

# Title 10

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City Development  
Standards



# Title 10

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## CITY DEVELOPMENT STANDARDS

### **SECTION 1110.01** PURPOSE

These regulations are adopted to secure and provide for the following objectives:

- A. To establish standards for logical, sound and economic development of the City.
- B. To prevent premature subdivisions that have inadequate water supply, drainage, sewage facilities or other public service and which may impose later expenditure of public funds to correct.
- C. To provide adequate and convenient spaces for traffic, utilities, access of fire-fighting apparatus, recreation, light and air, and the avoidance of congestion of the population.
- D. To require and secure all improvements such as pavements, sidewalks, sanitary sewers, storm sewers and water lines in accordance with the specifications of the City.
- E. To coordinate the arrangement of streets or highways in a manner which will promote safe and convenient vehicular and pedestrian movements and insuring the proper design of new streets in relationship to existing or proposed highways and the thoroughfare plan.
- F. To provide for the equitable handling of all subdivision plats by providing uniform procedures and standards for observance by both the approving authority and subdivider.
- G. To promote the public health, safety, comfort, convenience, prosperity and general welfare of the present and future population.

### **SECTION 1110.02** MINOR SUBDIVISION

- A. Purpose
  - (1) The purpose of the minor subdivision process is to allow for small subdivisions of land, consolidation of lots, or transfer of a portion of a lot to an adjacent lot where there will not be the creation of a new street, dedication of right of way, or a need for any public improvements.
- B. Applicability
  - (1) For the purposes of these regulations, a minor subdivision is a lot split, lot consolidation, or transfer of land between adjacent property owners that complies with all of the following requirements:
    - i. The subdivision shall not result in or create more than five lots, including the remainder of the original parcel;

- ii. The subdivision shall be in compliance with all applicable site development standards in this code or with any approved variance from such standards;
  - iii. All lots resulting from the minor subdivision shall have frontage and access on an existing street and shall not require the construction, expansion, or improvement of any street;
  - iv. The subdivision shall not require any public improvements or the dedication of rights-of-way;
  - v. The property has been surveyed and a survey sheet or record plan, in the form provided for in this code, and a full legal description of the changes resulting from the split, are submitted with the application; and
  - vi. No landlocking of parcels shall occur as a result of the minor subdivision.
- (2) A minor subdivision also includes the recombination of land, consolidation of lots, transfer of property from one lot to an adjacent lot, and for the dedication of additional land for the widening of existing streets, where no new lots are created.
  - (3) In the event a variance is required to meet the criteria, BZA must review and approve the variance prior to minor subdivision review.

#### C. Sale of Land in Subdivisions; Start of Construction

- (1) No owner, or authorized agent, of any land located within a subdivision shall transfer, sell, agree to sell or negotiate to sell any land by reference to, by exhibition of, or by the use of, a plan or plat of a subdivision, nor proceed with any construction work before such plan or plat has been approved and recorded in the manner prescribed in these regulations. Any sale or transfer contrary to the provisions of this section is void. The description of such lot or parcel by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the transaction from the provisions of these regulations.
- (2) The Zoning Administrator shall not issue zoning permits for any structure or activity on a lot in a subdivision for which a plat has not been approved and recorded in the manner prescribed in these regulations.
- (3) In the event, a variance is required to meet the criteria, BZA must review and approve the variance prior to minor subdivision review.

#### D. Minor Subdivision Review Procedure

The review procedure for a minor subdivision shall be as follows:

- (1) Step 1 – Application
  - i. The applicant shall submit an application in accordance with 1102.07, and with the provisions of this section.
  - ii. The application shall include a deed or other instrument of conveyance in compliance containing an accurate and current legal description based on a boundary survey, of each proposed new lot.
  - iii. If the minor subdivision involves the transfer of land area from one lot to an adjacent lot, both property owners shall be required to authorize the application and deeds, or other instruments of conveyance shall be submitted for both lots.
- (2) Step 2 – Review and Comment by Applicable Agencies
  - i. Upon determination that the application for a minor subdivision is complete, the Zoning Administrator may transmit copies of the application for review by applicable agencies including,

but not limited to, the City Engineer and any other agencies having authority over streets, water, sewer, gas, or other utilities and other public improvements.

- ii. Such agencies may supply comments, recommendations, and approvals as applicable, to the Zoning Administrator for consideration prior to the Zoning Administrator's decision (Step 3).
- (3) Step 3 – Review and Decision by the Zoning Administrator
- i. Within seven days of the determination that the application (Step 1) is complete, the Mayor shall review the application and approve or deny the application for a minor subdivision based on the review criteria established below. An extension on the decision may be granted with approval from the applicant.
  - ii. In reviewing the minor subdivision, the Zoning Administrator, on recommendation of the City Engineer, and/or the Public Service Director, may require the addition of easements and/or setbacks as part of a transfer of land area between two lots.
  - iii. If the application for a minor subdivision is denied, the Zoning Administrator shall provide the applicant with written finding for the denial.
  - iv. If the application is approved, the Mayor shall be required to sign the minor subdivision/plat.

E. Review Criteria

In order to approve a minor subdivision, the Zoning Administrator shall determine the following:

- (1) That the minor subdivision complies with all applicable provisions of this code;
- (2) That the minor subdivision complies with all other applicable regulations and plans of the City; and
- (3) That the applicable review agencies have no objections that cannot be resolved by the applicant.

F. Recording

- (1) The Mayor shall sign and date the minor subdivision/plat.
- (2) The subdivider shall then be responsible for submitting the signed conveyance with the Summit County Auditor for the transfer of property and to the Summit County Recorder for the recording of the lots as legal lots of record and providing a copy of said minor subdivision/plat to the Planning and Zoning Department after recording.
- (3) In the case of a transfer of land between two adjacent lots, the recording of the revised lots shall take place simultaneously.

## **SECTION 1110.03 MAJOR SUBDIVISION**

A. Purpose

- (1) The purpose of the major subdivision process is to provide a method of review for any subdivision that exceeds the scope of a minor subdivision and which includes multiple lots, the creation or expansion of new streets, and/or the installation of public improvements.

B. Applicability

- (1) Any subdivision of land or replat of an existing subdivision that does not meet the applicability requirements of a minor subdivision in Section 1110.02 B.: Applicability, shall be subject to the requirements of this section.

C. Sale of Land in Subdivisions; Start of Construction

- (1) No owner, or authorized agent, of any land located within a subdivision shall transfer, sell, agree to sell or negotiate to sell any land by reference to, by exhibition of, or by the use of, a plan or plat of a subdivision, nor proceed with any construction work before such plan or plat has been approved and recorded in the manner prescribed in these regulations. Any sale or transfer contrary to the provisions of this section is void. The description of such lot or parcel by metes and bounds in the instrument of transfer or other documents used in the process of selling or transferring shall not exempt the transaction from the provisions of these regulations.
- (2) The Zoning Administrator shall not issue zoning permits for any structure or activity on a lot in a subdivision for which a plat has not been approved and recorded in the manner prescribed in these regulations.

D. Major Subdivision Review Procedure

The review procedure for a major subdivision shall be as set forth below. The preliminary plat option is conducted for the developer's benefit. With the submission of the preliminary plat for review, the applicant waives any rights to an approval until such time as application is made for final subdivision plat review and is submitted to PZC (Step 5) for review and approval, as detailed in these regulations.

- (1) Step 1 – Application and Filing of the Preliminary Plat
  - i. The applicant shall submit an application along with a preliminary plat in accordance with 1102.07 and with the provisions of this section.
  - ii. The preliminary plat shall be prepared, signed, and sealed by an engineer or surveyor who is qualified and registered in the State of Ohio.
  - iii. Upon determination by the Zoning Administrator that the application is complete, the preliminary plat shall be accepted as being officially filed.
  - iv. The Zoning Administrator shall notify property owners within 500' of the proposed plat within 14 days of the public meeting.
- (2) Step 2 – Staff Review and Staff Report on the Preliminary Plat
  - i. Upon determination that the application for a major subdivision is complete, the Zoning Administrator shall transmit copies of the application for review by applicable agencies including, but not limited to, the City Engineer, Fire Department, Police Department, agencies having jurisdiction for water, sanitary sewer and/or soil and water, or other agencies the Zoning Administrator deems appropriate.
  - ii. Such agencies shall supply comments and recommendations to the Zoning Administrator prior to the regularly scheduled PZC meeting where the preliminary plat will be reviewed.
  - iii. Prior to PZC meeting where the preliminary plat is scheduled for review, the Zoning Administrator shall review the preliminary plat and prepare a staff report.
- (3) Step 3 – Review and Decision on the Preliminary Plat by PZC
  - i. In accordance with the applicable submission, PZC shall review the preliminary plat application at its next regularly scheduled meeting, or at a special meeting, after the application is determined to be complete.
  - ii. In making its decision, PZC shall approve, approve with conditions, or deny the preliminary plat. PZC may grant variances to the preliminary plat. PZC may also continue the meeting if questions regarding the plat are not satisfactorily addressed by the applicant.

