SUPPLEMENT NO. 34
VOLUMES I AND II
May 2008

EXHIBIT
A

CODE

of

SHELBY COUNTY, TENNESSEE

Looseleaf Supplement

This Supplement contains all ordinances deemed advisable to be included at this time through:

Ordinance No. 352, enacted December 11, 2007.

See the Code Comparative Table for further information.

Remove old pages	*Insert new pages*
VOLUME I	
Checklist of up-to-date pages	Checklist of up-to-date pages (following Table of Contents)
979—982	979—982
1405, 1406	1405, 1406
1438.1, 1438.2	1438.1, 1438.2
VOLUME II	
2695—2712	2695—2712.12
2754.23, 2754.24	2754.23—2754.24.1
2754.31, 2754.32	2754.31, 2754.32
3735, 3736	3735, 3736
3761	3761
3880.1, 3880.2	3880.1, 3880.2
3885, 3886	3885—3886.1
3925—3926.1	3925—3926.1

Insert and maintain this instruction sheet in front of this publication. File removed pages for reference.

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Tallahassee, FL 32316
(850) 576-3171
1-800-262-CODE

Checklist of Up-to-Date Pages

(This checklist will be updated with the printing of each Supplement)

From our experience in publishing Looseleaf Supplements on a page-for-page substitution basis, it has become evident that through usage and supplementation many pages can be inserted and removed in error.

The following listing is included in this Code as a ready guide for the user to determine whether the Code volume properly reflects the latest printing of each page.

In the first column all page numbers are listed in sequence. The second column reflects the latest printing of the pages as they should appear in an up-to-date volume. The letters "OC" indicate the pages have not been reprinted in the Supplement Service and appear as published for the original Code. When a page has been reprinted or printed in the Supplement Service, this column reflects the identification number or Supplement Number printed on the bottom of the page.

In addition to assisting existing holders of the Code, this list may be used in compiling an up-to-date copy from the original Code and subsequent Supplements.

Page No.	Supp. No.	Page No.	Supp. No.
Volume I		7, 8	OC
Title page	1	9, 10	30
iii	OC	10.1	30
v, vi	OC	11, 12	OC
vii	OC	13, 14	OC
ix, x	OC	15, 16	OC
xi, xii	1	17, 18	OC
xiii	1	19, 20	OC
xv, xvi	33	21, 22	OC
xvii, xviii	33	23, 24	OC
xix, xx	33	25, 26	OC
xxi, xxii	33	27, 28	30
xxiii, xxiv	33	29, 30	30
1, 2	OC	30.1	30
3, 4	OC	31, 32	OC
5, 6	OC	33, 34	OC

Page No.	Supp. No.	Page No.	Supp. No.
35, 36	OC	205, 206	31
37, 38	OC	263, 264	23
39, 40	OC	265, 266	23
41, 42	OC	267, 268	23
43, 44	OC	269, 270	23
45, 46	OC	271, 272	23
47, 48	OC	273, 274	23
49, 50	OC	275, 276	23
51, 52	OC	277, 278	23
53, 54	OC	279, 280	23
55, 56	OC	281, 282	23
57, 58	OC	283, 284	23
59	OC	285, 286	23
109	30	289, 290	OC
121	OC	291, 292	OC
123, 124	OC	343	OC
125, 126	OC	345, 346	OC
127, 128	8	347, 348	OC
177, 178	33	349	OC
179	33	399	OC
181, 182	OC	401, 402	22
183, 184	OC	403, 404	22
185, 186	OC	405	22
187, 188	OC	455, 456	33
189, 190	33	457, 458	33
190.1	33	459, 460	33
191, 192	OC	461, 462	33
193, 194	OC	463, 464	33
195, 196	OC	465	33
197, 198	3	509, 510	OC
198.1, 198.2	33	511, 512	33
198.3, 198.4	33	513	33
199, 200	1	515, 516	OC
201, 202	32	517, 518	OC
202.1, 202.2	32	519, 520	OC
202.3, 202.4	32	521, 522	OC
202.5, 202.6	32	523, 524	OC
202.7	32	525, 526	OC
203, 204	3	527, 528	OC

Page No.	Supp. No.	Page No.	Supp. No.
529, 530	OC	659, 660	OC
531, 532	OC	661	OC
533, 534	OC	711, 712	OC
535, 536	OC	713, 714	27
537, 538	OC	714.1	27
539, 540	26	715	16
540.1	26	717, 718	24
541, 542	14	719, 720	OC
543, 544	14	721, 722	OC
545, 546	22	723, 724	OC
547, 548	14	725, 726	OC
549, 550	14	727, 728	OC
551, 552	22	729, 730	OC
553, 554	22	731, 732	OC
555, 556	22	733, 734	OC
556.1, 556.2	30	735, 736	OC
557, 558	30	737, 738	OC
558.1	30	739, 740	11
558.3, 558.4	22	741, 742	11
558.5, 558.6	22	742.1	11
558.7, 558.8	22	743, 744	OC
558.9, 558.10	22	745, 746	OC
558.11, 558.12	22	747, 748	OC
558.13, 558.14	22	749, 750	OC
559	33	751, 752	33
581, 582	OC	753, 754	OC
583, 584	OC	755, 756	OC
585, 586	OC	757, 758	OC
587, 588	OC	759, 760	OC
589, 590	32	761, 762	OC
591, 592	32	763, 764	16
593, 594	32	764.1, 764.2	27
595, 596	32	765, 766	OC
597, 598	32	767, 768	17
599, 600	32	769, 770	17
601	32	771, 772	17
635	5	773, 774	17
637, 638	5	775	17
657	OC	823	OC

Page No.	Supp. No.	Page No.	Supp. No.
825, 826	1	1069, 1070	OC
827, 828	1	1071, 1072	OC
879, 880	OC	1073, 1074	OC
881, 882	33	1075, 1076	OC
903	33	1077, 1078	6
905, 906	33	1079, 1080	33
907, 908	33	1103	1
933, 934	33	1105, 1106	29
935, 936	29	1107, 1108	31
937, 938	25	1109, 1110	31
939, 940	OC	1129	OC
941, 942	27	1131, 1132	OC
942.1	27	1133	OC
943, 944	29	1183, 1184	17
944.1	29	1184.1	17
945, 946	OC	1185, 1186	OC
947, 948	OC	1187, 1188	OC
949, 950	OC	1189, 1190	OC
951, 952	OC	1191, 1192	OC
953, 954	OC	1193, 1194	OC
955, 956	33	1195, 1196	OC
957, 958	33	1197, 1198	OC
959, 960	33	1199, 1200	OC
961, 962	33	1201, 1202	10
975	33	1203, 1204	19
977, 978	33	1205, 1206	19
979, 980	34	1206.1	19
981, 982	34	1207, 1208	10
983, 984	33	1209, 1210	10
985, 986	33	1211, 1212	10
987, 988	33	1213, 1214	10
989	33	1215, 1216	17
1005, 1006	1	1217	17
1007, 1008	OC	1251	OC
1009, 1010	OC	1253, 1254	OC
1011, 1012	OC	1255, 1256	OC
1013, 1014	OC	1257, 1258	OC
1015, 1016	6	1259, 1260	OC
1067, 1068	33	1261, 1262	OC

Page No.	Supp. No.	Page No.	Supp. No.
1263, 1264	OC	1435, 1436	1
1265, 1266	OC	1437, 1438	9
1267	OC	1438.1, 1438.2	34
1317, 1318	OC	1439, 1440	1
1319, 1320	OC	1441, 1442	1
1321, 1322	OC	1443, 1444	33
1323, 1324	OC	1444.1	33
1325, 1326	OC	1445, 1446	1
1327, 1328	OC	1447, 1448	1
1329, 1330	OC	1449, 1450	1
1331, 1332	OC	1451, 1452	33
1333, 1334	OC	1452.1, 1452.2	33
1335, 1336	OC	1453, 1454	1
1337, 1338	OC	1455, 1456	1
1339	OC	1457, 1458	1
1389	8	1459, 1460	1
1391, 1392	8	1461, 1462	1
1393, 1394	8	1463, 1464	1
1395	9	1465, 1466	1
1405, 1406	34	1467, 1468	1
1407	33	1469, 1470	1
1409, 1410	1	1471, 1472	1
1411, 1412	1	1473, 1474	1
1413, 1414	1	1475, 1476	1
1415, 1416	1	1477, 1478	1
1417, 1418	1	1479, 1480	1
1419, 1420	1	1481, 1482	1
1421, 1422	9	1483, 1484	1
1423, 1424	33	1485, 1486	1
1425, 1426	33	1487, 1488	1
1427, 1428	33	1489, 1490	9
1428.1, 1428.2	33	1490.1	9
1428.3, 1428.4	33	1491, 1492	1
1428.5	33	1493, 1494	1
1429, 1430	25	1497	OC
1430.1, 1430.2	25	1499, 1500	OC
1430.3, 1430.4	25	1501	OC
1431, 1432	1	1551	10
1433, 1434	1	1553, 1554	25

Page No.	Supp. No.	Page No.	Supp. No.
1554.1	25	1771, 1772	OC
1555, 1556	22	1773, 1774	OC
1557, 1558	22	1775, 1776	OC
1559, 1560	22	1777, 1778	OC
1561, 1562	22	1779, 1780	OC
1563, 1564	22	1781, 1782	OC
1565, 1566	22	1783, 1784	OC
1567, 1568	22	1785, 1786	OC
1569, 1570	22	1787, 1788	OC
1571, 1572	22	1789, 1790	OC
1573, 1574	22	1791, 1792	OC
1621, 1622	OC	1793, 1794	OC
1623, 1624	OC	1795, 1796	OC
1625, 1626	OC	1797, 1798	OC
1627, 1628	OC	1799, 1800	OC
1629, 1630	OC	1801, 1802	OC
1631	OC	1803, 1804	OC
1681, 1682	OC	1805, 1806	OC
1683, 1684	OC	1807, 1808	OC
1685, 1686	OC	1809, 1810	OC
1687, 1688	OC	1811, 1812	OC
1689, 1690	22	1813, 1814	OC
1690.1	22	1815, 1816	OC
1691, 1692	OC	1817, 1818	OC
1693	OC	1819, 1820	17
1743, 1744	OC	1821, 1822	17
1745, 1746	17	1823	17
1747, 1748	OC	1871	OC
1749, 1750	OC	1873, 1874	4
1751, 1752	OC	1875	4
1753, 1754	OC	1899, 1900	3
1755, 1756	OC	1901, 1902	3
1757, 1758	OC	1903, 1904	3
1759, 1760	OC	1905, 1906	16
1761, 1762	OC	1906.1	16
1763, 1764	OC	1907, 1908	3
1765, 1766	OC	1909, 1910	3
1767, 1768	OC	1911, 1912	3
1769, 1770	OC	1913, 1914	3

