pictures from Walkers Landing, which has the same types of problems. Many of the moisture readings are above 80%. Some of them have new flooring, but they never treated the old flooring for mold, so it's just breeding quickly underneath the new laminate. Some of the drywalls are completely molded. She said she found it to be completely unacceptable for people to have to live in these types of situations. Some of the mold is "fuzzy", which means that it's been there for quite a while. None of these people can afford the remediation themselves and it's subsidized housing.

She explained that what their company has done in the past is ask tenants to take these reports to the City and have our minimum housing inspector go out and investigate, so she wanted to bring it to our attention now. She said she was going to leave her business card, but this was not about her business, this was about saving people from mold because it could make you extremely sick.

Councilman Biggs said, "I know you strive to have no moisture, but given our humid climate, you'll have some. What is acceptable level?" Ms. Cannon replied that there will also be some mold in your home, but not this type of mold. This type needs complete remediation. This isn't like a windowsill that leaks and you can wipe it up. This is when walls need to be torn out. There is no accurate official reading by the EAP for what is acceptable. Councilman Biggs asked if 10% was a reasonable average maybe? He said he knew the ones reading 79% and 100% were not acceptable, he was just wondering what a baseline might be.

Ms. Cannon said that in 20% or higher, mold can grow. So, if you're selling a home and your moisture reading is more than 17% or so, they usually won't close on your home.

Councilman Biggs asked on a multi-story building, would you expect it to be higher on the second story because you've got moisture coming from the ground and roof? Ms. Cannon said that these we're looking at here are single story. She said she didn't do all the assessments, but most of those that were asking for help are just apartment size. When we do our inspections, we find the actual cause of mold and that has to be fixed first, be it HVAC, roof, whatever. Sometimes in multi-story homes, you have mold on the first floor and then you have it sucked up and have it everywhere.

Councilman Peel noted that they might as well have been through a flood with these type of moisture readings. The first thing you do with a flood is tear everything out to the studs. Ms. Cannon agreed that yes, most of the carpet was so wet it needed to be torn out. Some of it could maybe be dried out and then treated. The walls needed to be torn down, the ones showing 80% or so. You can't treat that.

Councilman Peel asked, "Are these companies that run these places, are they non-responsive to these people? Are they trying to fix it and just don't know what they're doing?" Ms. Cannon noted that Councilwoman Baxter could probably answer that better than she could. We haven't heard from anyone in that area since their former regional manager left. The maintenance people aren't qualified because they have to have EAP guidelines for mold and to treat the HVAC. So they don't know what to do. It takes knowledge, equipment, dryers. It takes thousands of dollars' worth of equipment. I think it's partly they don't want to spend the money and partly they don't understand. I was told that one of the regional managers said they were told there was no mold, but that's absolutely not true. We have a community that needs us and I wanted to make you aware.

Councilman Walton said, "I appreciate your presentation and I believe there's mold, but how can we as a Council influence something different?" Ms. Cannon said she didn't know the answer, but she will continue helping as much as she can to do reports. "I am meeting to see if we can get testing done, but a lot of these tenants can't afford the test. Maybe together as a community we can get them some help." Councilman Walton asked that she let us know how things are going. "We might be able to do something with \$450. I can't speak for the Council, but maybe people in the community can supply some things because no one needs to be living in mold." Ms. Cannon replied that their maintenance can do the tear out, but we could do the spraying and other efforts, which could make it cheaper, so there are things we could do.

Mayor Pro Tem Spence said that we can do something about it, if it's that bad. We can pull the power. Unfortunately, it would hurt the people who live there. We can go to the main office and let them know they have to do something or we'll pull their power. There should be something or some way that we as a city can find funds to help and these are definitely people that need help. We see them living in it and it's killing them. Some people get lung diseases and everything else from mold and never get better. We need to contact the owners and let them know that we'll pull their power, but we can also look at funds, grants, something to try to help out.