- iii. PZC shall make a decision within 60 days of the filing of the preliminary plat (Step 2) unless PZC and subdivider agree to an extension of this time frame.
  - iv. If PZC denies the preliminary plat, the applicant shall not move forward in the review process until a preliminary plat is approved by PZC. Denial of the plat does not bar the applicant from re-applying a new preliminary plat.
  - v. Approval of the preliminary plat by PZC does not constitute approval of the subdivision but is merely an authorization to proceed with the preparation of the improvement plans and final plat.
- (4) Step 4 – Submission of Improvement Drawings
- i. The applicant shall submit all necessary improvement drawings for review within one year of the decision on the preliminary plat unless an alternative schedule is approved as part of the preliminary plat approval or the subdivider can show just cause for extending the deadline. For phased subdivisions, the deadline shall apply to the first phase of the subdivision. Failure to submit the improvement plans within this time frame shall void the preliminary plat approval and the subdivider will be required to submit a new application in accordance with these regulations.
  - ii. The applicant shall submit improvement drawings and specifications incorporating all changes in the preliminary plat approval for review and approval by the Director of Public Service. In cases where the applicant proposes to develop the subdivision in phases, the improvement plans and final plat shall be submitted for each individual phase.
  - iii. The improvement drawings shall be prepared, signed, and sealed by an engineer or surveyor who is qualified and registered in the State of Ohio.
  - iv. Upon determination that the submission of the improvement drawings is complete, the Zoning Administrator shall transmit copies of the application for review by applicable agencies including, but not limited to the City Engineer, Fire Department, Police Department, agencies having jurisdiction for water and/or sanitary sewer, or other agencies the Zoning Administrator deems appropriate.
  - v. Construction of Improvements
    - (a) Applicants shall have the choice to construct all public improvements prior to the approval of the final plat, without a financial guarantee, but such public improvements must be completed and then inspected and approved by the City before the City can approve the final plat. The improvements shall be constructed within a reasonable time as determined by the City, but not to exceed two years.
    - (b) All required subdivision improvements shall be maintained in a satisfactory condition by the subdivider during any interim period between their construction and final approval and acceptance of the subdivision by the City. See Section 1110.08 Installation of Public Improvements and Financial Guarantees.
    - (c) If the applicant requests approval of a final plat prior to installation of the public improvements, the applicant shall be required to provide a financial guarantee in accordance with the regulations of this code at the time the final plat is submitted for review.
- (5) Step 5 – Submission of the Final Plat
- i. The applicant shall submit the final plat in accordance with Section 1102.07, and with the provisions of this section within 2 years of approval on the preliminary plat.
  - ii. If a preliminary plat has been previously approved, the final plat shall have incorporated all changes in the preliminary plat approval.

- iii. If the applicant proposes to provide a financial guarantee for the public improvements in-lieu of installing all public improvements prior to approval of the final plat, the applicant shall be required to provide all information required as part of Section 1110.08 Installation of Public Improvements and Financial Guarantees.
- iv. Upon determination by the Zoning Administrator that the final plat has been properly submitted, the final plat shall be accepted as being filed.
- v. In cases where the applicant proposes to develop the subdivision in phases, the final plat and improvement drawings shall be submitted for each individual phase.
- vi. The final plat shall be prepared, signed, and sealed by an engineer or surveyor who is qualified and registered in the State of Ohio.
- vii. The final plat shall include the following certifications in the illustrated form:
  - (a) Certification of a registered surveyor using the following standard form:

CERTIFICATE OF SURVEYOR

I hereby certify that this plat is a true and complete land survey made (under my supervision), (by me), on date and that all survey monuments shown have been set.

(SEAL)

REGISTERED SURVEYOR #

- (b) An acknowledgment by the owner or owners, adopting the plat, offering streets for dedication, and establishing utility easements and other public area; using the following standard form:

OWNERS' CONSENT AND OFFER OF DEDICATION

1. We, the undersigned, being all the owners, and lien holders of the lands herein platted, do hereby voluntarily consent to the execution of this plat and do offer for dedication the streets, parks and public grounds as shown thereon to the public use forever.

2. All easements shown hereon are for the construction, operation, maintenance, repair, replacement, or removal of water, sewer, gas, electric, telephone or other utility lines or services, and for the express privilege of removing any and all trees, shrubs, bushes, buildings or other obstructions to the free use of said utilities and for providing ingress and egress to the property for said purposes and are to be maintained as such forever.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
WITNESS

- (c) A certificate of Notary Public relative to subsection (b)(11) hereof in accordance with the following standard form:

CERTIFICATE OF NOTARY PUBLIC

STATE OF OHIO, COUNTY OF SUMMIT, SS

Be it remembered that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

before me the undersigned, a Notary Public in and for said County and State, personally came \_\_\_\_\_ and \_\_\_\_\_ and acknowledged the signing and execution of the foregoing plat to be their voluntary act and deed.

IN TESTIMONY WHEREOF, I have set my hand and notary seal on the day and date above written.

My Commission expires

\_\_\_\_\_  
NOTARY PUBLIC in and for  
SUMMIT COUNTY, OHIO

- (d) A signature block for the Commission in accordance with the following standard form:

APPROVED BY THE PLANNING AND ZONING COMMISSION OF THE CITY OF TALLMADGE, OHIO, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
CHAIRMAN

\_\_\_\_\_  
SECRETARY



(e) A signature block for Council in accordance with the following standard form:

ACCEPTED BY THE CITY COUNCIL OF TALLMADGE, OHIO, at its regular session  
this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
PRESIDENT

\_\_\_\_\_  
CLERK OF COUNCIL

(f) A signature block for the City Engineer in accordance with the following standard form:

APPROVED BY \_\_\_\_\_, City Engineer on this day \_\_\_\_ of \_\_\_\_\_, 20\_\_.

(g) Reserve a block three inches by five inches for the official stamp of the County Auditor and County Recorder in the area of the aforementioned certifications.

(6) Step 6 – Staff Review and Staff Report on the Final Plat

- i. Upon determination that the submission of the final plat and improvement drawings is complete, the Zoning Administrator shall transmit copies of the application for review by applicable agencies including, but not limited to the City Engineer, Fire Department, Police Department, agencies having jurisdiction for water, sanitary sewer and/or soil and water, or other agencies the Zoning Administrator deems appropriate.
- ii. Such agencies shall supply comments and recommendations to the Zoning Administrator prior to the regularly scheduled PZC meeting where the final plat will be subject to review.
- iii. Prior to PZC meeting where the final plat is scheduled for review, the Zoning Administrator shall review the final plat and prepare a staff report.

(7) Step 7 – Review and Decision on the Final Plat by PZC

- i. In accordance with the applicable submission deadlines, PZC shall review the final at its next regularly scheduled meeting, or at a special meeting, after the final plat is submitted and determined to be complete.
- ii. PZC shall approve, approve with conditions, or deny the final plat. PZC may grant variances to the final plat. PZC may also continue the meeting if questions regarding the plat are not satisfactorily addressed by the applicant.

- iii. PZC shall make a decision within 60 days of the filing of the final plat (Step 5) unless PZC has continued the meeting as authorized in Paragraph (A) above or if PZC and subdivider agree to an extension of this time frame.
  - iv. If PZC denies the final plat, the applicant shall not move forward in the review process until a final plat is approved by PZC.
  - v. In the event PZC denies the final plat or approves with conditions, PZC shall provide the subdivider with a statement in writing setting forth the reasons for the denial or the conditions of approval.
  - vi. PZC, with approval of City Council, may give final approval on the final plat and improvement drawings before all required public improvements are installed, provided that a financial guarantee (See Section 1110.08 Installation of Public Improvements and Financial Guarantees.) is provided and accepted by City Council.
  - vii. Approval of the final plat by PZC shall not be an acceptance by the public of the offer of dedication of any street, or other public ways or open space on the final plat unless they are accepted by City Council in the form of the adoption of an ordinance.
  - viii. No final plat shall be recorded until all areas offered for parks, open space, fee in lieu or public rights-of-way been accepted by City Council.
- (8) Step 8 – Acceptance of Improvements by City Council
- The City, through action by City Council, may accept public improvements made by a subdivider which meet the following conditions:
- i. The public improvements have been made in accordance with the requirements of this code, and any other manuals or documents referenced in Section 1110.07 B. Construction Procedures and Materials.
  - ii. Installation of the public improvements has been completed in accordance with the approved improvement plans and applicable design standards.
  - iii. All final inspections required by these regulations have been carried out by the City, and said public improvements were found to be acceptable by the City; and
  - iv. After all public improvements have been installed to the satisfaction of the City, the subdivider shall submit an original copy of as-built improvement drawings (showing how all public improvements were actually installed) to the City on mylar and a digital copy of the same drawings in a format acceptable to the City.
  - v. After all public improvements have been installed in accordance with the approved improvement plans and these regulations and the subdivider has complied with this section, City Council may, by ordinance, accept the public improvements for maintenance with any applicable guarantee.
  - vi. If the applicant proposes to provide a financial guarantee for the public improvements in-lieu of installing all public improvements prior to approval of the final plat, the applicant shall be required to provide all information required as part of Section 1110.08 Installation of Public Improvements and Financial Guarantees.
- (9) Step 9 – Disposition of Approved Plat and Recordation
- i. After approval of the original drawing of the final plat by PZC, such final plat shall be transmitted to City Council or other appropriate public body for necessary acceptance of all public dedications.
  - ii. After approval of the final plat and after acceptance of all land to be dedicated on the plat by City

Council or other appropriate public bodies, the original tracing/mylar and three signed prints shall be returned to the subdivider for filing with the Summit County Recorder. The plat shall be filed within 60 days after date of final approval and after all necessary certifications have been noted thereon. Failure to record the approved final plat within the 60 days shall result in the final plat being considered void.

- iii. The subdivider shall also furnish to the Department of Planning & Zoning the original tracing/mylar of the plat and digital copy of the plat in a format acceptable to the City. Such information shall be submitted within five working days after the plat recording.

E. Deed Restrictions. All deed restrictions shall run with the land and be enforceable by the owner of any of the property lying within the subdivision. Restrictions shall be so written that they may be amended to meet changing conditions. All covenants and restrictions shall indicate the proposed use of the land.

F. Review Criteria

In order to approve a major subdivision, PZC, shall determine the following:

- (1) That the major subdivision complies with all applicable provisions of this code.
- (2) That the major subdivision does not conflict with other regulations, plans, or policies of the City; Chapter 1102 Administration and Procedures and Section 1110.03 Major Subdivisions Subsection (G): Amendments and Withdrawal of Application
- (3) That applicable review agencies have no objections that cannot be resolved by the applicant; and
- (4) That the final plat and improvement drawings conform to the approved preliminary plat, if submitted and approved.