Page No.	Supp. No.	Page No.	Supp. No.
1915, 1916	3	2187, 2188	27
1917, 1918	3	2189, 2190	27
1925, 1926	OC	2191, 2192	27
1927, 1928	OC	2193, 2194	27
1929, 1930	OC	2195, 2196	27
1931, 1932	OC	2197, 2198	27
1933, 1934	OC	2199, 2200	27
1935, 1936	OC	2201, 2202	27
1937, 1938	OC	2203, 2204	27
1939, 1940	OC	2205, 2206	27
1941, 1942	24	2207, 2208	27
1943	24	2209, 2210	27
1993, 1994	33	2211, 2212	27
1995, 1996	OC	Volume II	
1997, 1998	OC	Title page	1
1999, 2000	33	xv, xvi	33
2001, 2002	33	xvii, xviii	33
2002.1, 2002.2	33	xix, xx	33
2003, 2004	OC	xxi, xxii	33
2005, 2006	OC	xxiii, xxiv	33
2007, 2008	30	2575, 2576	26
2009, 2010	30	2577, 2578	OC
2011	30	2579, 2580	OC
2057, 2058	OC	2581, 2582	3
2059, 2060	OC	2583, 2584	3
2061, 2062	OC	2585, 2586	25
2063, 2064	OC	2586.1	25
2065, 2066	OC	2587, 2588	24
2067, 2068	OC	2589, 2590	25
2069, 2070	OC	2590.1	25
2071, 2072	OC	2591, 2592	7
2073, 2074	OC	2592.1	7
2075	27	2593, 2594	OC
2175, 2176	27	2595, 2596	22
2177, 2178	27	2596.1	22
2179, 2180	27	2597, 2598	OC
2181, 2182	27	2599, 2600	7
2183, 2184	27	2601, 2602	OC
2185, 2186	27	2603, 2604	25

Page No.	Supp. No.	Page No.	Supp. No.
2604.1	25	2659, 2660	OC
2605, 2606	OC	2661, 2662	OC
2607, 2608	19	2663, 2664	22
2609, 2610	22	2665, 2666	22
2611, 2612	22	2667, 2668	22
2612.1, 2612.2	22	2668.1	19
2612.2.1	22	2669, 2670	OC
2613, 2614	OC	2671, 2672	OC
2615, 2616	OC	2673, 2674	25
2617, 2618	22	2675, 2676	25
2619, 2620	22	2677, 2678	25
2621, 2622	22	2678.1, 2678.2	25
2622.1, 2622.2	22	2679, 2680	OC
2622.3	22	2681, 2682	25
2623, 2624	7	2682.1	25
2625, 2626	8	2683, 2684	OC
2626.1, 2626.2	8	2685, 2686	OC
2627, 2628	OC	2687, 2688	3
2629, 2630	OC	2688.1, 2688.2	25
2631, 2632	OC	2688.3, 2688.4	25
2633, 2634	OC	2689, 2690	25
2635, 2636	OC	2691	25
2637, 2638	OC	2692.1, 2692.2	18
2639, 2640	1	2692.3	18
2640.1, 2640.2	22	2693, 2694	OC
2640.3, 2640.4	22	2695, 2696	34
2640.5, 2640.6	22	2697, 2698	34
2640.7, 2640.8	22	2699, 2700	34
2641, 2642	16	2701, 2702	34
2643, 2644	16	2703, 2704	34
2644.1	16	2705, 2706	34
2645, 2646	OC	2707, 2708	34
2647, 2648	OC	2709, 2710	34
2649, 2650	3	2711, 2712	34
2650.1	3	2712.1, 2712.2	34
2651, 2652	OC	2712.3, 2712.4	34
2653, 2654	OC	2712.5, 2712.6	34
2655, 2656	OC	2712.7, 2712.8	34
2657, 2658	OC	2712.9, 2712.10	34

Page No.	Supp. No.	Page No.	Supp. No.
2712.11, 2712.12	34	2754.21, 2754.22	26
2713, 2714	25	2754.23, 2754.24	34
2715, 2716	25	2754.24.1	34
2717, 2718	25	2754.25, 2754.26	26
2719, 2720	25	2754.27, 2754.28	26
2720.1, 2720.2	25	2754.29, 2754.30	26
2720.3, 2720.4	25	2754.31, 2754.32	34
2720.5, 2720.6	25	2755, 2756	22
2720.7, 2720.8	25	2757, 2758	22
2720.9, 2720.10	25	2759, 2760	OC
2721, 2722	11	2761, 2762	OC
2722.1, 2722.2	22	2763, 2764	OC
2723, 2724	24	2765, 2766	OC
2725, 2726	OC	2767, 2768	OC
2727, 2728	3	2769, 2770	OC
2729, 2730	3	2771, 2772	OC
2731, 2732	21	2773, 2774	22
2733, 2734	OC	2775, 2776	OC
2735, 2736	OC	2777, 2778	OC
2737, 2738	21	2779, 2780	OC
2738.1	21	2781, 2782	OC
2739, 2740	16	2783, 2784	22
2741, 2742	26	2785, 2786	22
2743, 2744	26	2787, 2788	OC
2745, 2746	26	2789, 2790	OC
2747, 2748	26	2791, 2792	OC
2749, 2750	26	2793, 2794	22
2751, 2752	26	2794.1, 2794.2	20
2753, 2754	26	2794.3, 2794.4	20
2754.1, 2754.2	26	2794.5, 2794.6	20
2754.3, 2754.4	26	2794.7, 2794.8	20
2754.5, 2754.6	26	2794.9, 2794.10	20
2754.7, 2754.8	26	2794.11, 2794.12	20
2754.9, 2754.10	26	2794.13	20
2754.11, 2754.12	26	2795, 2796	OC
2754.13, 2754.14	26	2797, 2798	OC
2754.15, 2754.16	26	2799, 2800	OC
2754.17, 2754.18	26	2800.1, 2800.2	26
2754.19, 2754.20	26	2800.3	26

Page No.	Supp. No.	Page No.	Supp. No.
2801	OC	2967, 2968	OC
2901, 2902	OC	2969, 2970	OC
2903, 2904	OC	2971, 2972	OC
2905, 2906	OC	2973, 2974	OC
2907, 2908	OC	2975, 2976	OC
2909, 2910	OC	2977, 2978	OC
2911, 2912	25	2979, 2980	OC
2912.1	25	2981, 2982	OC
2913, 2914	OC	2983, 2984	OC
2915, 2916	OC	2985, 2986	OC
2917, 2918	OC	2987, 2988	OC
2919, 2920	OC	2989	8
2921, 2922	OC	3087, 3088	20
2923, 2924	25	3088.1, 3088.2	20
2925, 2926	25	3089, 3090	8
2927, 2928	25	3091	8
2928.1, 2928.2	25	3093, 3094	OC
2929, 2930	OC	3095, 3096	OC
2931, 2932	3	3097, 3098	OC
2932.1, 2932.2	3	3099, 3100	8
2933, 2934	OC	3101, 3102	8
2935, 2936	OC	3103, 3104	8
2937, 2938	20	3105, 3106	8
2939, 2940	20	3107, 3108	8
2940.1	20	3109, 3110	8
2941, 2942	OC	3111, 3112	8
2943, 2944	OC	3113, 3114	8
2945, 2946	20	3115, 3116	8
2947, 2948	20	3117, 3118	8
2949	20	3119, 3120	8
2951, 2952	OC	3121, 3122	8
2953, 2954	20	3123, 3124	8
2954.1	20	3125, 3126	8
2955, 2956	OC	3127, 3128	8
2957, 2958	3	3129, 3130	8
2959, 2960	20	3131, 3132	8
2961, 2962	20	3133, 3134	8
2963, 2964	OC	3135, 3136	8
2965, 2966	OC	3137, 3138	8

Page No.	Supp. No.	Page No.	Supp. No.
3139, 3140	8	3735, 3736	34
3141, 3142	8	3757, 3758	12
3143, 3144	20	3759, 3760	24
3145, 3146	20	3761	34
3147, 3148	20	3785, 3786	33
3149, 3150	20	3787, 3788	33
3151, 3152	20	3789	33
3153, 3154	20	3839, 3840	OC
3155, 3156	20	3841, 3842	OC
3157, 3158	20	3843, 3844	OC
3159, 3160	20	3845, 3846	OC
3161, 3162	20	3847, 3848	32
3163, 3164	20	3849, 3850	23
3165, 3166	20	3851, 3852	33
3167, 3168	20	3852.1	33
3169, 3170	20	3853, 3854	28
3171, 3172	20	3855, 3856	33
3173, 3174	20	3857, 3858	33
3175, 3176	20	3858.1, 3858.2	33
3199	OC	3859, 3860	27
3201, 3202	OC	3860.1	27
3203, 3204	OC	3861, 3862	10
3205, 3206	OC	3863, 3864	29
3207, 3208	OC	3865, 3866	33
3209, 3210	OC	3867, 3868	33
3211, 3212	OC	3869, 3870	33
3213, 3214	OC	3871, 3872	33
3215, 3216	OC	3873, 3874	33
3217, 3218	OC	3875, 3876	33
3219, 3220	OC	3877, 3878	33
3221, 3222	OC	3878.1	33
3223, 3224	OC	3879, 3880	20
3225	OC	3880.1, 3880.2	34
3725, 3726	17	3881, 3882	33
3726.1	17	3883, 3884	33
3727, 3728	OC	3885, 3886	34
3729, 3730	24	3886.1	34
3731, 3732	OC	3887, 3888	33
3733, 3734	22	3888.1	33

Page No.	Supp. No.
3889, 3890	20
3891, 3892	27
3893, 3894	33
3895, 3896	33
3896.1	33
3897, 3898	17
3898.1, 3898.2	17
3898.3, 3898.4	17
3898.5, 3898.6	17
3898.7, 3898.8	33
3899, 3900	27
3900.1, 3900.2	27
3900.3	27
3901, 3902	3
3903, 3904	3
3905, 3906	3
3907, 3908	8
3909, 3910	20
3911, 3912	33
3913, 3914	33
3915, 3916	33
3917	33
3925, 3926	34
3926.1	34
3927, 3928	3
3929, 3930	20

(2) Inspects off-site locations for any zoning, environmental, public health-related, construction code (building, existing building, mechanical, fuel, gas, or plumbing), or school, road, or other facilities construction, compliance mandated by state law, contract agreement, or local ordinance.