Ms. Cannon noted that Councilwoman Baxter may know the regional manager, but these people do need help. I do want to be part of the solution. I invite you to come tour these, but you will need to wear a suit and an N95 mask.

Mayor Pro Tem Spence said, "I think Director Bell went out there a while back, didn't he?" Director Bell confirmed that he did go out there early on with Councilwoman Baxter and Kellen Long and it's horrible. He asked if we knew how much it would cost to get the mold tests because he was willing to donate out of his own pocket to help. Ms. Cannon said she was working with someone on a reduced figure but she would find out the pricing once he notified her. She said it would be nice to have our minimum housing employees educated on mold if they're not already.

Mayor Rivers said our inspectors have gone out to Rivers Landing and condemned and moved three families who had been complaining for eight months. They did go to try to meet with the management company and they refused to meet with them. They did call the building inspector. He asked that Mr. Freeman send the file in question to all councilors. He noted that they did not meet their deadline, which was Tuesday of last week. He concurred that we could do what Mayor Pro Tem Spence said and pull the power, but then where do

those people go? We will have the manager send the file out to all councilors so you have a timeline to see what the City has already executed and compare it to what DMS has done and then we can discuss this further at our next work session before we start committing to different things. We want to be on sound ground and have guidance from our attorneys.

Councilwoman Baxter noted that part of the bigger issue is that you have a rental office, a third-party management team and the owner and they're giving the tenants faulty numbers so they cannot reach the third-party. The City has reached out to the regional manager and met with her, but they denied that there was mold and they had been denying it for a long time. This was built in 1972, but they also say it was built in the '80s. I am a resident there and I've been seeing this for a long time. We have a lot of people that don't care because they don't have to live there. Until you actually go and see it for yourself, you just don't know how bad it is. The apartment that read 100% on the wall, they came in and took the wall down, but as they were taking the wall down, they didn't tell the tenant on the other side and they opened her up to mold spores. Where they did take the wall down, they left the carpet and did nothing in the bathroom. Maintenance is telling people they need to leave the apartments because it's going to kill them and then they "no longer work there." I don't know how we'll get to the owner. We've been trying. The owner will have to get rid of the third-party team because they're a nasty bunch of people.

Councilman Peel said that until we figure out how we can hold the people accountable who own these buildings, I'm not sure where we go. He suggested that Attorney Morgan do some research and provide it for us during the work session. Mr. Morgan agreed that he would do any kind of digging that he could. Councilman Peel said these types of people don't need to be in business. It sounds like they're spending money doing something, but it's not helping the situation.

Councilman Biggs agreed that all of those on Council would be willing to help people in need. He said his concern is this is one of the first issues that was brought to light when we came on Council and it was a sewage issue at that time and now it's mold. What else is going on city-wide that the tenants who are living in these places and don't have the courage or the voice to stand up and say these are the conditions they're living in? Tackling the mold issue is just the tip of the iceberg. This isn't the only place this is going on. We've talked a lot about the rental inspection program that was taken away by act of General Assembly years ago. I don't know that we don't ask the GA to have that power again. I agree that we ask the city attorney what legal options do we have. We can say we'll pull the power, but we don't have the available places for people to go. I know staff has been working on this and now the city manager is too. We've been talking about this a long time and I'm ready for some action on this. Even if it's not what we want to hear, let's get somewhere with this at the work session. These are sad conditions.

Manager Freeman made a request to form a task force because he was hearing a challenge that could speak to the Department of Social Services, the Council on Aging, Public Health and the Fire Department. He said there may be some pots of money that might allow us some movement. EAP is a federal arm that can put more bite into this. He agreed that it's absolutely correct that we don't have the housing to pull the plug on them, but I think we can get a task force together and start swinging. He said he believed the owner was probably aware this was happening. He mentioned paying into an escrow account if the landlord was not honoring proper living situations, so he felt there were possible ways to work with this. He said he did not have faith in the rental office, third-party or the owner itself. He asked for three weeks because they were still trying to interview a new Community Development Director.