G. Amendments and Withdrawal of Application

- (1) No changes, erasures, modifications, or revisions shall be made in any plat of a subdivision after final approval has been given by PZC and an endorsement is made in writing on the plat, unless the plat is first resubmitted and the changes approved by PZC.
- (2) If the applicant finds, in the process of preparing improvement drawings, that the approved preliminary plat, if submitted, is not workable and changes in layout are required, the applicant shall inform the Zoning Administrator. The Zoning Administrator may require that a revised preliminary plat be submitted for re-approval following the review procedure in Section 1110.03 D. Major Subdivision Review Procedure, above if the changes significantly alter the design of the subdivision.
- (3) During the final plat process, the City may be authorized to allow minor changes related to the public improvements or design where there is minimal impact to the overall design of the subdivision. This shall not give the City the authority to vary the requirements of this code.
- (4) Before approval of the final plat, the submitted plat may be withdrawn or modified. If modified, the review process shall be repeated. If the application is withdrawn, any application fees shall be forfeited.
- (5) If during the course of construction, any changes or modifications are encountered that are not in conformance with the original approved improvement drawings, the subdivider shall submit the modified improvement drawings (which have now become as-built drawings) to the City, who, if in agreement with such modifications, shall affix their signature to these drawings indicating approval of the modifications.

## **SECTION 1110.04** SUBDIVISION MODIFICATIONS

### A. Purpose

- (1) The purpose of a subdivision modification is to allow a subdivision that conforms to the spirit and standards that apply to the subdivision of land including standards for improvements but which does not fully conform to the regulations within this code, due to land size, shape, title limitations or topography. Subdivision modifications are intended for those cases where strict application of a particular requirement will create a practical difficulty or extraordinary hardship prohibiting the use of land in a manner otherwise allowed under these regulations. It is not intended that modifications be approved merely to remove inconveniences or financial burdens that the requirements of these regulations may impose on property owners or subdivider in general.

### B. Applicability

- (1) If the proposed subdivision requires a deviation from the minimum site development standards (e.g., lot area, lot width, etc.) or other standards identified in Section 1103 Zones and Overlays, the applicant will be required to apply for and receive all the necessary variance (See Chapter 1102.09.) approvals through prior to approval of a preliminary plat.
- (2) If the applicant seeks a modification of standards required by this code Subdivision Design, then the request for a modification shall be accomplished through the procedure outlined in this section.

### C. Subdivision Modification Review

- (1) A request for a subdivision modification shall be reviewed as part of the preliminary plat review procedure.
- (2) PZC shall review the request and may approve, approve with conditions, or deny the request to modify any or all of the modifications.
- (3) In approving a modification, PZC may impose conditions on the approval as it determines are required to ensure compliance with the provisions and purpose of these regulations.
- (4) If the preliminary plat is denied or if the approval of the preliminary plat expires, so does the approval of the subdivision modification. Any future request for preliminary plat approval that includes the same modifications shall require a new review and decision on the request for modifications.

### D. Review Criteria

- (1) The review criteria for a subdivision modification shall be the same as those for a variance as established in Section 1102.09 B. Standards for Granting a Variance.

### E. Plat Revision after Approval

- (1) No changes, erasures, modifications, or revision shall be made in any plat of a subdivision after approval has been given by the PZC and an endorsement is made in writing on a plat, unless the plat is first resubmitted and the changes approved by the PZC. A fee shall be charged in accordance with the fee schedule approved by City Council.

## **SECTION 1110.05** VACATION OF STREETS, ALLEYS OR EASEMENTS

Whenever a request is made to vacate a street, alley or easement, the applicant shall

- A. File a Vacation Plat indicating the street, alley or easement to be vacated, prepared by a registered surveyor to the Planning & Zoning Department. Legal descriptions shall accompany the plat. The petition for vacation requires the signatures of all property owners that abut the requested vacation. If such signatures of all property owners that abut the requested vacation are not received, then a Public Notice of Consideration to Vacate has to be advertised in the newspaper of general circulation for four consecutive weeks. The cost of the advertising shall be paid by the petitioner. PZC will review and make recommendation to Council. Upon their findings, Council will request legislation and give it three (3) separate readings if the vacation is to proceed. Anyone wishing to address Council must do so at the scheduled Public Meeting .
- B. When any street, alley, or public highway, or a portion thereof, is vacated or narrowed by the City pursuant to the provisions of any section of Chapter 723 of the Revised Code, and the relocation of any conduits, cables, wires, towers, poles, sewer lines, steam lines, pipelines, gas and water lines, tracks, or other equipment or appliances of any railroad or public utility, whether owned privately or by any governmental authority, located on, over, or under the portion of the street, alley, or highway affected by such vacation or narrowing, is not required for purposes of the municipality, including urban renewal, any affected railroad or public utility shall be deemed to have a permanent easement in such vacated portion or excess portion of such street, alley, or highway for the purpose of maintaining, operating, renewing, reconstructing, and removing said utility facilities and for purposes of access to said facilities. When, in the opinion of Council, there is good cause for vacating or narrowing a street or alley, or any part thereof, and that such vacation or narrowing will not be detrimental to the general interest, it may, by ordinance and without petition therefor, vacate or narrow such street or alley or any part thereof.
- C. After approval of the vacation plat by City Council, the original tracing/mylar and three signed prints shall be returned to the subdivider for filing with the Summit County Recorder. Failure to record the approved vacation plat within the 60 days shall result in the final plat being considered void.
- D. The petitioner shall also furnish to the Department of Planning & Zoning the original tracing/mylar of the plat and digital copy of the plat in a format acceptable to the City. Such information shall be submitted within five working days after the plat recording.

## **SECTION 1110.06** SUBDIVISION DESIGN

- A. Purpose  
The purpose of this section is to further the overall purpose of this code and to:
  - (1) Establish standard requirements, conditions, and procedures for the design and review of subdivisions.
  - (2) Provide for the orderly subdivision of land.
  - (3) Encourage the wise use and management of land and natural resources throughout the City.
  - (4) Ensure that adequate public infrastructure, facilities and services are available concurrent with development.
  - (5) Encourage a beneficial relationship between the uses of land and circulation of traffic throughout the City, and to provide for the proper location and design of streets; and
  - (6) Provide adequate utility systems to support the future needs of the system; and
  - (7) To prevent pollution of air, streams and ponds and to ensure that development subject to these regulations is sensitive to and compatible with environmental consideration.

- (8) To ensure the ability of the natural environment to adequately support such development without significant negative consequences and to ensure critical natural resources including prime agricultural soils are preserved, conserved and/or protected.

## SECTION 1110.07 GENERALLY APPLICABLE DEVELOPMENT STANDARDS

### A. Suitability of Land for Development

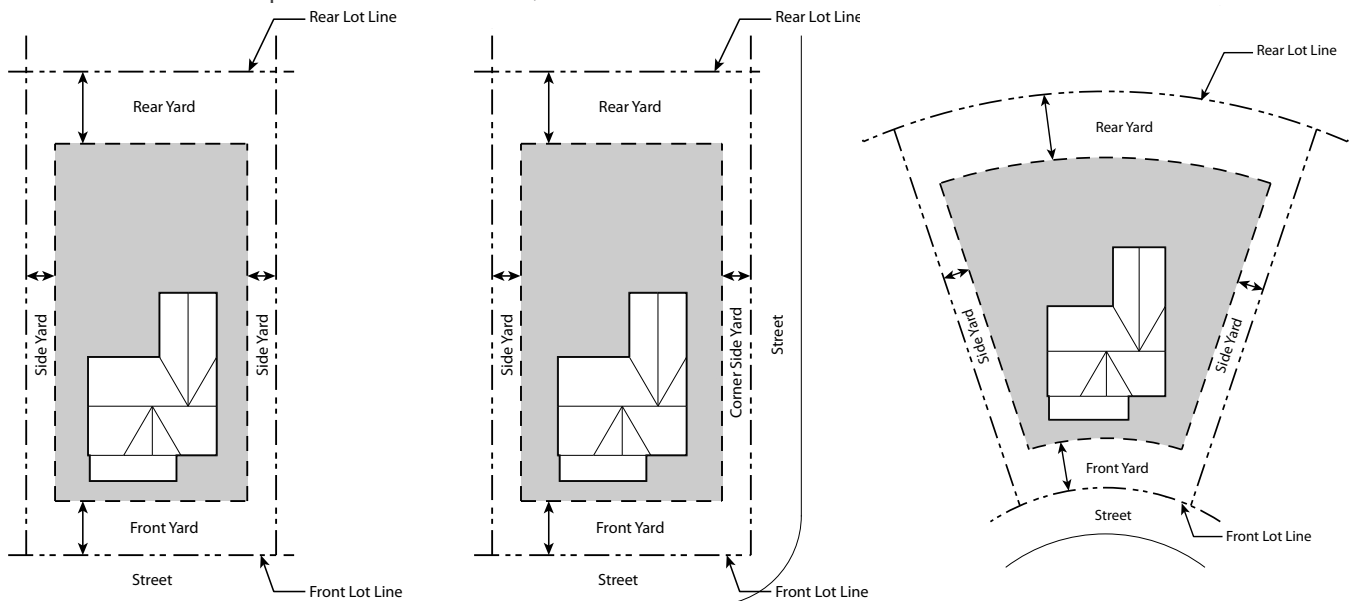
- (1) Natural Land Use. Subdivisions should be planned to take advantage of the topography of the land, to economize in the construction of drainage facilities, to reduce the amount of grading, and to minimize destruction of trees and topsoil.
- (2) Flood Hazard. If any portion of the land within the subdivision is subject to flooding or other hazards, due consideration shall be given to such problems in the design of the subdivision. While portions of a lot may be within a flood prone area, no residential occupancy, accessory buildings nor such other use that may increase danger to health, life or property or aggravate the hazard of the flooding shall be permitted. Furthermore, defined flood plains shall not be filled.

### B. Construction Procedures and Materials

- (1) The design and construction of improvements shall be in accordance with the City Development Standards and other pertinent regulations. The work shall be done under City supervision and inspection.