(b) Every official, employee and appointee subject to subsection (a) shall submit to the ethics officer a statement of disclosure of interests on or before February 15 annually. The statement of disclosure of interests shall include the information for the spouse of the official, employee or appointee. The statement may be updated by an official, employee or appointee at any time.

(c) The form of the statement of disclosure of interests shall be the same as the statement of disclosure of interests that candidates and elected officials must file with the Tennessee Ethics Commission.

(d) In addition to such statements of disclosure of interests, elected officials shall submit copies of their campaign financial disclosure statements when they are required to be filed with the county election commission.
(Ord. No. 330, Att. § 4, 6-25-07)

Sec. 12.5-55. General standard of conduct for officials, employees, appointees.

Officials, employees, appointees, their spouses, and children living in their household:

(a) Shall not receive or use for personal purposes any property, services or funds of county government unless authorized by law or county policy. Excepted is the use of county facilities without a measurable monetary value or with minimal monetary value;

(b) Shall not:

(1) Accept, lend, or borrow money to or from an official, employee, appointee, or prohibited source; or

(2) Accept any surety, guaranty, or endorsement of any obligation for his or herself from another official, employee, appointee, or prohibited source; or

(3) Give any surety, guaranty, or endorsement of any obligation for another official, employee, appointee, or prohibited source.

Excepted are loans made between employees of similar classification for $2,000.00 or less per calendar year and loans between family members, provided that neither such loan may be made to or from a prohibited source.

(c) Shall not, for a period of one year after separation from service or employment receive compensation for any services rendered on behalf of any person, business or association in relation to any case, proceeding, or application, with respect to which such former official, employee, or appointee was directly concerned or in which such official, employee, or appointee personally participated during the period of his service or employment or which was under his active consideration or with respect to which knowledge of information was made available to him during the period of his employment. Nothing in this section precludes a former official, employee, or appointee from being engaged directly by the county to provide services to or on behalf of the county during this one-year period.

(d) Notwithstanding any provision in this code of ethics to the contrary, nothing in this code of ethics prevents a member of the board of county commissioners from holding full-time employment in a position which may have incidental or occasional contact with the county, if such employment is his or her primary source of income, and if he or she discloses his or her interest and otherwise complies with this code of ethics and state law regarding conflicts of interest.

(Ord. No. 330, Att. § 5, 6-25-07)

Sec. 12.5-56. Acceptance of gifts and other things of value.

An official, employee, appointee, or their spouse or child living in the same household, shall not accept, directly or indirectly, any

gift, money, gratuity, or other consideration or favor of any kind from anyone other than the county for the performance of an act, or refraining from performance of an act, that he would be expected to perform, or refrain from performing, in the regular course of his county duties.

An elected official shall not accept any entertainment, food, refreshments, meals, health screenings, amenities, foodstuffs, beverages, or other items with a value in excess of $200.00 in a calendar year from any prohibited source or single entity which conducts business with the county or appears before the board of county commissioners. Excepted are meals and entertainment offered as part of events sponsored by public or quasi-public entities, community organizations, or nonprofit charitable or educational organizations.

Each prohibited source shall disclose, on a quarterly calendar basis in writing to the ethics officer, all gratuities that it has given to officials, employees, and appointees during the preceding quarter.

Notwithstanding anything in this Code of Ordinances to the contrary, an individual may accept any offer of items described regardless of value, provided that the same items are offered at the same time to the public generally or to all the board of county commissioners and/or any other individuals in the same class of officials, employees, or appointees.
(Ord. No. 330, Att. § 6, 6-25-07; Ord. No. 348, 10-22-07)

Sec. 12.5-57. Ethics complaints.

(a) *Ethics commission.* A county ethics commission consisting of 12 members and a chairman shall be appointed to two-year terms by the mayor with confirmation by the board of county commissioners. The membership of the ethics commission shall consist of not less than five licensed attorneys of which three shall be former judges of a court of record or general sessions court, in addition to eight members from the broader community. The mayor shall insure that the diversity of the community is reflected in the membership of the ethics commission. The ethics commission shall have jurisdiction of all ethics complaints lodged against elected officials; appointees to boards, commissions, and

authorities; the chief administrative officer; assistant chief administrative officer; division directors, deputy directors, chief administrators, administrators, and deputy administrators; chief deputy and assistant chief deputy sheriffs; and superintendent, deputy superintendent, assistant superintendent, chief financial officer, and chief of operations for the county school board. The records of the ethics commission shall be maintained at the direction of the chair and filed with the ethics officer, where they shall be open to the public.

(b) *Ethics officer.* The county attorney shall designate one attorney from his staff to serve as ethics officer to the ethics commission. This ethics officer shall provide legal advice and direction to the commission, and shall review all ethics complaints prior to those complaints being heard by the commission. Upon reviewing a complaint, the ethics officer may take no action, refer the matter to an appropriate officer or entity, or refer it to the ethics commission. The ethics officer shall also issue ethics opinions, verbally or in writing, at the request of any county elected official or department head.

(c) *Ethics training required.* Every official, employee, and appointee under the jurisdiction of the ethics commission shall undergo ethics training once per calendar year. It shall be the responsibility of the ethics officer to identify a reputable source for ethics training and make that training available locally on a quarterly basis. The ethics officer shall file a report with the ethics commission no later than December 31 of each year certifying that ethics training has been completed by the individuals under its jurisdiction.

(d) *Duties of ethics commission.* The ethics commission shall investigate any credible complaint referred by the ethics officer charging a violation under this code of ethics by an official, employee, or appointee in its jurisdiction. The ethics commission shall also hold public meetings on an on-going basis to educate the public about ethical behavior and practices by government officials; inform the public of the appropriate process for filing complaints; make recommendations regarding possible rule or ordinance provisions relating to ethics; and maintain an on-going

Chapter 20

MOTOR VEHICLES AND TRAFFIC*

Article I. In General

Sec. 20-1. Definitions.
Sec. 20-2. General duties of the sheriff under chapter.
Sec. 20-3. Duty of officers to enforce traffic laws.
Sec. 20-4. Authority to direct traffic.
Sec. 20-5. Authority of firemen to direct traffic.
Sec. 20-6. Obedience to traffic officers.
Sec. 20-7. Obedience to school safety patrols.
Sec. 20-8. Riding or driving animals or animal drawn vehicles.
Sec. 20-9. Application of chapter to persons propelling pushcarts.
Sec. 20-10. Application of chapter to persons working on street.
Sec. 20-11. Exemptions for authorized emergency vehicles.
Sec. 20-12. Use of roller skates, coasters, etc., in roadway.
Sec. 20-13. Clinging to moving vehicles.
Sec. 20-14. Boarding or alighting from vehicle in motion.
Sec. 20-15. Riding on portion of vehicle not intended for passengers or operating a vehicle while persons are riding on portion of vehicle not intended for passengers.
Sec. 20-16. Riding on motorcycles.
Sec. 20-17. Motorcycles, etc.—Wearing of crash helmets by driver and passenger required; operation of headlights required.
Sec. 20-18. Same—Passenger seats required.
Sec. 20-19. Same—Windshield; wearing of goggles by operator and passenger.
Sec. 20-20. Same—Penalty for violation of sections 20-17—20-19.
Sec. 20-21. Same—Parent deemed guilty of an offense for permitting minor to violate sections 20-17—20-19.
Sec. 20-22. Child passenger safety responsibility.
Sec. 20-23. Deposit of glass, nails, etc., in street or highway prohibited; removal of same.
Sec. 20-24. Report of vehicles stored for more than 30 days.
Sec. 20-25. Traffic records and reports.
Sec. 20-26. Chapter violators to furnish name and address.
Sec. 20-27. Processions, vehicular or pedestrian, on streets or highways.
Sec. 20-28. Same—Participation prior to compliance with section.

***Cross references**—Division of public works, § 2-6; businesses relating to vehicles, § 7-36 et seq.; gasoline, § 7-156 et seq.; taxicabs, carriers, § 7-451 et seq.; traffic at Shelby Farms, § 14-110; transportation of pupils, § 23-1; litter from motor vehicle, § 28-80; parking district, app. A, § 25; offstreet parking and loading, app. A, § 28.

State law reference—Motor and other vehicles, T.C.A. § 55-1-101 et seq.

Sec. 20-29. Same—Penalty for violation of sections 20-27 and 20-28.
Sec. 20-29.1. Use of safety belts in passenger vehicles.
Sec. 20-29.2. Exceptions to section 20-29.1.
Sec. 20-29.3. Location and construction of Memphis Area Transit Authority (MATA) bus shelters.

Article II. Administration and Enforcement

Sec. 20-30. General penalty; continuing violations; court costs; definitions.
Sec. 20-31. When summonses deemed lawful complaints for prosecution.
Sec. 20-32. Procedures applicable to summonses and traffic citations.
Sec. 20-33. Violation forfeitures; exceptions.
Sec. 20-34. Court may adopt rule permitting deposit of chauffeur's or operator's license in lieu of bond.
Sec. 20-35 Limitation on action for traffic violation; when action deemed commenced; service of summons.
Sec. 20-36. Dismissal, nolle prosequi of summons or citation not prohibited.