Councilman Walton praised Mr. Freeman's plan and said we can put a little bit of heat out there with our influence. Every business wants someone to think positively of them. You can put a review about somebody out there and upset somebody. A one-star review will hurt some feelings. A building like that can be bought by a lot of owners, so there's no telling how many owners you might actually have in there. He thought that a task force would be a good idea and helpful to move things forward.

Councilman Gibbs agreed about asking Mr. Morgan about paying the rent into a "pot" – sometimes choking up that money flow or finding a way to legally hinder that from coming in might be the only way to get their attention and make them act the way they need to. This

Council cares about people and this is not just a fourth ward thing. This is probably city-wide. If we address this the right way, we can maybe slow it down or stop it from happening in other places. If I have to pay out of my own pocket, I have no problem.

Mayor Rivers asked that all correspondence that gone out on the matter be forwarded to the Council. We want the task force to go ahead and meet and start looking into things. Mr. Morgan said he would go ahead and start looking into some general things and asked Councilwoman Baxter to provide him with a copy of a lease before that time.

Councilman Biggs said he felt this issue was important enough that we should dedicate some time every month to discuss this on the work session. Mayor Rivers suggested we call it the Elizabeth City Rental Housing Task Force and add it to the work session under Community Development. Mayor Pro Tem Spence asked that once the manager created the task force, could it possibly be added to the city's website so that people know who to reach out to and maybe create a specific contact person in Community Development?

Mayor Rivers noted that we won't disband the task force once we finish this issue, so they can still handle things afterwards as they see fit.

c. Update – City's Annual United Way Pledge Drive Efforts;

Grants Administrator Jon Hawley explained this was an annual pledge drive that allowed employees to streamline donations to the United Way through payroll deductions, either one-time or through a payment each pay period. Employees could donate to the United Way and have it go to where it was determined it was most needed or they could select where they'd like their money to go. The pledge drive runs through the month of November, and the Council is also free to donate as well.

Councilwoman Felton asked how is it determined which of those agencies get the funds? Councilman Biggs said that he served on the boards for many years, so he could answer that. You can make a designation directly to the organization that you'd like for the money to go to. So if SPCA is your thing or the Food Bank, you can designate that all your money goes to that. If not and you just want it to go to the general fund, then the Board, which is made up of people all across the five county service area will decide where the money goes, usually through grant requests, etc. Say if the SPCA asked for \$20,000 in grant funds and ended up with that in payroll donations, then they'd probably redirect some of that to someone else who'd asked for some.

d. Consideration – Call for a Public Hearing – Traffic Calming;

Motion was made by Mayor Pro Tem Kem Spence, seconded by Councilwoman Katherine Felton to call for a Public Hearing on the Traffic Calming Policy to be held on November 28, 2022. Those voting in favor of the motion were: Biggs, Peel, Gibbs, Whitehurst, Spence, Felton, Baxter and Walton, Against: None. Motion carried.

e. Consideration / Discussion – Equipment Quotes for Traffic Calming Equipment;

Chief Webster noted this item was a companion piece with the traffic calming policy. He'd been directed during the 10/24 meeting to look into traffic calming equipment. The City needs to acquire the appropriate equipment if we wish to engage in proper traffic calming and traffic studies in order to measure speed, volume and time of days. He received quotes on two different systems. Tube systems are less expensive; they stretch across the road and measure the traffic count. The other system was radar-based, which eliminated having employees in the street having to place tubes down and deal with the maintenance on those. The radar system is touchless, but it is more expensive. Both deal with counting, measuring speed and congestion. Part of the treatment piece would be speed warning equipment. We have four radar speed warning signs now. The problem with the four we have now give feedback but they don't count, so there's no data being collected. There are several pole-mounted systems that give feedback and count and he listed prices for those: \$2,873 for the Metro Unit (2 - tube based) and \$2,934 for radar based unit (recommended); Shield 12 – gives feedback and counts - \$4,999 per unit (two recommended).