### C. Lot Setback Identification

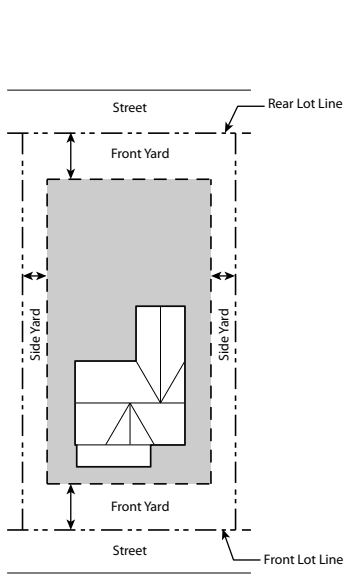
- (1) The determination of front, side, and rear setbacks shall be determined by the lot configuration and relationship to the street or streets, and as illustrated below:



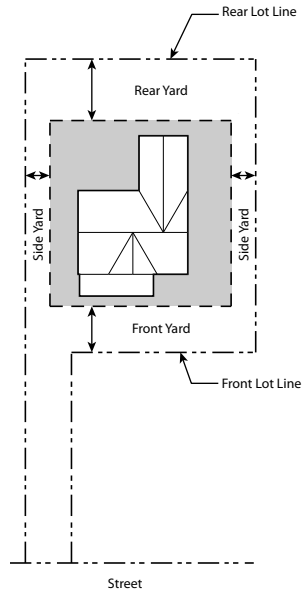
*Regular-shape lot and setbacks.*

*Corner lot and setbacks.*

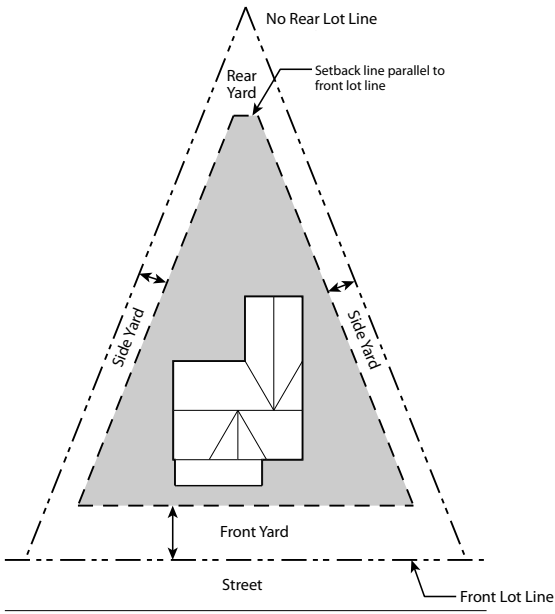
*Cul-de-sac lot and setbacks.*



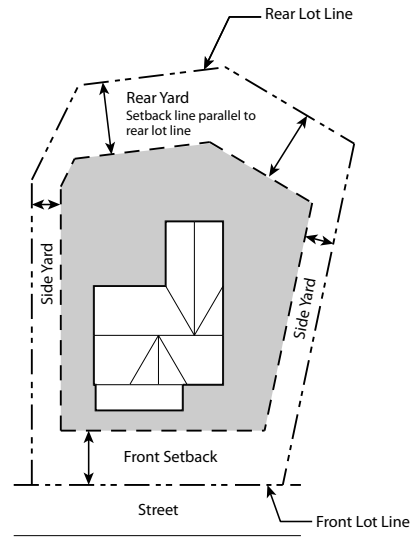
*Double-frontage lot and setbacks.*



*Flag lot and setbacks.*



*Triangle-shape lots and setbacks*



*Irregular-shape lots and setbacks*

## **SECTION 1110.08**    **INSTALLATION OF PUBLIC IMPROVEMENTS AND FINANCIAL GUARANTEES**

The conditions associated with financial guarantees shall be enumerated in the applicable ordinance as adopted by City Council.

### A. Pre-Construction Meeting

- (1) After the subdivider has received approval of the final plat consisting of construction plans, and not less than two weeks prior to the start of construction or site development, a pre-construction meeting shall be held between the subdivider and City staff. The subdivider shall submit a request for the meeting with the City.
- (2) At the pre-construction meeting, the subdivider must do the following:
  - i. Provide a construction schedule detailing when all required improvements will be complete and an itemized cost estimate of the required improvements; and
  - ii. Pay inspection fees as estimated by the City prior to any inspections. The funds will be held in escrow by the City and disbursed as the City is billed for the services. Any unused fees will be returned upon completion of all inspections. If inspection fees are incurred in excess of the original estate by the City, additional deposits will be required.

### B. Protection of Streets, Utilities and Other Installations

- (1) The subdivider shall provide the City with a plan for the routing of construction equipment and traffic with the objective of alleviating any need to traverse adjacent off-site residential streets. In exceptional cases, where no reasonable alternative exists or can be provided, construction equipment may be permitted the use of collector streets for a predetermined time period. The contractor shall be permitted to operate only pneumatic-tired equipment over any paved street surfaces and shall be responsible for correction of any damage to street surfaces in any manner resulting from the contractor's operation. During the period of use, such streets shall be kept reasonably free of debris, based on periodic inspections by the City and in accordance with approved sedimentation and erosion control measures.
- (2) The subdivider and their contractors shall protect all City infrastructure within the Road Right of Way such as pavement, sidewalks and utilities against all damage prior to final acceptance of the work including damage created by the contractor's construction equipment and vehicles, as well as general traffic. As soon as curing and sealing are completed, the contractor shall clean the pavement free of all debris and construction equipment.
- (3) The subdivider and their contractors shall at all times take proper precautions for the protection of utility lines, the presence of which can be determined by contacting the Ohio Utilities Protection Service (OUPS). The subdivider shall be financially responsible for the repair of any damage to such utility lines. Contractors are responsible for "pot-hole" hydro-excavating when it is determined that any utility location is in close proximity and unable to be otherwise properly located.

### C. Financial Guarantees for Public Improvements

- (1) A subdivider may execute and file a written financial guarantee with the City in lieu of actual installation or completion of the required public improvements when requesting approval of a final plat.
- (2) The financial guarantee shall be an obligation for the faithful performance of any and all work and the construction and installation of all public improvements required to be done by the subdivider, together with all engineering and inspection costs and fees incurred by the City.



- (3) The guarantee shall contain the further condition that should one of the following conditions exist, the City may, at its option, cause all required work to be done and public improvements constructed by using the financial guarantee.
  - i. The installation of all required public improvements as called for in these regulations has not taken place within the time period agreed on with the City, and the subdivider has failed to establish reasonable cause for such delay to the satisfaction of City Council and thereby to receive a time extension; and/or
  - ii. The subdivider has not constructed the required public improvements in accordance with the minimum standards specified by these regulations, and the subdivider is unwilling to modify and upgrade said public improvements within a six-month time period of notice so as to be in compliance with the provisions of these regulations.
- (4) The parties executing the guarantee shall be firmly bound for the payment of all necessary costs therefor.
- (5) The guarantee may take the form of a bond, cash deposit, or an irrevocable letter of credit as further outlined in Chapter 1102 Administration and Procedures.
- (6) The amount of the financial guarantee for installation of public improvements shall be based on an engineer's cost estimate, approved by the City, for 100 percent of the cost to complete the unfinished public improvements.
- (7) Where applicable, engineering, plan review, and construction review fees, etc., shall be required to be a part of the engineer's cost estimate.
- (8) After a period of two years from the date of submittal, the City may require that a revised engineer's estimate and bond be submitted that reflects updated unit prices.
- (9) Unit prices used in the engineers cost estimate shall be based upon unit costs associated with public contracting (i.e., prevailing wage rates).
- (10) Guarantees, as identified in Section 1102 Administration and Procedures, shall be made payable to the City of Tallmadge and be acceptable to the City and the City's legal counsel.
- (11) Incomplete public improvements that the City determines will constitute a safety hazard or maintenance issue or will prevent the effective functioning of the public improvements, shall be required to be completed prior to the approval of a final plat.
- (12) Reduction of Financial Guarantees After the improvements are installed, tested, and approved, the subdivider may request the following reduction and reimbursement:
  - i. As improvements are installed, the subdivider may make a written request to the City Engineer for a reduction in the bond for up to 75 percent of the estimated cost of the completed improvement. The reduction will be granted if the installation of the applicable improvement is complete to the satisfaction of the City and approved by the Director of Public Service. However, in no event will the financial guarantee be reduced by more than 75 percent until final completion and acceptance of all improvements. No more than two reduction requests will be considered during the term of an agreement.

D. Inspections: The City will make periodic inspections during the installation of improvements.

E. Final Inspection, Release of Financial Guarantees and Requirement of Maintenance Guarantees

- (1) When the required improvements are complete, the subdivider shall notify the City in writing. Upon receipt of the notice of completion, the City will make a final inspection of the required improvements.

- (2) If the required improvements are completed to the City's satisfaction, the Director of Public Service shall release the financial guarantee for improvements.
- (3) The Director of Public Service shall not release the financial guarantee without the following:
  - i. Receipt of a Final Inspection Report letter from the City Engineer certifying a satisfactory completion of all required improvements.
  - ii. Proof that the subdivider has installed all survey monuments or has provided a separate financial guarantee to secure the installation of iron pins not previously set; and
  - iii. Receipt of a maintenance guarantee in the amount of 10 percent of the total estimated cost of installing the required improvements.
  - iv. Set of As-Built Plans – using final approved plans.
  - v. Approved Stormwater Long Term Maintenance Agreement
- (4) The maintenance guarantee shall be held for a period of two years and shall be subject to the same requirements of Section 1102.19 P. Types of Guarantees.
- (5) During the two-year maintenance period, the City may authorize the maintenance guarantee to repair any public improvements and return them to the condition they were in at the time of completion. Any remaining guarantee will then be released to the subdivider after one year from the date the original financial guarantee was released. Such release shall only occur with the approval of the Director of Public Service.

#### F. Penalties

If there is a violation of this chapter, the City is entitled to enforce the following penalties in addition to or in conjunction with any other penalty available under this code, in law, or in equity.

- (1) Development Standards. The final plat may not be recorded, and no zoning permits may be issued if the required improvements are not completed as required by this code, or the final plat, construction drawings, and related specifications.
- (2) Whenever construction and installation of required improvements are not accomplished in accordance with the requirements of this code, or the final plat, construction drawings, and related specifications, the Director of Public Service may foreclose on the any of the outstanding financial guarantees, as may be applicable.
- (3) If, in the opinion of the City, installations are improper or inadequate, a stop order will be issued. Failure to comply with the inspector will be deemed a violation of this chapter subject to the penalty set forth in Chapter 1102.19 Violations, Remedies, and Fees.