Article III. Operation of Vehicles Generally

Sec. 20-37. State driver's license required; compliance with financial responsibility law required; evidence of compliance.
Sec. 20-38. Duty to devote full time and attention to operating vehicle.
Sec. 20-39. Duty to drive at safe speed, maintain lookout and keep vehicle under control.
Sec. 20-40. Driving when view or control obstructed.
Sec. 20-41. Lap driving.
Sec. 20-42. Pulling away from curb.
Sec. 20-43. Emerging from or entering alley, private driveway or building.
Sec. 20-44. Duty to drive on right side of roadway.
Sec. 20-45. Passing vehicles proceeding in opposite direction.
Sec. 20-46. Passing vehicles proceeding in same direction—Generally.
Sec. 20-47. Same—On right side.
Sec. 20-48. Same—Duty of driver of overtaken vehicle.
Sec. 20-49. Overtaking and passing school buses; Identification of buses.
Sec. 20-50. Off-highway motor vehicles.
Sec. 20-51. Driving on divided streets.
Sec. 20-52. Entering or leaving controlled-access roadway.
Sec. 20-53. Driving in parks.
Sec. 20-54. Driving within sidewalk area.
Sec. 20-54.1. Driving on walk-way.
Sec. 20-55. Obstructing intersection or crosswalk.
Sec. 20-56. Following too closely.
Sec. 20-57. General speed restrictions.
Sec. 20-58. Speed limit in school zone.
Sec. 20-59. Minimum speed regulations.
Sec. 20-60. Right-of-way at uncontrolled intersections.

ARTICLE III. OPERATION OF VEHICLES GENERALLY

Sec. 20-37. State driver's license required; compliance with financial responsibility law required; evidence of compliance.

(a) No person shall operate any motor vehicle on any street or highway without having in his possession a driver's license valid under the laws of this state for the type or class of vehicle being driven.

(b) Every vehicle driven on the streets of the incorporated areas of Shelby County must be in compliance with the state financial responsibility law.

(c) For purposes of this section, "financial responsibility" means:

(1) Documentation, such as the declaration page of an insurance policy, an insurance binder, or an insurance card from an insurance company authorized to do business in Tennessee, stating that a policy of insurance meeting the requirements for the state financial responsibility law has been issued;

(2) A certificate, valid for one year, issued by the commissioner of safety, stating that a cash deposit or bond in the amount required by the state financial responsibility law has been paid or filed with the commissioner, or has qualified as a self-insurer under the state financial responsibility law; or

(3) The motor vehicle being operated at the time of the violation was owned by a carrier subject to the jurisdiction of the Department of Safety, or the Interstate Commerce Commission, or was owned by the United States, the state, or any political subdivision thereof, and that such motor vehicle was being operated with the owner's consent.

(d) At the time the driver of a motor vehicle is charged with any moving violation under this chapter regulating traffic or at the time of an accident for which notice is required under state law, the officer shall request evidence of financial responsibility as required by this section. In case of an accident for which notice

is required under state law, the officer shall request such evidence from all drivers involved in the accident, without regard to apparent or actual fault.

(e) It is a violation of this section to fail to provide evidence of financial responsibility pursuant to this section.

(f) Any fine imposed by this section shall be in addition to any other fine imposed by this chapter for any other violation under this chapter.

(g) On or before the court date, the person so charged, may submit evidence of compliance with this section at the time of the violation. If the court is satisfied that compliance was in effect at the time of the violation, the charge of failure to provide evidence of financial responsibility may be dismissed.

(Ord. No. 90, § 1, 8-5-92; Ord. No. 342, 8-27-07; Ord. No. 352, Exh. A, 12-11-07)

Editor's note—Ord. No. 342, adopted Aug. 27, 2007, amended § 20-37 in its entirety to read as herein set out. Former § 20-37 pertained to required state license and derived from Ord. No. 90, adopted Aug. 5, 1992.

State law references—Accidents, notice to police, T.C.A. § 55-12-139; financial responsibility Law of 1977, T.C.A. §§ 55-12-101 to 140.

intensity ratios which govern any use in this district are listed on chart 2.
(Joint Ord. No. 11, § 1, 6-15-87)

Cross references—Hospitals, ch. 15; motor vehicles and traffic, ch. 20.

Section 26. Overlay district regulations.

FP floodplain district.

I. *Purposes and objectives.*

A. *Statement of purposes.* It is the purpose of this ordinance [section] to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas. This ordinance [section] is designed to:

1. Restrict or prohibit uses which are vulnerable to water or erosion hazards, or which result in damaging increases in erosion, flood heights, or velocities;
2. Require that uses vulnerable to floods, including community facilities, be protected against flood damage at the time of initial construction;
3. Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;
4. Control filling, grading, dredging and other development which may increase flood damage or erosion; and
5. Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

B. *Objectives.* The objectives of this ordinance [section] are:

1. To protect human life, health and property;
2. To minimize expenditure of public funds for costly flood control projects;
3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. To minimize prolonged business interruptions;

5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodable areas;

6. To help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize blight in flood areas;

7. To ensure that potential homebuyers are notified that property is in a floodable area; and

8. To maintain eligibility for participation in the National Flood Insurance Program.

II. *Definitions.* Unless specifically defined below, words or phrases used in this ordinance [section] shall be interpreted as to give them the meaning they have in common usage and to give this ordinance its most reasonable application given its stated purpose and objectives. Definitions under this section shall apply only to the terms as they appear in section 26 of the Joint Memphis and Shelby County Zoning Ordinance - Regulations, FP floodplain district, and are not intended to be applied to any other section of the Zoning Ordinance.

Accessory structure shall represent a subordinate structure to the principal structure and, for the purpose of this section, shall conform to the following:

1. Accessory structures shall not be used for human habitation.

2. Accessory structures shall be designed to have low flood damage potential.

3. Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.

4. Accessory structures shall be firmly anchored to prevent flotation which may result in damage to other structures.

5. Service facilities such as electrical and heating equipment shall be elevated or floodproofed.

Act means the statutes authorizing the National Flood Insurance Program that are incorporated in 42 U.S.C. 4001-4128.

Addition (to an existing building) means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a firewall. Any walled and roofed addition, which is connected by a firewall or is separated by an independent perimeter load-bearing wall, shall be considered "new construction".

Appeal means a request for a review of the local enforcement officer's interpretation of any provision of this ordinance [section] or a request for a variance.

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

Area of special flood-related erosion hazard is the land within a community which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the Flood Hazard Boundary Map (FHBM). After the detailed evaluation of the special flood-related erosion hazard area in preparation for publication of the FIRM, Zone E may be further refined.

Area of special flood hazard is the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-30, AE or A99.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Basement means that portion of a building having its floor subgrade (below groundlevel) on all sides.

Building means any structure built for support, shelter, or enclosure for any occupancy or storage (see "structure")

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

Elevated building means a non-basement building built to have the lowest floor of the lowest enclosed area elevated above the ground level by means of fill, solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwater, pilings, columns, piers, or shear walls adequately anchored so as not to impair the structural integrity of the building during a base flood event.

Emergency flood insurance program or *emergency program* means the program as implemented on an emergency basis in accordance with section 1336 of the Act. It is intended as a program to provide a first layer amount of insurance on all insurable structures before the effective date of the initial FIRM.

Erosion means the process of the gradual wearing away of landmasses. This peril is not per se covered under the program.

Exception means a waiver from the provisions of this ordinance [section] which relieves the applicant from the requirements of a rule, regulation, order or other determination made or issued pursuant to this ordinance [section].

Existing construction means any structure for which the "start of construction" commenced before the effective date of the first floodplain management code or ordinance adopted by the community as a basis for that community's participation in the National Flood Insurance Program (NFIP).

Existing manufactured home park or 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, final site grading or the pouring of concrete pads) is completed before the effective date of

the first floodplain management code or ordinance adopted by the community as a basis for that community's participation in the National Flood Insurance Program (NFIP).

Existing structures (see "existing construction").

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

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;

2. The unusual and rapid accumulation or runoff of surface waters from any source.

Flood elevation determination means a determination by the administrator of the water surface elevations of the base flood, that is, the flood level that has a one percent or greater chance of occurrence in any given year.

Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) or flood-related erosion hazards.

Flood Hazard Boundary Map (FHBM) means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of areas of special flood hazard have been designated as Zone A.

Flood Insurance Rate Map (FIRM) means an official map of a community, issued by the Federal Emergency Management Agency, delineating the areas of special flood hazard or the risk premium zones applicable to the community.

Flood insurance study is the official report provided by the Federal Emergency Management Agency, evaluating flood hazards and containing flood profiles and water surface elevation of the base flood.

Floodplain or *floodprone area* means any land area susceptible to being inundated by water from any source (see definition of "flooding").

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

Flood protection system means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the area within a community subject to a "special flood hazard" and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood modifying works are those constructed in conformance with sound engineering standards.

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 sanitary facilities, structures and their contents.

Flood-related erosion means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood, or by some similarly unusual and unforeseeable event which results in flooding.

Flood-related erosion area or *flood-related erosion prone area* means a land area adjoining the shore of a lake or other body of

water, which due to the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

Flood-related erosion area management means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control works and floodplain management regulations.

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

Freeboard means a factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings and the hydrological effect of urbanization of the watershed.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to construction, adjacent to the proposed walls of a structure.

Historic structure means any structure that is:

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

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

3. Individually listed on the Tennessee inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior; or

4. Individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:

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

   b. Directly by the Secretary of the Interior.

Levee means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Levee system means a flood protection system, which consists of a levee, or levees, and associated structures, such as closure, and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area, including a basement. An unfinished or flood-resistant enclosure used solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this ordinance [section].

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home"

does not include a "recreational vehicle", unless such transportable structures are placed on a site for 180 consecutive days or longer.

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 means the Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by the Agency.

Mean sea level means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For the purposes of this ordinance [section], the term is synonymous with National Geodetic Vertical Datum (NGVD) or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

National Geodetic Vertical Datum (NGVD) as corrected in 1929 is a vertical control used as a reference for establishing varying elevations within the floodplain.

New construction means any structure for which the "start of construction" commenced after the effective date of this ordinance [section] or the effective date of the first floodplain management ordinance and includes any subsequent improvements to such structure.

New manufactured home park or 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) is completed after the effective date of this ordinance [section] or the effective date of the first floodplain management ordinance and includes any subsequent improvements to such structure.