Speed alter 18 trailer - \$9,554 (one recommended); and Speed alter 24 trailer (measures speed and traffic calming messaging) - \$17,205

Councilman Peel said he was counting roughly \$26,000. Chief Webster said that's right, but they can be purchased all or in part or not at all. Councilman Peel said the reality is we can't implement the traffic calming policy we currently have without this equipment much less the one on the table. Chief Webster agreed and added that at a minimum you need one of the tube-based counters.

Councilman Biggs said the tube unit that you've got there does not report your speed. Is the radar far enough out? Is it catching the speed of the car before the motorist is catching how fast they're running? Are we getting accurate info? Chief Webster said that's a concern I've always had and I don't know if it picks up before it flashes. To depend on the pole-mounted radar unit to do a study would be a snapshot, but not an actual speed study. You'd need the tube counts. People normally don't realize it's there to measure speed and it gives you a much cleaner picture of what's going on. Councilman Biggs said he'd be interested in at least finding the money to start with the tube ones then.

Mayor Rivers noted that with calling for the hearing on the policy and finding out if the public has any other concerns and we have what the recommendation is, that gives us a good grasp to put that out and we can send it up and maybe get some grants and see if we can get anything and maybe even put us into talking budget.

Councilman Biggs noted that we were presented with a traffic calming study and I believe it was \$20,000 and we were using Powell Bill money for that, was that correct? Director Bell confirmed that was correct. Councilman Biggs asked if we budgeted for that or was it unbudgeted? Director Bell replied that it was unbudgeted, we were just trying to get it approved. Councilman Biggs said he believed Powell Bill money goes back to the state if not used. Manager Freeman asked if we're talking city-wide for these traffic calming devices? Councilman Peel said the policy in front of us has been written in such a way that if people come before us and ask for measures, we can talk about them, but we need this equipment to be able to do it. It would be anywhere that someone was concerned about speeding or we had more traffic that we could handle. Manager Freeman asked if there is an issue on the table or we're just looking at going forward? Councilman Gibbs said he believed that we have issues. Manager Freeman noted there may be things we can do in the interim until you're ready to address this.

Mayor Rivers said, "I think we kind of directed that we wanted to get the prices, now we're doing the public hearing and at the first of the year we can really start thinking about what equipment to purchase, what to do and give some direction at that time.

f. Call for a Public Hearing – Annexation;

Motion made to call for a public hearing to be held on November 28, 2022 on the annexation of 100 and 104 Capital Trace by Councilman Joseph Peel, seconded by Mayor Pro Tem Kem Spence. Those voting in favor of the motion were: Biggs, Peel, Gibbs, Whitehurst, Spence, Felton, Baxter and Walton, Against: None. Motion carried.

Mayor Rivers said he wanted to recognize Kellen Long for her service, even though her last day had been the prior Thursday. He had a certificate for her and would make sure that she received it.

Councilman Peel requested a presentation on what the manager recommends in fixing the infrastructure for the 11/28 meeting. He said he worried about the sewer valve leaking into the river. That's not that expensive of a fix. We need to take some action. I'd like an update on where we are during the Public Utilities Committee Report. Mayor Rivers said they are prepared for that at the work session coming forward. Councilman Peel noted that we also have not had a conversation about how we'll evaluate the city manager and we were all concerned about fair treatment. Mayor Rivers agreed that could put under the Human Resources Committee. Councilman Walton opined that a process is already in place, we just didn't complete it last time. Mayor Rivers said we'll talk about that. We did indicate to the city manager that we'll have an evaluation. We've come out of our strategic plan and we know when we get there, there won't be any surprises.

Mayor Rivers asked Montique McClary if she would come forward. He said they wanted to formally thank her for the service that she rendered as interim city manager. They received great compliments and response from the community while she served. He said she did a wonderful job representing the city during meetings and in dealing with personnel.

7. Adjournment:

Having no further business to be discussed, Mayor Rivers adjourned the meeting at 8:53 p.m.

E. Kirk Rivers
Mayor

April Onley, NCCMC
City Clerk