## SECTION 110.09 RIPARIAN SETBACKS

### A. Purpose.

- (1) The City of Tallmadge has determined that the system of streams within the City contributes to the health, safety, and general welfare of the residents of the City. The purpose of this chapter is to protect and preserve the water quality within streams of the City and to protect residents of the City from property loss and damage because of flooding and other impacts of the stream. The City will implement this chapter by controlling uses and developments within a riparian setback that would impair the ability of the riparian area to:

- i. Reduce flood impacts by absorbing peak flows, slowing the velocity of flood waters and regulating base flow.
  - ii. Stabilize the banks of streams to reduce bank erosion and the downstream transport of sediments eroded from stream banks.
  - iii. Reduce pollutants in streams during periods of high flows by filtering, settling, and transforming pollutants already present in streams or in runoff before they enter streams.
  - iv. Provide areas for natural meandering and lateral movement of stream channels.
  - v. Reduce the presence of aquatic nuisance species to maintain diverse and connected riparian vegetation.
  - vi. Provide high quality stream habitats with shade and food to a wide array of wildlife by maintaining diverse and connected riparian vegetation.
  - vii. Benefit the City economically by minimizing encroachment on stream channels and reducing the need for costly engineering solutions such as dams and riprap, to protect structures and reduce property damage and threats to the safety of watershed residents, and by contributing to the scenic beauty and to the environment of the City, the quality of life of the residents of the City, and corresponding property values.
- (2) This chapter has been enacted to protect these services of riparian areas by providing reasonable controls governing structures and uses in riparian setbacks.

B. Compliance and Violations.

- (1) No preliminary plan or zoning approvals shall be issued by the City without full compliance with the terms of these regulations where applicable.
- (2) Any person or organization who violates this Chapter shall be guilty of a minor misdemeanor and, upon conviction, shall be subject to punishment as provided in Chapter 1102 of the Codified Ordinances of the City, and shall be required to restore the riparian setback through a plan approved by the appropriate Soil and Water Conservation District (SWCD).
- (3) The imposition of any other penalties provided herein shall not preclude the City from instituting an appropriate action or proceeding in a Court of proper jurisdiction to prevent an unlawful development, or to restrain, correct, or abate a violation, or to require compliance with the provisions of this Chapter or other applicable laws, ordinances, rules, or regulations, or the orders of the City.

C. Conflicts with other Regulations and Severability.

- (1) Where this chapter imposes a greater restriction upon land than is imposed or required by any other provision of law, regulation, contract, or deed, the provisions of this chapter shall control.
- (2) These regulations shall not limit or restrict the application of other provisions of law, regulation, contract, or deed, or the legal remedies available thereunder, except as provided in division (1) of this section.
- (3) If any clause, section, or provision of these regulations is declared invalid or unconstitutional by a court of competent jurisdiction, validity of the remainder shall not be affected.

D. Establishment of a Riparian Setback.

- (1) Riparian setbacks are established as provided in this chapter.
- (2) Streams addressed by this chapter are those which meet the definition of “stream” in Appendix A.5. and are indicated on at least one of the following maps:

- i. USGS topographical map.
  - ii. Applicable County Riparian Setback Map.
  - iii. Soils maps located in the Soil Survey for, as applicable, Summit or Portage County, Ohio, USDA, NRCS.
  - iv. City of Tallmadge Riparian Setback Map is on file in the Zoning Department.
- (3) Widths of setbacks are measured as horizontal map distance outward from the ordinary high water mark on each side of a stream, and are established as follows:
- i. A minimum of 300 feet on each side of all streams draining an area greater than 300 square miles.
  - ii. A minimum of 100 feet on each side of all streams draining an area greater than 20 square miles and up to 300 square miles.
  - iii. A minimum of 75 feet on each side of all streams draining an area greater than 0.5 square mile (320 acres) and up to 20 square miles.
  - iv. A minimum of 50 feet on each side of all streams draining an area greater than 0.05 square mile (32 acres) and up to 0.5 square mile (320 acres).
  - v. A minimum of 30 feet on each side of all streams draining an area less than 0.05 square mile (32 acres).
- (4) The following are exempt from the terms and protection of this chapter: grassy swales, roadside ditches, drainage ditches created at the time of a subdivision to convey storm water to another system, tile drainage systems, and stream culverts.
- (5) The following shall apply to the riparian setback:
- i. Where the 100-year floodplain is wider than the riparian setback on either or both sides of the stream, the riparian setback shall be extended to the outer edge of the 100-year floodplain. The 100-year floodplain shall be defined by FEMA and subject to review and approval by the City Engineer.
  - ii. Because the gradient of the riparian corridor significantly influences impacts on the stream, the following adjustment for steep slopes will be integrated into the riparian setback formulae for width determination:
 

(a)	Average Percent Slope	Width of Setback
(b)	15% to 20%	Add 25 feet
(c)	21% to 25%	Add 50 feet
(d)	>25%	Add 100 feet
  - iii. Average stream bank slope is to be calculated using methodology outlined in “The Ohio Supplement to Urban Hydrology for Small Watersheds, Technical Release Number 55 (TR-55)” by USDA, NRCS.
  - iv. Where wetlands protected under Federal or State law are identified within the riparian setback, the riparian setback shall consist of the full extent of the wetlands plus the following additional setback widths:
    - (a) A 50-foot setback extending beyond the outer boundary of a Category 3 wetlands.
    - (b) A 30-foot setback extending beyond the outer boundary of a Category 2 wetlands.
    - (c) No additional setback will be required adjacent to Category 1 wetlands.

- v. Wetlands shall be delineated by a qualified professional under guidelines established by the U.S. Army Corps of Engineers and Ohio Environmental Protection Agency and the delineation approved by the appropriate agencies. All wetland delineations shall also include the latest version of the Ohio Rapid Assessment Method for wetland evaluation approved at the time of application of these regulations.
- vi. The applicant shall be responsible for delineating the riparian setback, including any expansions or modifications as required by subsections ii. through v. hereof, and identifying this setback on all subdivisions, land development plans, and/or building permit applications. This delineation shall be done at the time of application of the preliminary plans, or all plans that are required, or at the time of submission of any permit applications. This delineation shall be subject to review and approval by the applicable SWCD. As the result of this review, the SWCD may require further studies from the applicant.
- vii. Prior to any soil-disturbing activity, the riparian setback shall be clearly delineated with construction fencing or other suitable material by the applicant on site, and such delineation shall be maintained throughout soil- disturbing activities. The delineated area shall be maintained in an undisturbed state unless otherwise permitted by these regulations. All fencing shall be removed when a development project is completed.
- viii. No approvals or permits shall be issued by the City prior to delineation of the riparian setback in conformance with these regulations.
- ix. Upon completion of an approved subdivision, planned residential development, or other land development, the riparian setback shall be permanently recorded on the plat records for the City.

E. Uses Permitted.

- (1) The following uses are permitted by right within the riparian setbacks without prior approval:
  - i. Open space uses. Open space uses that are passive in character shall be permitted in the riparian setback, including but not limited to those listed in divisions (a)(2) through (4) of this section. No use permitted under these regulations shall be construed as allowing trespass on privately-held lands. Alteration of this natural area is strictly limited. Except as otherwise provided in these regulations, the riparian setback shall be preserved in its natural state.
  - ii. Recreational activity. Passive recreational uses, as permitted by Federal, State, and local laws, such as hiking, non-motorized bicycling, fishing, hunting, picnicking and similar uses and associated structures, including boardwalks, pathways constructed of pervious material, picnic tables, and wildlife viewing areas.
  - iii. Removal of damaged or diseased trees. Damaged or diseased trees may be removed. Because of the potential for felled logs and branches to damage downstream properties and/or block ditches or otherwise exacerbate flooding, logs and branches resulting from the removal of damaged or diseased trees that are greater than 6 inches in diameter shall be anchored to the shore or removed from the 100-year floodplain.
  - iv. Revegetation and/or reforestation. The revegetation and/or reforestation of the riparian setback shall be allowed without approval of the appropriate SWCD. Species of shrubs and vines recommended for stabilizing flood- prone areas along streams within the City are listed in the Appendix.
- (2) The following uses are permitted by right within the riparian setbacks with prior approval of the design.

- i. Stream bank stabilization/erosion control measures. Best management practices (BMPs) for stream bank stabilization or erosion control may be allowed if such practices are within permitted uses by the local, State and Federal government regulations and are ecologically compatible and emphasize the use of natural materials and native plant species where practical and available. Such stream bank stabilization/erosion control practices shall only be undertaken upon approval of a Storm Water Pollution Prevention Plan (SWPPP or SW3P) by the SWCD.
- ii. Crossings. In reviewing plans for stream crossings, the City may confer with the SWCD, the Ohio Department of Natural Resources, Division of Natural Areas; the Ohio Environmental Protection Agency, Division of Surface Water; the County Engineer; the Department of Environmental Services of the County; the County Health Department or other technical experts as necessary.
  - (a) Limited crossings of designated streams through the riparian setback by vehicles, storm sewers, sewer and/or water lines and public utility lines will be per the approval of local, County, and State governing agencies and as a part of the regular zoning review process.
  - (b) One driveway crossing per stream per tax parcel will be allowed for individual landowners.
  - (c) Roadway crossings for major and minor subdivisions, open space subdivisions, or any other non-single family residential use shall be designed and constructed per the City Development Standards and as approved by the City Planning and Zoning Commission. If more than two crossings per 1,000 linear feet of stream center are required for these areas, the applicant must apply for a variance.
  - (d) All roadway crossings shall be perpendicular to the stream flow and shall minimize disturbance to the riparian setback and shall mitigate any necessary disturbances.
- iii. Placement of storm water retention or detention facilities may be considered within the riparian setback if:
  - (a) Storm water quality treatment that is consistent with current State standards is incorporated into the basin.
  - (b) The storm water quality treatment basin is located at least 50 feet from the ordinary high water mark of the stream.
- iv. Dredging may be permitted, provided the City or property owner obtains all necessary permits that may be required, and notification and presentation of the plan are provided to the City Engineer for review and approval.