North American Vertical Datum (NAVD) as corrected in 1988 is a vertical control used as a reference for establishing varying elevations within the floodplain.

100-year flood (see "base flood").

Person includes any individual or group of individuals, corporation, partnership, association, or any other entity, including state and local governments and agencies.

Recreational vehicle means a vehicle which is:

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

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

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

Special hazard area means an area having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, or AH.

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 (including a manufactured home) on a site, such as the pouring of slabs or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; and include the placement of a manufactured home on a foundation. (Permanent construction does not include initial land preparation, such as clearing, grading and filling; nor does it include the installation of

streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds, not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

State coordinating agency means the Tennessee Department of Economic and Community Development's Local Planning Assistance Office as designated by the Governor of the State of Tennessee at the request of the Administrator to assist in the implementation of the National Flood Insurance Program for the state.

Structure, for purposes of this section, means a walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank, or other manmade facilities or infrastructures.

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

Substantial improvement means any repairs, reconstructions, rehabilitations, additions, alterations or other improvements to a structure, taking place during a five-year period, in which the cumulative cost equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. The market value of the structure should be (1) the appraised value of the structure prior to the start of the initial repair or improvement, or (2) in the case of damage, the value of the structure prior to the damage occurring. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed.

For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building com-

mences, whether or not that alteration affects the external dimensions of the building. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been pre-identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions and not solely triggered by an improvement or repair project; or

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

Substantially improved existing manufactured home parks or subdivisions is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

"*Variance* is a grant of relief from the requirements of this ordinance [section] which permits construction in a manner otherwise prohibited by this ordinance [section] where specific enforcement would result in unnecessary hardship.

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 certification, or other evidence of compliance required in this ordinance [section] is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains of riverine areas.

III. *General provisions.*

A. *Application.* This ordinance [section] shall apply to all areas within the incorporated area with the City of Memphis and the unincorporated areas of Shelby County.

B. *Basis for establishing the areas of special flood hazard.* The areas of special flood hazard identified on the City of Memphis and Shelby County Federal Emergency Management Agency, Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM), Community Panel Number 47157C, dated September 28, 2007, along with all supporting technical data, are adopted by reference and declared to be a part of this ordinance [section].

C. *Requirement for development permit.* A development permit shall be required in conformity with this ordinance [section] prior to the commencement of any development activities.

D. *Compliance.* No land, structure or use shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this ordinance [section] and other applicable regulations.

E. *Abrogation and greater restrictions.* This ordinance [section] is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance [section] conflicts or overlaps with another regulatory instrument, whichever imposes the more stringent restrictions shall prevail.

F. *Interpretation.* In the interpretation and application of this ordinance [section], all provisions shall be:

(1) Considered as minimum requirements;

(2) Liberally construed in favor of the governing body; and

(3) Deemed neither to limit nor repeal any other powers granted under Tennessee statutes.

G. *Warning and disclaimer of liability.* The degree of flood protection required by this ordinance [section] is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This ordinance [section] does not imply that land outside the areas of special flood hazard or uses permitted within such areas

will be free from flooding or flood damages. This ordinance [section] shall not create liability on the part of the City of Memphis or Shelby County, Tennessee or by any officer or employee thereof for any flood damages that result from reliance on this ordinance [section] or any administrative decision lawfully made hereunder.

H. *Penalties for violation.* Violation of the provisions of this ordinance [section] or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance shall constitute a misdemeanor punishable as other misdemeanors as provided by law. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent either the City of Memphis or Shelby County from taking such other lawful actions to prevent or remedy any violation.

IV. *Administration.*

A. *Designation of ordinance administrator.* Within the City of Memphis, the city engineer or his delegate is hereby appointed as the administrator to implement the provisions of this ordinance [section]. Within the unincorporated areas of Shelby County, the county engineer or his delegate is hereby appointed as the administrator to implement the provisions of this ordinance [section].

B. *Permit procedures.* Application for a development permit shall be made to the administrator on forms furnished by the community prior to any development activities. The development permit may include, but is not limited to the following: plans in duplicate drawn to scale and showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill placement, storage of materials or equipment, and drainage facilities. Specifically, the following information is required:

1. Application stage.

   a. Elevation in relation to mean sea level of the proposed lowest floor, including basement, of

all buildings where BFEs are available, or to the highest adjacent grade when applicable under this ordinance [section].

b. Elevation in relation to mean sea level to which any nonresidential building will be floodproofed where BFEs are available, or to the highest adjacent grade when applicable under this ordinance [section].

c. Design certificate from a registered professional engineer or architect that the proposed nonresidential floodproofed building will meet the floodproofing criteria in article IV, section B [subsection IV.B].

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

2. *Construction stage.* Within unnumbered A zones, where flood elevation data are not available, the administrator shall record the elevation of the lowest floor on the development permit. The elevation of the lowest floor shall be determined as the measurement of the lowest floor of the building relative to the highest adjacent grade.

For all new construction and substantial improvements, the permit holder shall provide to the administrator an as-built certification of the regulatory floor elevation or floodproofing level upon the completion of the lowest floor or floodproofing. Within unnumbered A zones, where flood elevation data is not available, the elevation of the lowest floor shall be determined as the measurement of the lowest floor of the building relative to the highest adjacent grade.

Any lowest floor certification made relative to mean sea level shall be prepared by, or under the direct supervision of, a registered land surveyor and certified by same. When floodproofing is utilized for a nonresidential building said certification shall be

prepared by, or under the direct supervision of, a professional engineer or architect and certified by same.

Any work undertaken prior to submission of the certification shall be at the permit holder's risk. The administrator shall review the above-referenced certification data. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being allowed to proceed. Failure to submit the certification or failure to make said corrections required hereby shall be cause to issue a stop work order for the project.

C. *Duties and responsibilities of the administrator.* Duties of the administrator shall include, but not be limited to:

1. Review of all development permits to assure that the permit requirements of this ordinance [section] have been satisfied, and that proposed building sites will be reasonably safe from flooding.

2. Advice to permittee that additional federal or state permits may be required, and if specific federal or state permit requirements are known, require that copies of such permits be provided and maintained on file with the development permit. This shall include Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U. S. C. 1334.

3. Notification to adjacent communities and the Tennessee Department of Economic and Community Development Local Planning Assistance Office, prior to any alteration or relocation of a watercourse, and submission of evidence of such notification to the Federal Emergency Management Agency.

4. For any altered or relocated watercourse, submit engineering data/analysis within six months to the Federal Emergency Management Agency to ensure accuracy of community flood maps through the Letter of Map Revision process. Assure that the flood carrying capacity within an altered or relocated portion of any watercourse is maintained.

5. Record the elevation, in relation to mean sea level or the highest adjacent grade, where applicable of the lowest floor including basement of all new or substantially improved buildings, in accordance with article IV, section B [subsection IV.B].

6. Record the actual elevation, in relation to mean sea level or the highest adjacent grade, where applicable to which the new or substantially improved buildings have been floodproofed, in accordance with article IV, section B [subsection IV.B].

7. When floodproofing is utilized for a structure, the administrator shall obtain certification of design criteria from a registered professional engineer or architect, in accordance with [subsection] IV.B.

8. Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the administrator shall make the necessary interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this ordinance [section].

9. When base flood elevation data or floodway data have not been provided by the Federal Emergency Management Agency then the administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from federal, state, or other sources, including data developed as a result of these regulations, as criteria for requiring that new construction, substantial improvements, or other development in Zone A on the community FIRM meet the requirements of this ordinance [section].

   Within unnumbered A zones, where base flood elevations have not been established and where alternative data is not available, the administrator shall require the lowest floor of a building to be elevated

or floodproofed to a level of at least three feet above the highest adjacent grade (lowest floor and highest adjacent grade being defined in article [subsection] II of this ordinance [section]). All applicable data including elevations or floodproofing certifications shall be recorded as set forth in article IV, section B [subsection IV.B].

10. All records pertaining to the provisions of this ordinance [section] shall be maintained in the office of the administrator and shall be open for public inspection. Permits issued under the provisions of this ordinance [section] shall be maintained in a separate file or marked for expedited retrieval within combined files.

V. *Provisions for flood hazard reduction.*

A. *General standards.* In all floodprone areas the following provisions are required:

1. New construction and substantial improvements to existing buildings shall be anchored to prevent flotation, collapse or lateral movement of the structure;

2. Manufactured homes shall be elevated and anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces;

3. New construction and substantial improvements to existing buildings shall be constructed with materials and utility equipment resistant to flood damage;

4. New construction or substantial improvements to existing buildings shall be constructed by methods and practices that minimize flood damage;

5. All electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities

shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

6. New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
7. 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 floodwaters;
8. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
9. Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance [section], shall meet the requirements of "new construction" as contained in this ordinance [section]; and
10. Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provision of this ordinance [section], shall be undertaken only if said nonconformity is not further extended or replaced.

B. *Specific standards.* These provisions shall apply to all areas of special flood hazard as provided herein:

1. *Residential construction.* Where base flood elevation data is available, new construction or substantial improvement of any residential building (or manufactured home) shall have the lowest floor, including basement, elevated no lower than one foot above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate equalization of flood hydrostatic forces on both sides of exterior walls and to ensure unimpeded movement of floodwater shall be provided in accordance with the standards of article V, section B [subsection V.B].

   Within unnumbered A zones, where base flood elevations have not been established and where alter-

native data is not available, the administrator shall require the lowest floor of a building to be elevated or floodproofed to a level of at least three feet above the highest adjacent grade (lowest floor and highest adjacent grade being defined in article [subsection] II of this ordinance [section]). All applicable data including elevations or floodproofing certifications shall be recorded as set forth in article IV, section B [subsection IV.B].

2. *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial, or nonresidential building, when BFE data is available, shall have the lowest floor, including basement, elevated or floodproofed no lower than one foot above the level of the base flood elevation.

   Within unnumbered A zones, where base flood elevations have not been established and where alternative data is not available, the administrator shall require the lowest floor of a building to be elevated or floodproofed to a level of at least three feet above the highest adjacent grade (lowest floor and highest adjacent grade being defined in article [subsection] II of this ordinance [section]). All applicable data including elevations or floodproofing certifications shall be recorded as set forth in article IV, section B [subsection IV.B].

   Buildings located in all A zones may be floodproofed, in lieu of being elevated, provided that all areas of the building below the required elevation are watertight, with walls substantially impermeable to the passage of water, and are built with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions above, and shall provide such certification to the administrator as set forth in article IV, section B [subsection IV.B].

3. *Elevated building.* All new construction or substantial improvements to existing buildings that include any fully enclosed areas formed by foundation and other exterior walls below the base flood elevation, or required height above the highest adjacent grade, shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

   a. Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:

      1) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

      2) The bottom of all openings shall be no higher than one foot above the finish grade; and

      3) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

   b. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the elevated living area (stairway or elevator); and

   c. The interior portion of such enclosed area shall not be partitioned or finished into separate rooms in such a way as to impede the movement of floodwaters and all such petitions shall comply with the provisions of article V, section B.3.a. [subsection V.B.3.a.] of this ordinance [section].

4. *Standards for manufactured homes and recreational vehicles.*

a. All manufactured homes placed, or substantially improved, on:

1) Individual lots or parcels,

2) In expansions to existing manufactured home parks or subdivisions, or

3) In new or substantially improved manufactured home parks or subdivisions, must meet all the requirements of new construction, including elevations and anchoring.

b. All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that either:

1) When base flood elevations are available, the lowest floor of the manufactured home is elevated on a permanent foundation no lower than one foot above the level of the base flood elevation; or

2) Absent base flood elevations, the manufactured home chassis is elevated and supported by reinforced piers (or other foundation elements) at least three feet in height above the highest adjacent grade.

c. Any manufactured home, which has incurred "substantial damage" as the result of a flood or that has substantially improved, must meet the standards of article V, section B.4.(b)(1) [subsection] V.B.4.b.1) of this ordinance [section].

d. All manufactured homes must be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

e. All recreational vehicles placed on identified flood hazard sites must either:

1) Be on the site for fewer than 180 consecutive days;

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

3) The recreational vehicle must meet all the requirements for new construction, including the anchoring and elevation requirements of this section above if on the site for longer than 180 consecutive days.

5. *Standards for subdivisions.* Subdivisions and other proposed new developments, including manufactured home parks, shall be reviewed to determine whether such proposals will be reasonably safe from flooding. If a subdivision proposal or other proposed new development is in a floodprone area, any such proposals shall be reviewed to ensure that:

a. All subdivision proposals shall be consistent with the need to minimize flood damage.

b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

d. Base flood elevation data shall be provided for subdivision proposals and other proposed developments (including manufactured home parks and subdivisions) that are greater than 50 lots and/or five acres in area.

C. *Standards for areas of special flood hazard with established base flood elevations and with floodways designated.* Located within the areas of special flood hazard established in article III, section B. [subsection III.B], are

areas designated as floodways. A floodway may be an extremely hazardous area due to the velocity of floodwaters, debris or erosion potential. In addition, the area must remain free of encroachment in order to allow for the discharge of the base flood without increased flood heights and velocities. Therefore, the following provisions shall apply:

1. Encroachments are prohibited, including earthen fill material, new construction, substantial improvements or other developments within the regulatory floodway. Development may be permitted however, provided it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the cumulative effect of the proposed encroachments or new development, when combined with all other existing and anticipated development, shall not result in any increase in the water surface elevation of the base flood level, velocities or floodway widths during the occurrence of a base flood discharge at any point within the community. A registered professional engineer must provide supporting technical data and certification thereof.

2. New construction or substantial improvements of buildings shall comply with all applicable flood hazard reduction provisions of article [subsection] V and all provisions of Section 25, special purpose districts, of the Joint Memphis And Shelby County Zoning Ordinances - Regulations that apply to the floodway district.

D. *Standards for areas of special flood hazard zones AE with established base flood elevations but without floodways designated.* Located within the areas of special flood hazard established in article III. section B [subsection III.B.], where streams exist with base flood data provided but where no floodways have been designated, (Zones AE) the following provisions apply:

1. No encroachments, including fill material, new structures or substantial improvements shall be located

within areas of special flood hazard, unless certification 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 foot at any point within the community. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.

2. New construction or substantial improvements of buildings shall be elevated or floodproofed to elevations established in accordance with article V. section B [subsection V.B.].

E. *Standards for streams without established base flood elevations or floodways (A Zones).* Located within the areas of special flood hazard established in article III [subsection III], where streams exist, but no base flood data has been provided (A Zones), or where a floodway has not been delineated, the following provisions shall apply:

1. When base flood elevation data or floodway data have not been provided in accordance with article [subsection] III, then the administrator shall obtain, review and reasonably utilize any scientific or historic base flood elevation and floodway data available from a federal, state or other source, in order to administer the provisions of article [subsection] V. Base flood elevation data shall be provided for subdivision proposals and other proposed developments (including manufactured home parks and subdivisions) that are greater than 50 lots and/or five acres in area. Only if data is not available from these sources, then the following provisions (2. and 3.) shall apply.

2. No encroachments, including structures or fill material, shall be located within an area equal to the width of the stream or 20 feet, whichever is greater, measured from the top of the stream bank, unless

certification 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 foot at any point within the community. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.

3. In special flood hazard areas without base flood elevation data, new construction or substantial improvements of existing [buildings] shall have the lowest floor of the lowest enclosed area (including basement) elevated no less than three feet above the highest adjacent grade at the building site. Openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with the standards of article V, section B [subsection V.B.], and "elevated buildings."

F. *Standards for areas of shallow flooding (AO and AH Zones).* Located within the Areas of Special Flood Hazard established in article [subsection] III, section B, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

1. All new construction and substantial improvements of residential and nonresidential buildings shall have the lowest floor, including basement, elevated to at least one foot above the flood depth number specified on the Flood Insurance Rate Map (FIRM), in feet, above the highest adjacent grade. If no flood depth number is specified, the lowest floor, including basement, shall be elevated, at least three feet above the highest adjacent grade. Openings sufficient to facilitate the unimpeded movements of floodwaters

shall be provided in accordance with standards of article V, section B [subsection V.B.], and "elevated buildings."

2. All new construction and substantial improvements of nonresidential buildings may be floodproofed in lieu of elevation. The structure together with attendant utility and sanitary facilities must be floodproofed and designed watertight to be completely floodproofed to at least one foot above the specified FIRM flood level, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. If no depth number is specified, the lowest floor, including basement, shall be floodproofed to at least three feet above the highest adjacent grade. A registered professional engineer or architect shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this ordinance [section] and shall provide such certification to the administrator as set forth above and as required in article IV, section B [subsection IV.B.].

3. Adequate drainage paths shall be provided around slopes to guide floodwaters around and away from proposed structures.

4. The Administrator shall certify the elevation or the highest adjacent grade, where applicable, and the record shall become a permanent part of the permit file.

G. Standards for areas protected by flood protection system (A-99 Zones). Located within the areas of special flood hazard established in article III [subsection] are areas of the 100-year floodplain protected by a flood protection system but where base flood elevations and flood hazard factors have not been determined. Within these areas (A-99 Zones) all provisions of article [subsection] IV. and article V. section A. [subsection V.A.] shall apply.

H. *Standards for unmapped streams.* Located within the City of Memphis and Shelby County, Tennessee, are unmapped streams where areas of special flood hazard are neither indicated nor identified. Adjacent to such streams the following provisions shall apply:

1. In areas adjacent to such unmapped streams, no encroachments including fill material or structures shall be located within an area of at least equal to twice the width of the stream, measured from the top of each stream bank, unless certification 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 foot at any point within the locality.

2. When new elevation data is available, new construction or substantial improvements of buildings shall be elevated or floodproofed to elevations established in accordance with article [subsection] IV.

VI. *Variance procedures.* The provisions of this section shall apply exclusively to areas of special flood hazard within the City of Memphis and Shelby County, Tennessee.

A. *Board of adjustment.*

1. The City of Memphis and Shelby County Board of Adjustment shall hear and decide appeals and requests for variances from the requirements of this ordinance [section].

2. Variances may be issued for the repair or rehabilitation of historic structures (see definition) upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum to preserve the historic character and design of the structure.

3. In passing upon such applications, the board of adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance [section], and:

   a. The danger that materials may be swept onto other property to the injury of others;

   b. The danger to life and property due to flooding or erosion;

   c. The susceptibility of the proposed facility and its contents to flood damage;

   d. The importance of the services provided by the proposed facility to the community;

   e. The necessity of the facility to a waterfront location, in the case of a functionally dependent facility;

   f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

   g. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

   h. The safety of access to the property in times of flood for ordinary and emergency vehicles;

   i. 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

   j. 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.

4. Upon consideration of the factors listed above, and the purposes of this ordinance [subsection], the board of adjustment may attach such conditions to the granting of variances as it deems necessary to effectuate the purposes of this ordinance [section].

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

B. *Conditions for variances.*

1. Variances shall be issued upon a determination that the variance is the minimum relief necessary, considering the flood hazard; and in the instance of a historical building, a determination that the variance is the minimum relief necessary so as not to destroy the historic character and design of the building.

2. Variances shall only be issued upon: a showing of good and sufficient cause, a determination that failure to grant the variance would result in exceptional hardship; or a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

3. Any applicant to whom a variance is granted shall be given written notice that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increases risks to life and property.

4. The administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

(Joint Ord. No. 9, § 1, 4-13-87; Ord. No. 278, §§ 2, 3, 12-3-03; Ord. No. 279, 1-26-04; Joint Ord. No. 350, 12-3-07)

an existing nonconforming use shall have been terminated and the permitted use shall have commenced and continued for a period of seven days.

6. *Abandonment or discontinuance.* When a nonconforming use of land or a nonconforming use of part or all of a structure is discontinued or abandoned for a period of 365 consecutive days, such use shall not thereafter be reestablished or resumed, regardless of any intent not to abandon and to resume such use. Discontinuance or abandonment for time to obtain a permit or license to operate or keep the nonconforming use, or due to a suspension, revocation, injunction, or loss of such permit or license, shall not toll any portion of the 365 days. Any subsequent use or occupancy of such land or structure shall comply with the regulations of the zoning district in which such land or structure is located.