F. Uses Prohibited.

- (1) The following uses are specifically prohibited within the riparian setback:
  - i. Construction. There shall be no structures of any kind, except as permitted under these regulations.
  - ii. Dredging or Dumping. There shall be no drilling for petroleum or mineral products, mining activity, filling or dredging of soil, spoils, or any material (natural or man-made) except as permitted under these regulations.
  - iii. Roads or Driveways. There shall be no roads or driveways, except as permitted under these regulations.
  - iv. Motorized Vehicles. There shall be no use of motorized vehicles of any kind, except as permitted under these regulations.
  - v. Modification of Natural Vegetation. Modification of the natural vegetation shall be limited to

conservation maintenance that the landowner deems necessary to control noxious weeds; for such plantings as are consistent with these regulations; for such disturbances as are approved under these regulations; and for the passive enjoyment, access and maintenance of landscaping or lawns existing at the time of passage of these regulations. Nothing in this section shall be construed as requiring a landowner to plant or undertake any other activities in the riparian setback, provided the landowner allows for natural succession.

- vi. Parking Lots. There shall be no parking lots or other human made impervious cover, except as permitted under these regulations.
- vii. New Surface and/or Subsurface Sewage Disposal or Treatment Area. Riparian setbacks shall not be used for the disposal or treatment of sewage except for:
  - (a) Undeveloped parcels that have received site evaluation approval and/or permit approval prior to the enactment of this chapter.
  - (b) Dwellings served by disposal/treatment systems existing at the time of passage of these regulations when such systems are properly sited (approved site evaluation) and permitted or in accordance with the County Health Department and/or the Ohio Environmental Protection Agency. Existing failing systems which are located within the riparian setback can be upgraded with approval of the County Health Department and/or the Ohio Environmental Protection Agency.
  - (c) Sanitary sewer systems, either public or private, that may need to be sited along riparian corridors to provide for flows and are commensurate with an approved sanitary system approved by the Ohio Environmental Protection Agency.

G. Nonconforming Structures or Uses.

- (1) Structures and uses within the riparian setback, existing at the time of passage of these regulations, that are not permitted under these regulations may be continued but shall not be expanded except as set forth in this chapter.
- (2) If damaged or destroyed, these structures or uses may be repaired or restored in accordance with existing zoning regulations within two years from the date of damage/destruction or the adoption of these regulations, whichever is later, at the property owners' own risk.
- (3) A residential structure or use within the riparian setback existing at the time of passage of these regulations may be expanded subject to the following provisions:
  - i. The expansion conforms to existing zoning regulations.
  - ii. The expansion must not impact the stream channel or the 100-year floodplain.
  - iii. The expansion must not exceed an area of fifteen percent (15%) of the total footprint of existing structure or use that lies within the riparian setback. Expansions exceeding fifteen percent (15%) of the total footprint within the riparian setback must be obtained through the variance process.

H. Nonresidential structure or use expansions will be permitted only through the variance process.

I. Boundary Interpretation and Appeals Procedure.

- (1) When an applicant disputes the boundary of the riparian setback or the ordinary high water mark of a stream, the applicant shall submit evidence to the Building and Zoning Department and applicable SWCD that describes the boundary, presents the applicant's proposed boundary, and presents all justification for the proposed boundary change.



- (2) The City Engineer and applicable SWCD shall evaluate all materials submitted and shall make a written recommendation to the Planning and Zoning Commission within a reasonable period of time, not to exceed sixty days. A copy of this recommendation shall be submitted to the applicant. If during this evaluation the City or SWCD requires further information to complete this evaluation, the applicant may be required to provide additional information.
- (3) The Planning and Zoning Commission shall decide such boundary disputes. The party contesting the location of the riparian setback or the ordinary high water mark of the streams as determined by these regulations shall have the burden of proof in case of any such appeal.

J. Variances within Riparian Setback.

- (1) Applications for a hearing before the Planning and Zoning Commission for variances to the provisions of this chapter shall be submitted to the Planning and Zoning Department.
- (2) The Planning and Zoning Commission may consult with representatives from the applicable SWCD; the Ohio Department of Natural Resources, Division of Natural Areas; the Ohio Environmental Protection Agency, Division of Surface Water; the County Engineer; the applicable Department of Environmental Services of the County; the County Health Department; or other technical experts as necessary to provide the necessary data for the Planning and Zoning Commission to consider variance requests.
- (3) Expansions of residential structures or uses exceeding fifteen percent (15%) of the footprint area and expansions of all nonresidential structures or uses are subject to the following:
  - i. The expansion conforms to the existing zoning regulations.
  - ii. The expansion must not impact the stream channel or the 100-year floodplain.
  - iii. The expansion of a nonresidential structure or use must not affect upstream or downstream hydrologic conditions which could cause damage from flooding or stream bank erosion to landowners in those areas. A hydrologic study must be completed by nonresidential applicants only as a process of the variance application.
  - iv. The expansion of a nonresidential structure or use will not exceed twenty-five percent (25%) of the footprint area. The twenty-five percent (25%) expansion limit is per the portion of the structure or use that lies within the riparian setback.
- (4) Requests for variances for subdivisions or planned residential developments (PRD) will be considered for the following:
  - i. An additional stream crossing or crossings for a subdivision, PRD, or open space development which is necessary for the health, welfare, and safety of the residents of the subdivision.
  - ii. A reduction of the setback width, not to exceed ten percent (10%) of the prescribed riparian setback width.
- (5) No variances shall be granted for expansion of the following structures or uses:
  - i. Facilities which use, store, distribute, or sell petroleum-based products or any hazardous materials. Such facilities include, but are not limited to asphalt plants, dry cleaners, gasoline service stations, and road maintenance facilities.
  - ii. Facilities which use, store, distribute, or sell products which may contribute higher than acceptable concentrations of dissolved or particulate matter to storm water runoff around the facility. Such facilities include, but are not limited to landfills or transfer stations, junk yards, recycling facilities, quarries and borrow pits, sand and gravel extraction operations and road salt storage barns.



- (6) In reviewing whether to grant variances, the Planning and Zoning Commission shall consider the following:
- i. The extent to which the requested variance impairs the functions of the riparian area. This determination shall be based on sufficient technical and scientific evidence as provided by the applicant and the agencies listed in subsections 1 through 5 hereof.
  - ii. The soil type and natural vegetation of the parcel as well as the percentage of the parcel that is in the 100-year floodplain.
  - iii. The degree of hardship these regulations place on the applicant and the availability of alternatives to the proposed activity.

K. Inspection.

- (1) The riparian setback shall be inspected by the applicable SWCD:
  - i. When a preliminary subdivision plat or other land development plan is submitted to the City.
  - ii. When a building or zoning permit is requested.
  - iii. Prior to any soil-disturbing activity to inspect the delineation of the riparian setback as required under these regulations.
- (2) The riparian setback shall also be inspected annually or as time permits by the SWCD or approved monitoring entity for compliance with any approvals under these regulations or at any time evidence is brought to the attention of the SWCD that uses or structures are occurring that may reasonably be expected to violate the provisions of these regulations.
- (3) Violations of these regulations will be handled as noted in Section 1102.

L. Appendix: Woody Plants Suitable for Riparian Area

FLOOD TOLERANCE*	SHADE TOLERANCE **	COMMON NAME
<b>HIGH FLOOD TOLERANCE*</b>		
Aronia arbutifolia	3	Red chokeberry
Aronia melanocarpa	3	Black chokeberry
Cephalanthus occidentalis	5	Common buttonbush
Clethra alnifolia	2	Summersweet clethra ***
Cornus amomum	4	Silky dogwood
Cornus stolonifera (sericea)	5	Redosier dogwood
Hamamelis vernalis	3	Vernal witchhazel ***
Ilex decidua	3	Possumhaw ***
Ilex glabra	2	Inkberry ***
Ilex verticillata	3	Common winterberry
Itea virginica	1	Virginia sweetspire ***
Magnolia virginiana	2	Sweetbay magnolia ***
Myrica pensylvanica	4	Northern bayberry
Physocarpus opulifolius	4	Common ninebark
Potentilla fruticosa	4	Bush cinquefoil
Sambucus canadensis	1	American elderberry

FLOOD TOLERANCE*	SHADE TOLERANCE **	COMMON NAME
Salix x cotteti	5	Bankers willow ***
Salix exigua	5	Sandbar willow
Salix purpurea	5	Streamco willow ***
Viburnum cassinoides	2	Witherod viburnum
Parthenocissus quinquefolia	1	Virginia creeper (vine)
<b>MODERATE FLOOD TOLERANCE*</b>		
Calycanthus floridus	1	Common sweetshrub
Hypericum kalmianurn	5	Kalm St. John's wort
Viburnum dentatum	2	Arrowwood viburnum
Xanthorhiza simplicissima	1	Yellowroot ***
<b>INTERMEDIATE FLOOD TOLERANCE*</b>		
Aesculus parviflora	2	Bottlebush buckeye ***
Aesculus pavia	2	Red buckeye ***
Cornus racemosa	2	Gray dogwood
Lindera benzoin	1	Common spicebush
Rosa setigera	4	Prairie rose
Campsis radicans	3	Trumpetcreeper (vine)
Lonicera dioica	2	Limber honeysuckle (vine)
Corylus americana	2	American filbert
Diervilla lonicera	1	Dwarf bushhoneysuckle
Fothergilla gardeni	1	Dwarf fothergilla ***
Fothergilla major	1	Large fothergilla ***
Hydrangea arborescens	1	Smooth hydrangea
Hydrangea quericifolia	1	Oakleaf hydrangea ***
Mahonia aquifolium	1	Oregongrape holly ***
Rosa carolina	4	Carolina rose
Rubus odoratus	1	Fragrant thimbleberry
Vaccinium stamineum	2	Common deerberry
<b>LOW FLOOD TOLERANCE*</b>		
Arctostaphylos uva-ursi	4	Bearberry
Cornus rogusa	1	Roundleaf dogwood
Corylus americana	2	American filbert
Diervilla lonicera	1	Dwarf bushhoneysuckle
Fothergilla gardeni	1	Dwarf fothergilla ***
Fothergilla major	1	Large fothergilla ***
Hydrangea arborescens	1	Smooth hydrangea
Hydrangea quericifolia	1	Oakleaf hydrangea ***
Mahonia aquifolium	1	Oregongrape holly ***
Rosa carolina	4	Carolina rose
Rubus odoratus	1	Fragrant thimbleberry
Symphoricarpos albus	1	Common snowberry

FLOOD TOLERANCE*	SHADE TOLERANCE **	COMMON NAME
Vaccinium stamineum	2	Common deerberry
<b>NO FLOOD TOLERANCE*</b>		
Amorpha canescens	5	Leadplant ***
Ceanothus americanus	3	New Jersey tea
Comptonia peregrina	2	Sweetfern
Dirca palustris	1	Leatherwood
Hypericum frondosum	5	Golden St. John's wort
Juniperus communis	5	Common juniper
Juniperus horizontalis	5	Creeping juniper ***
Rhus aromatica	5	Fragrant sumac
Sambucus pubens	1	Scarlet elder
Symphoricarpos albus	1	Common snowberry

<b>KEY</b>	
*High Flood Tolerance:	Generally lowland wet species surviving when flooded or exposed to high water table more than 40% of the growing season.
*Moderate Flood Tolerance:	Generally lowland wet species surviving when flooded or exposed to high water table more than 30% of the growing season but less than 40%.
*Intermediate Flood Tolerance:	Generally lowland wet-mesic species surviving occasional inundation or elevated water table between 20% and 30% of the growing season.
*Low Flood Tolerance:	Generally upland mesic and mesic-dry species rarely inundated or exposed to an elevated water table for periods of short duration, between 5% and 20% of the growing season.
*No Flood Tolerance:	Generally upland dry species exhibiting immediate and rapid decline frequently culminating in death if inundated or exposed to elevated water table for more than 5% of the growing season.
**Shade Tolerance:	Shade tolerance means able to grow in a state of health and vigor beneath dense shade. In this ranking, shrubs and vines are ranked on a scale of 1 to 5, with 1 being very shade tolerant, and 5 being very shade intolerant.
Notes:	
1. The majority of plants listed are available on the local commercial market and do not displace native species.	
2. The cultivated varieties ("cultivars") of the species listed above may also be used.	
3. Primary information taken from Hightshoe, Gary, 1987. Native Trees, Shrubs, and vines for Urban and Rural America. Van Nostrand. NY, NY.	
4. For further assistance contact Roger Gettig, Landscape Consulting Program, The Holden Arboretum, or Steve Roloson, ODNR Scenic Rivers Program.	

## SECTION 110.10 FLOOD DAMAGE CONTROL

### A. General Provisions.

Statutory Authorization. Article XVIII, Section 3, of the Ohio Constitution grants municipalities the legal authority to adopt land use and control measures for promoting the health, safety, and general welfare of its citizens. Therefore, the Council of the City of Tallmadge, State of Ohio, does ordain as follows:

- (1) Findings of Fact. The City of Tallmadge has special flood hazard areas that are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base. Additionally, structures that are inadequately elevated, floodproofed, or otherwise protected from flood damage also contribute to the flood loss. In order to minimize the threat of such damages and to achieve the purposes hereinafter set forth, these regulations are adopted.
- (2) Statement of Purpose. It is the purpose of these regulations to promote the public health, safety and general welfare, and to:
  - i. Protect human life and health;
  - ii. Minimize expenditure of public money for costly flood control projects;
  - iii. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
  - iv. Minimize prolonged business interruptions;
  - v. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
  - vi. Help maintain a stable tax base by providing for the proper use and development of areas of special flood hazard so as to protect property and minimize future flood blight areas;
  - vii. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions;
  - viii. Minimize the impact of development on adjacent properties within and near floodprone areas;
  - ix. Ensure that the flood storage and conveyance functions of the floodplain are maintained;
  - x. Minimize the impact of development on the natural, beneficial values of the floodplain;
  - xi. Prevent floodplain uses that are either hazardous or environmentally incompatible; and
  - xii. Meet community participation requirements of the National Flood Insurance Program.
- (3) Methods of Reducing Flood Loss. In order to accomplish its purposes, these regulations include methods and provisions for:
  - i. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water hazards, or which result in damaging increases in flood heights or velocities;
  - ii. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
  - iii. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
  - iv. Controlling filling, grading, dredging, excavating, and other development which may increase flood damage; and,

- v. Preventing or regulating the construction of flood barriers, which will unnaturally divert flood waters or which may increase flood hazards in other areas.
- (4) Lands to Which These Regulations Apply. These regulations shall apply to all areas of special flood hazard within the jurisdiction of the City of Tallmadge, including any additional areas of special flood hazard annexed by the City of Tallmadge.
- (5) Basis for Establishing the Areas of Special Flood Hazard. For the purposes of these regulations, the following studies and/or maps are adopted:
- i. Flood Insurance Study (FIS) Summit County, Ohio and incorporated areas and flood insurance Rate Map (FIRM) Summit County, Ohio and incorporated Areas both effective July 20, 2009.
  - ii. Other studies and/or maps, which may be relied upon for establishment of the flood protection elevation, delineation of the 100-year floodplain, floodways or delineation of other areas of special flood hazard.
  - iii. Any hydrologic and hydraulic engineering analysis authored by a registered Professional Engineer in the State of Ohio which has been approved by the City of Tallmadge.
  - iv. Any revisions to the aforementioned maps and/or studies are hereby adopted by reference and declared to be a part of these regulations. Such maps and/or studies are on file at the office of the Clerk of Council of the City of Tallmadge, 46 North Avenue, Tallmadge, Ohio 44278.
- (6) Abrogation and Greater Restrictions. These regulations are not intended to repeal any existing ordinances including Subdivision Regulations, Zoning or Building Codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall be followed. These regulations shall not impair any deed restriction covenant or easement but the land subject to such interests shall also be governed by these regulations.
- (7) Interpretation. In the interpretation and application of these regulations, all provisions shall be:
- i. Considered as minimum requirements;
  - ii. Liberally construed in favor of the governing body; and,
  - iii. Deemed neither to limit nor repeal any other powers granted under state statutes. Where a provision of these regulations may be in conflict with a state or Federal law, such state or Federal law shall take precedence over these regulations.
    - (a) Warning and Disclaimer of Liability. The degree of flood protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man made or natural causes. These regulations do not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damage. These regulations shall not create liability on the part of the City of Tallmadge, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made thereunder.
- (8) Severability. Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

B. Administration.

- (1) Designation of the Floodplain Administrator. The City Engineer is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator.
- (2) Duties and Responsibilities of the Floodplain Administrator. The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:
  - i. Evaluate applications for permits to develop in special flood hazard areas.
  - ii. Interpret floodplain boundaries and provide flood hazard and flood protection elevation information.
  - iii. Issue permits to develop in special flood hazard areas when the provisions of these regulations have been met, or refuse to issue the same in the event of noncompliance.
  - iv. Inspect buildings and lands to determine whether any violations of these regulations have been committed.
  - v. Make and permanently keep all records for public inspection necessary for the administration of these regulations including Flood Insurance Rate Maps, Letters of Map Amendment and Revision, records of issuance and denial of permits to develop in special flood hazard areas, determinations of whether development is in or out of special flood hazard areas for the purpose of issuing floodplain development permits, elevation certificates, variances, and records of enforcement actions taken for violations of these regulations.
  - vi. Enforce the provisions of these regulations.
  - vii. Provide information, testimony, or other evidence as needed during variance hearings.
  - viii. Coordinate map maintenance activities and FEMA follow-up.
  - ix. Conduct substantial damage determinations to determine whether existing structures, damaged from any source and in special flood hazard areas identified by FEMA, must meet the development standards of these regulations.
- (3) Floodplain Development Permits. It shall be unlawful for any person to begin construction or other development activity including but not limited to filling; grading; construction; alteration, remodeling, or expanding any structure; or alteration of any watercourse wholly within, partially within or in contact with any identified special flood hazard area, as established in this chapter, until a floodplain development permit is obtained from the Floodplain Administrator. Such floodplain development permit shall show that the proposed development activity is in conformity with the provisions of these regulations. No such permit shall be issued by the Floodplain Administrator until the requirements of these regulations have been met.
- (4) Application Required. An application for a floodplain development permit shall be required for all development activities located wholly within, partially within, or in contact with an identified special flood hazard area. Such application shall be made by the owner of the property or his/her authorized agent, herein referred to as the applicant, prior to the actual commencement of such construction on a form furnished for that purpose. Where it is unclear whether a development site is in a special flood hazard area, the Floodplain Administrator may require an application for a floodplain development permit to determine the development's location. Such applications shall include, but not be limited to:
  - i. Site plans drawn to scale showing the nature, location, dimensions, and topography of the area in question; the location of existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing.

- ii. Elevation of the existing, natural ground where structures are proposed.
  - iii. Elevation of the lowest floor, including basement, of all proposed structures.
  - iv. Such other material and information as may be requested by the Floodplain Administrator to determine conformance with, and provide enforcement of these regulations.
  - v. Technical analyses conducted by the appropriate design professional registered in the State of Ohio and submitted with an application for a floodplain development permit when applicable:
    - (a) Floodproofing certification for non-residential floodproofed structure.
    - (b) Certification that fully enclosed areas below the lowest floor of a structure not meeting the design requirements of this chapter are designed to automatically equalize hydrostatic flood forces.
    - (c) Description of any watercourse alteration or relocation that the flood carrying capacity of the watercourse will not be diminished, and maintenance assurances.
    - (d) A hydrologic and hydraulic analysis demonstrating that the cumulative effect of proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood by more than one foot in special flood hazard areas where the Federal Emergency Management Agency has provided base flood elevations but no floodway.
    - (e) A hydrologic and hydraulic engineering analysis showing impact of any development on flood heights in an identified floodway.
    - (f) Generation of base flood elevation(s) for subdivision and large-scale developments.
  - vi. A floodplain development permit application fee set by the schedule of fees adopted by the City Council of the City of Tallmadge.
- (5) Review and Approval of a Floodplain Development Permit Application.
- i. Review.
    - (a) After receipt of a complete application, the Floodplain Administrator shall review the application to ensure that the standards of these regulations have been met. No floodplain development permit application shall be reviewed until all required information under this Chapter has been received by the Floodplain Administrator.
    - (b) The Floodplain Administrator shall review all floodplain development permit applications to assure that all necessary permits have been received from those federal, state or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits as required including permits issued by the U.S. Army Corps of Engineers under the Rivers and Harbors Act and the Clean Water Act, and the Ohio Environmental Protection Agency under the Clean Water Act.
  - ii. Approval. Within thirty (30) days after the receipt of a complete application, the Floodplain Administrator shall either approve or disapprove the application. If an application is approved, a floodplain development permit shall be issued. All floodplain development permits shall be conditional upon the commencement of work within one (1) year. A floodplain development permit shall expire one (1) year after issuance unless the permitted activity has been substantially begun and is thereafter pursued to completion.