7. *Damage or destruction.* In the event that any structure that is devoted in whole or in part to a nonconforming use is damaged or destroyed, by any means, to the extent of more than 75 percent of the fair market value of such structure immediately prior to such damage, such structure shall not be restored unless such structure and the use thereof shall thereafter conform to all regulations of the zoning district in which such structure and use are located. When such damage or destruction is 75 percent or less of the fair market value of the structure immediately prior to such damage, such structure may be repaired and reconstructed and used for the same purposes as it was before the damage or destruction, provided that such repair or reconstruction is commenced and completed within 12 months of the date of such damage or destruction.

C. *Nonconforming structures.*

1. *Authority to continue.* Any nonconforming structure which is devoted to a use which is permitted in the zoning district in which such structure is located may be continued so long as it remains otherwise lawful, subject to the provisions of subsections C.2. through C.4. of this section.

2. *Enlargement, repair, alterations.* Any nonconforming structure may be enlarged, maintained, repaired or altered; provided, however, that no such enlargement, maintenance, repair or alteration shall either create an additional nonconformity or increase the degree of the existing nonconformity of all or any part of such structure.

3. *Damage or destruction.* In the event that any nonconforming structure is damaged or destroyed, by any means, to the extent of more than 75 percent of the fair market value of such structure immediately prior to such damage, such structure shall not be restored unless it shall thereafter conform to the regulations of the zoning district in which it is located, unless restoration or reconstruction is authorized under the provisions of section 11 of this article [appendix]. When such nonconforming structure is damaged or destroyed, by any means, by 75 percent or less of the fair market value of such structure, immediately prior to such damage, such structure may be repaired or reconstructed, provided such repairs or restorations begin and are diligently pursued to completion within one year of the date of such damage.

4. *Relocation.* No nonconforming structure shall be relocated in whole or in part to any other location on the same or any other lot, unless the entire structure shall thereafter conform to the regulations of the zoning district in which such structure is located after being relocated.

D. *Nonconforming lots of record.*

1. *Authority to utilize for single-family residence.* In any district in which single-family detached dwellings are a permitted use, notwithstanding the regulations imposed by any other provisions of this article [appendix], a single-family detached dwelling which complies with the restrictions of subsection D.2. of this section may be erected on a nonconforming lot that is not less than 25 feet in width, and which:

   a. Has less than the prescribed minimum lot area, width and depth, or any of them; and

b. Is shown by a recorded plat or deed to have been a lot of record owned separately and individually from adjoining tracts of land at a time when the creation

F. *Exception for repairs pursuant to public order.* Nothing in this section shall be deemed to prevent the strengthening or restoration to a safe condition of a building, structure or sign in accordance with an order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders it to be restored to a safe condition provided such restoration is not otherwise in violation of the various provisions of this section prohibiting the repair or restoration of partially damaged or destroyed buildings, structures or signs.

G. *Nonconforming accessory uses and structures.* No use or structure which is accessory to a principal nonconforming use or structure shall continue after such principal use or structure shall have ceased or terminated, unless such accessory use or structure shall thereafter conform to all the regulations of the zoning district in which it is located.
(Ord. of 12-6-82, § 2; Ord. No. 124, § 1(D), 8-30-93; Ord. No. 216, § 1, 12-6-99; Joint Ord. No. 283, § 10, 5-19-04; Joint Ord. No. 349, 11-5-07)

Section 31. Violation and penalty.

Any person, firm or corporation violating any of the provisions of this ordinance-resolution shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than $50.00. Each day's continuance of a violation shall be considered a separate offense. The owner of any buildings or premises or part thereof, where anything in violation of this ordinance shall be placed, or shall exist, and any person who may have knowingly assisted in the commission of any such violation, shall be guilty of a separate offense.

Section 32. Landscape and screening regulations.

A. *Introduction.* The mature hardwood forests which occur within and around Memphis are a prime and valuable asset. Few American cities of any size are graced with such stately and mature oak trees as Memphis. This ordinance seeks to preserve these forest trees where possible and establish new plantings of a complementary nature.

In a recent survey in which Memphians were asked to rank our natural amenities, trees were listed second only to the Mississippi River in order of importance. The quality of life in our city is directly related to the conservation and stewardship of this natural resource.

This ordinance is intended as a minimum standard for landscape treatment. Owners are encouraged to exceed this standard in seeking more creative solutions—both for the enhanced value of their land, and for the collective health and enjoyment of all Memphians.

B. *Purpose.* The purpose of this ordinance is to utilize landscape elements—particularly plant material—in an organized and harmonious fashion that will enhance the physical environment of Memphis and Shelby County for the comfort, safety and enjoyment of its [their] citizens. [The purpose of this ordinance is also:]

1. To preserve natural vegetation—particularly tree cover—and encourage design solutions with this foremost in mind.
2. To provide new planting in concert with natural vegetation and careful grading.
3. To provide an overall planting scheme which will:
   a. Reduce soil erosion.
   b. Provide visual screens and buffers, thereby preserving the appearance, character and value of existing neighborhoods.
   c. Provide shade, comfort and seasonal color.
   d. Reduce glare, noise and heat.
   e. Enhance spatial relationships and in general provide character and structure to the built environment.

Ordinance Number	Date	Section		Section this Code
		13		7-312(e)
		14		7-305(1)(b)
		15		7-305(1)(d)
261	5-13-02	1		3-27
		2		3-30(b)(3)
		3		3-40(a)
		4	Added	3-40(e)
		5(A)—(F)	Added	3-61—3-66
		5(G)		3-42
		5(H)	Added	3-67
263	7-29-02			Ch. 7, Art. XI(footnote)
265	9- 9-02	10		14.5-27
		12		14.5-29
270	2-10-03	1		9-1
271	6-23-03			20-30(c)
272	6-23-03			22-1
276	11-24-03	13		14.5-28
277	12- 8-03	1		App. B, § 301.3 D
		2		App. B, § 301.7 C.12
		3		App. B, § 105 H
278	12- 8-03	1		App. A, § 2
		2		App. A, § 26(FCD)
		3		App. A, § 26(FP) I.7
279	1-26-04			App. A, § 26(FCD) D.1
281	2-23-04			12-28(b)(8)
284	6- 7-04			Ch. 7, Art. XI(note)
286	7-12-04	1		14.5-28(note)
		2		14.5-37(note)
289	8-23-04		Added	9-293
292	12 -6-04	30-100—30-153	Added	30-1—30-72
293	1-10-05			12-38(c)
313	3-13-06	1		7-307(a)(2)
316	8-14-06	1—5	Added	28-116—28-130
318	12-18-06	1		14.5-37(note) 14.5-28(footnote)
320	2- 5-07			2-57(j)
321	2- 5-07			2-100

Ordinance Number	Date	Section		Section this Code
323	3-26-07	Exh. A		7-501—7-530
			Rpld	7-531—7-552
324	3-26-07	1, 2	Added	2-67
325	4- 9-07			2-57(b)(10)b
326	4- 9-07	1—14	Added	Ch. 11.5
328	5-21-07	1	Added	12-113—12-122
330	6-25-07	Att. §§ 1—13	Added	Ch. 12.5
332	7-23-07			28-76, 28-77, 28-82
339	8-27-07	Exh. A		20-74
340	8-27-07	Exh. A		20-22
341	8-27-07	Exh. A		20-50
342	8-27-07	Exh. A		20-37
343	8-27-07		Added	2-11
344	9-10-07		Rpld	7-346—7-390
346	10- 8-07		Rpld	14-121—14-133
348	10-22-07			12.5-66
352	12-11-07	Exh. A		20-37

[The next page is 3757]

Joint Ordinance Number	Date	Section		Section this Code
				App. A, § 2
				App. A, § 27.E.3.
				App. A, Chart 1
269	10-21-02	1		App. A, § 29.VII.C.2(a)
280	2- 9-04	1(attach.)		App. A, § 21
				App. A, Charts 1, 2
				App. A, Chart 2 (footnotes 25, 26)
				App. A, § 16(note)
282	4-26-04	1(attach.)		App. A, § 23
				App. A, Chart 1
				App. A, Chart 1 (footnote 2)
				App. A, § 2
				App. A, Chart 1 (footnote 18)
				App. A, Chart 2
283	5-19-04	3—7		App. A, § 29.III.—VII.
		8, 9	Added	App. A, § 29.XII., XIII.
		10		App. A, § 30.E.
297	6- 6-05	1—5		6-51—6-55
298	6- 6-05	1—5		6-101—6-105
299	6- 6-05	1—5		6-126—6-130
300	6- 6-05	1—4		6-76—6-79
304	7-25-05	1		12-42
		2		12-43
		3		12-26
308	11-21-05	1	Added	2-58
311	12- 5-05	1		14.5-28(note)
333	8-13-07	Exh. 1		6-26, 6-27
			Added	6-28
334	8-13-07	Exh. 1		6-26—6-28
335	8-13-07	Exh. 1		6-51—6-53
336	8-13-07	Exh. 1		6-101, 6-102
337	8-13-07	Exh. 1		6-126, 6-127
338	8-13-07	Exh. 1		6-76, 6-77
349	11- 5-07			App. A, § 30.B.6.
350	12- 3-07			App. A, § 26

[The next page is 3785]

Section

LEVEE AMD DRAINAGE DISTRICTS (Cont'd.)
Improvements, when county authorized to proceed with... 17-41
Installment payments 17-43
Lien 17-42
Manner of making improvements and purchases..... 17-54
Objections to improvements 17-55
Payment of assessment 17-42
Provisions supplemental 17-56
Reassessment of property 17-50
Statement of costs..... 17-42
Suits given immediate hearing 17-41
Surplus funds..... 17-48
Transactions with contractors, etc..... 17-48
Statute amended 17-26

LIBRARY
Branch libraries ..... 16-86 et seq.
See: JOINT CITY-COUNTY PROJECTS
County government library commission
Charges for use library 14-29
Commission's expenditure..... 14-28
Court cost, library finance by..... 14-28
Created; composition 14-26
Meetings; quorum; records 14-30
Purpose; powers..... 14-27
Terms of officers..... 14-26
Vacancies 14-26
Table of public acts ..... App. D

LICENSES AND PERMITS (Generally)
Cats, licensing re ..... 3-34 et seq.
See: ANIMALS AND FOWL
Dogs, licensing re ..... 3-34 et seq.
See: ANIMALS AND FOWL
Driver's licenses
Compliance with financial responsibility law required..... 20-37
State driver's license required 20-37
Fireworks; public displays with permit 22-37
Five-mile zone; use and occupancy permit 25-334
Judge of court of general session 9-348
Memphis and Shelby County Construction Codes Permit and Inspection Fee Regulations 6-141, 6-142
Telecommunications franchises. See: FRANCHISES (Appendix C)
Tree survey, removal permits. See: ZONING (Appendix A)
Water supply permit 29-54
Zoning permits. See: ZONING (Appendix A)

Section

LICENSES AND PERMITS (Businesses and trades)
Alarms
Police emergency alarm systems permit..... 7-303
Automobiles and other vehicles ..... 7-36 et seq.
See: AUTOMOBILES AND OTHER VEHICLES
Barbershops..... 7-76 et seq.
See: BARBERSHOPS
Carriers. See herein: Taxicabs
Construction
Electricians, plumbers, water systems and construction. See herein that subject
Plumbing, sewerage, electrical wiring and construction. See herein that subject
Dairy ..... 7-106 et seq.
See: DAIRIES
Electric services. See herein: Natural or Artificial Gas and Electric Services
Electrical wiring. See herein: Plumbing, Sewerage, Electrical Wiring and Construction
Electricians, plumbers, water systems and construction
Adoption of regulations; appropriations 7-134
Building, fire and utility regulations..... 7-131
Inspector 7-132
Scope of regulations 7-133
Violations
Other remedy 7-136
Penalty 7-135
Gas
Natural or artificial gas and electric services. See herein that subject
Gasoline, etc..... 7-156 et seq.
See: GASOLINE AND PETROLEUM PRODUCTS
Going-out-of-business sales. See herein: Liquidation or Going-Out-Of-Business Sales
Itinerant vendors and peddlers ..... 7-181 et seq.
See: ITINERANT VENDORS AND PEDDLERS
Liquidation or going-out-of-business sales..... 7-206 et seq.
See: LIQUIDATION OR GOING-OUT-OF-BUSINESS SALES
Natural or artificial gas and electric services..... 7-251 et seq.
See: NATURAL OR ARTIFICIAL GAS AND ELECTRIC SERVICES
Peddlers. See herein: Itinerant Vendors and Peddlers
Plumbers. See herein: Electricians, Plumbers, Water Systems and Construction
Plumbing, sewerage, electrical wiring and construction
Health rules, ordinances consistent with 7-277
Municipalities exempt from rules..... 7-278

Section

MOTOR VEHICLES AND TRAFFIC (Cont'd.)
School buses
Identification of buses 20-49
Overtaking and passing school buses 20-49
Business regulations re automobiles and other vehicles ..... 7-36 et seq.
See: AUTOMOBILES AND OTHER VEHICLES
Certain ordinances and actions not affected by Code ..... 1-6(12)
Child passenger safety responsibility 20-22
Citations. See herein: Violations and Penalties
Coasters
Clinging to moving vehicles 20-13
Use in roadway 20-12
Controlled-access roadway, entering or leaving 20-52
Court
Driver education courses 9-292
Rule permitting deposit of chauffeur's or operator's license in lieu of bond, court may adopt 20-34
Crosswalk, obstructing 20-55
Curbs
Pulling away from curb 20-42
Definitions 20-1
Divided streets, driving on 20-51
Drivers
Compliance with financial responsibility law required 20-37
State driver's license required 20-37
Driveways
Emerging from or entering private driveway 20-43
Driving when view or control obstructed 20-40
Emergency vehicles (authorized fire, police, ambulance, etc. vehicles)
Driving near fire 20-75
Exemptions for 20-11
Fire apparatus, following 20-75
Fire hose, driving over 20-76
Procedure upon approach of 20-74
Equipment. See also herein: Vehicle Equipment and Loads
Acrobatic riding 20-113
Bell or other signal device 20-105
Brake 20-104
Carrying excess persons forbidden 20-106
Clinging to moving vehicles 20-111
Lights and reflectors 20-103
Permanent seat required 20-106
Riding on roadways 20-107
Sidewalks, riding on 20-109
Single file, to be ridden in 20-110
Towing other vehicles 20-112
Traffic-control devices, obedience to 20-108

Section

MOTOR VEHICLES AND TRAFFIC (Cont'd.)
Unicycle riding 20-113
Exemptions for authorized emergency vehicles 20-11
Financial responsibility
Compliance with financial responsibility law required; evidence of compliance 20-37
Firemen
Authority to direct traffic 20-5
Following too closely 20-56
Full time and attention to operating vehicle 20-38
Glass, nails, etc.
Deposit in street or highway prohibited 20-23
Heavy-duty vehicles. See herein: Trucks, Trailers and Heavy-duty Vehicles
Highway maintenance or recovery vehicles
Procedure upon approach of 20-74
Impoundment
Vehicles obstructing street re 20-99
Improvement districts; traffic regulations 25-237
Insurance
Compliance with financial responsibility law required 20-37
Intersections
Obstructing 20-55
Right-of-way when vehicle turning left at intersection 20-72
Stop intersections 20-62
Uncontrolled intersections, right-of-way at 20-60
Yield intersections 20-61
Keep vehicle under control 20-39
Lap driving 20-41
Licenses
Court may adopt rule permitting deposit of chauffeur's or operator's license in lieu of bond 20-34
Litter control, applicable provisions re 28-80, 28-83
Loads. See herein: Vehicle Equipment and Loads
Maintain lookout 20-39
Motorcycles, motor-driven cycles, etc.
Brakes
Motorcycles and motorized bicycles re 20-131
Crash helmets worn by driver and passenger required 20-17
Goggles worn by operator and passenger 20-19
Headlamps on motorcycles 20-138
Headlights, operation required 20-17
Lights
Headlamps on motorcycles 20-138
Passenger seats required 20-18
Riding on motorcycles 20-16

Section

MOTOR VEHICLES AND TRAFFIC (Cont'd.)
Violations and penalties 20-20
Minors' violations
Parent deemed guilty of an offense for permitting.... 20-21

Section

Z

ZONING (Appendix A)
(Note—Sections contained herein refer to sections found within amendment, section 1 of Appendix A)
Accessory structures and uses
Authorization 27.A
Bulk and location regulations 27.D
Particular permitted accessory structures and uses 27.B
Prohibited accessory structures and uses 27.C
Use limitations 27.E
Administrative bodies, departments and personnel
Summary of authority 3
AG Agricultural District 20
AHR Airport Height Regulation District
Overlay district regulations 26
Amendments
Authority 6.A
Comprehensive plan and procedure 4.D
Guidelines for decision 6.C
Initiation 6.D
Planned development regulations; procedure for amendment 14.N
Prior provisions, amendment of 1
Procedure 6.E
Required vote 6.F
Site plan review 7.K
Special permits 8.I
Type and purpose 6.B
Amenity incentives and multiple-family and central business districts
Allowed 15.E
Authority 15.C
Computation of amenity incentives 15.F
Procedure 15.D
Purpose 15.A
Right, amenity incentive as 15.B
Annexed land 18
Appeals from administrative decisions
Authority 13.A
Effect of filing an appeal 13.D
Initiation 13.B
Procedure 13.C
Applicability 1
Application of regulations 28.B
Loading-design and maintenance 28.G
Number of parking spaces 28.E
Parking-design and maintenance 28.D

Section

ZONING (Appendix A) (Cont'd.)
Regulations of general applicability-offstreet loading 28.F
Regulations of general applicability-offstreet parking..... 28.C
Required number of loading spaces 28.H
CBD Central Business District..... 23
Certificate of occupancy
Authority 5.A
Procedure..... 5.D
Purpose 5.B
Required..... 5.C
Certificates
Planned development regulations; post-completion certificate 14.O
C-H Highway Commercial District 23
C-L Local Commercial District..... 23
Comprehensive plan and procedure
Authority 4.A
Effect..... 4.C
Procedure for development, adoption and amendment..... 4.D
Purpose and definition..... 4.B
C-P Planned Commercial District
Purpose 23.A
Site plan approval required 23.B
Site plan review and approval, uses requiring and procedure for 23.C
CU College and University District
Special purpose district 25
Definitions 2
Department. See herein: Administrative Bodies, Departments and Personnel
Districts
Established 16
See also specific districts as indexed
Zoning district map. See herein that subject
Effective date..... 1
Effective date, Appendix 3
FCD Fletcher Creek Drainage Basin District
Overlay district regulations 26
FP Floodplain District (Overlay district regulations)
Administration
Ordinance administrator designated..... 26.IV.A
Duties and responsibilities of the administrator 26.IV.C
Permit procedures 26.IV.B
Definitions..... 26.II
General provisions
Abrogation and greater restrictions 26.III.E
Application..... 26.III.A

Section

ZONING (Appendix A) (Cont'd.)
Areas of special flood hazard
Basis for establishing 26.III.B
Compliance 26.III.D
Development permit requirements 26.III.C
Interpretation 26.III.F
Penalties for violation 26.III.H
Warning and disclaimer of liability 26.III.G
Provisions for flood hazard reduction
Application 26.V.A
Specific standards 26.V.B
Standards for areas
Protected by flood protection system (A-99 Zones) 26.V.G
Shallow flooding (AO and AH Zones) 26.V.F
Special flood hazards
Established base flood elevations, floodways designated 26.V.C
Zones AE with established base flood elevations, without floodways designated 26.V.D
Streams without established base flood elevations or floodways (A Zones) 26.V.E
Unmapped streams 26.V.H
Purposes and objectives
Objectives 26.I.B
Statement of purposes 26.I.A
Variance procedures
Board of adjustment 26.VI.A
Conditions for variances 26.VI.B
FW Floodway District
Special purpose district 25
General purpose and intent 1
H Hospital District
Special purpose districts 25
I-H Heavy Industrial District 24
I-L Light Industrial District 24
Interpretation 2
Interpretations
Authority 12.A
Procedure 12.B