- (6) Inspections. The Floodplain Administrator shall make periodic inspections at appropriate times throughout the period of construction in order to monitor compliance with permit conditions.
- (7) Post-Construction Certifications Required. The following as-built certifications are required after a floodplain development permit has been issued:
  - i. For new or substantially improved residential structures, or nonresidential structures that have been elevated, the applicant shall have a Federal Emergency Management Agency Elevation Certificate completed by a registered surveyor to record as-built elevation data. For elevated structures in Zone A and Zone AO areas without a base flood elevation, the elevation certificate may be completed by the property owner or owner's representative.
  - ii. For all development activities subject to this chapter, a Letter of Map Revision.
- (8) Revoking a Floodplain Development Permit. A floodplain development permit shall be revocable, if among other things, the actual development activity does not conform to the terms of the application and permit granted thereon. In the event of the revocation of a permit, an appeal may be taken to the Appeals Board.
- (9) Exemption from Filing a Development Permit. An application for a floodplain development permit shall not be required for:
  - i. Maintenance work such as roofing, painting, and basement sealing, or for small nonstructural development activities (except for filling and grading) valued at less than five thousand dollars (\$5,000).
  - ii. Development activities in an existing or proposed manufactured home park that are under the authority of the Ohio Department of Health and subject to the flood damage reduction provisions of the Ohio Administrative Code.
  - iii. Major utility facilities permitted by the Ohio Power Siting Board under the Ohio Revised Code.
  - iv. Hazardous waste disposal facilities permitted by the Hazardous Waste Siting Board under the Ohio Revised Code.
  - v. Development activities undertaken by a federal agency and which are subject to Federal Executive Order 11988 - Floodplain Management.
  - vi. Any proposed action exempt from filing for a floodplain development permit is also exempt from the standards of these regulations.
- (10) Map Maintenance Activities. To meet National Flood Insurance Program minimum requirements to have flood data reviewed and approved by FEMA, and to ensure that the City of Tallmadge flood maps, studies and other data accurately represent flooding conditions so appropriate floodplain management criteria are based on current data, the following map maintenance activities are identified:
  - i. Requirement to submit new technical data.
    - (a) For all development proposals that impact floodway delineations or base flood elevations, the community shall ensure that technical data reflecting such changes be submitted to FEMA within six months of the date such information becomes available. These development proposals include:
      - 1) Floodway encroachments that increase or decrease base flood elevations or alter floodway boundaries;
      - 2) Fill sites to be used for the placement of proposed structures where the applicant desires to remove the site from the special flood hazard area;



- 3) Alteration of watercourses that result in a relocation or elimination of the special flood hazard area, including the placement of culverts; and
  - 4) Subdivision or large scale development proposals requiring the establishment of base flood elevations in accordance with this chapter.
- (b) It is the responsibility of the applicant to have all technical data prepared in a format required for a Conditional Letter of Map Revision or Letter of Map Revision, and submitted to FEMA. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.
  - (c) The Floodplain Administrator shall require a Conditional Letter of Map Revision prior to the issuance of a floodplain development permit for:
    - 1) Proposed floodway encroachments that increase the base flood elevation; and
    - 2) Proposed development which increases the base flood elevation by more than one foot in areas where FEMA has provided base flood elevations but no floodway.
  - (d) Floodplain development permits issued by the Floodplain Administrator shall be conditioned upon the applicant obtaining a Letter of Map Revision from FEMA for any development proposal subject to this chapter.
- ii. Right to submit new technical data. The Floodplain Administrator may request changes to any of the information shown on an effective map that does not impact floodplain or floodway delineations or base flood elevations, such as labeling or planimetric details. Such a submission shall include appropriate supporting documentation made in writing by the Director of Public Service and the Mayor of the City of Tallmadge, and may be submitted at any time.
  - iii. Annexation/Detachment. Upon occurrence, the Floodplain Administrator shall notify FEMA in writing whenever the boundaries of the City of Tallmadge have been modified by annexation or the community has assumed authority over an area, or no longer has authority to adopt and enforce floodplain management regulations for a particular area. In order that the City of Tallmadge's Flood Insurance Rate Map accurately represents the City of Tallmadge boundaries, include within such notification a copy of a map of the City of Tallmadge suitable for reproduction, clearly showing the new corporate limits or the new area for which the City of Tallmadge has assumed or relinquished floodplain management regulatory authority.
- (11) Data Use and Flood Map Interpretation. The following guidelines shall apply to the use and interpretation of maps and other data showing areas of special flood hazard:
- i. In areas where FEMA has not identified special flood hazard areas, or in FEMA identified special flood hazard areas where base flood elevation and floodway data have not been identified, the Floodplain Administrator shall review and reasonably utilize any other flood hazard data available from a federal, state, or other source.
  - ii. Base flood elevations and floodway boundaries produced on FEMA flood maps and studies shall take precedence over base flood elevations and floodway boundaries by any other source that reflect a reduced floodway width and/or lower base flood elevations. Other sources of data, showing increased base flood elevations and/or larger floodway areas than are shown on FEMA flood maps and studies, shall be reasonably used by the Floodplain Administrator.
  - iii. When Preliminary Flood Insurance Rate Maps and/or Flood Insurance Study have been provided by FEMA:

- (a) Upon the issuance of a Letter of Final Determination by the FEMA, the preliminary flood hazard data shall be used and replace all previously existing flood hazard data provided from FEMA for the purposes of administering these regulations.
  - (b) Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall only be required where no base flood elevations and/or floodway areas exist or where the preliminary base flood elevations or floodway area exceed the base flood elevations and/or floodway widths in existing flood hazard data provided from FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.
  - iv. The Floodplain Administrator shall make interpretations, where needed, as to the exact location of the flood boundaries and areas of special flood hazard. A person contesting the determination of the location of the boundary shall be given a reasonable opportunity to appeal the interpretation.
  - v. Where a map boundary showing an area of special flood hazard and field elevations disagree, the base flood elevations or flood protection elevations (as found on an elevation profile, floodway data table, established high water marks, etc.) shall prevail.
- (12) Substantial Damage Determinations. Damages to structures may result from a variety of causes including flood, tornado, wind, heavy snow, fire, etc. After such a damage event, the Floodplain Administrator shall:
- i. Determine whether damaged structures are located in special flood hazard areas;
  - ii. Conduct substantial damage determinations for damaged structures located in special flood hazard areas; and
  - iii. Make a reasonable attempt to notify owners of substantially damaged structures of the need to obtain a floodplain development permit prior to repair, rehabilitation, or reconstruction.

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

C. Use and Development Standards for Flood Hazard Reduction.

The following use and development standards apply to development wholly within, partially within, or in contact with any special flood hazard area:

- (1) Use Regulations.
  - i. Permitted Uses. All uses not otherwise prohibited in this section or any other applicable land use regulation adopted by the City of Tallmadge are allowed provided they meet the provisions of these regulations.
  - ii. Prohibited Uses.
    - (a) Private water supply systems in all special flood hazard areas identified by FEMA.
    - (b) Infectious waste treatment facilities in all special flood hazard areas.
- (2) Water and Wastewater Systems. The following standards apply to all water supply, sanitary sewerage and waste disposal systems not otherwise regulated by the Ohio Revised Code:
  - i. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems;

- ii. New and replacement sanitary sewerage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,
  - iii. On-site waste disposal systems shall be located to avoid impairment to or contamination from them during flooding.
- (3) Subdivisions and Large Developments.
- i. All subdivision proposals shall be consistent with the need to minimize flood damage and are subject to all applicable standards in these regulations;
  - ii. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
  - iii. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and
  - iv. In all areas of special flood hazard where base flood elevation data are not available, the applicant shall provide a hydrologic and hydraulic engineering analysis that generates base flood elevations for all subdivision proposals and other proposed developments containing at least 50 lots or 5 acres, whichever is less.
  - v. The applicant shall submit the technical data required under this chapter to FEMA when a hydrologic and hydraulic analysis is completed that generates base flood elevations.
- (4) Residential Structures.
- i. New construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Where a structure, including its foundation members, is elevated on fill to or above the base flood elevation, the requirements for anchoring and construction materials resistant to flood damage are satisfied.
  - ii. New construction and substantial improvements shall be constructed with methods and materials resistant to flood damage.
  - iii. New construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or elevated so as to prevent water from entering or accumulating within the components during conditions of flooding.
  - iv. New construction and substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including basement, elevated to or above the flood protection elevation. In Zone AO areas with no elevations specified, the structure shall have the lowest floor, including basement, elevated at least two feet above the highest adjacent natural grade.
  - v. New construction and substantial improvements, including manufactured homes, that do not have basements and that are elevated to the flood protection elevation using pilings, columns, posts, or solid foundation perimeter walls with openings sufficient to allow unimpeded movement of flood waters may have an enclosure below the lowest floor provided the enclosure meets the following standards:
    - (a) Be used only for the parking of vehicles, building access, or storage; and
    - (b) Be designed and certified by a registered professional engineer or architect to automatically

equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters; or

- (c) Have a minimum of two openings on different walls having a total net area not less than one square inch for every square foot of enclosed area, and the bottom of all such openings being no higher than one foot above grade. The openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
  - vi. Manufactured homes shall be affixed to a permanent foundation and anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
  - vii. Repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and is the minimum necessary to preserve the historic character and design of the structure, shall be exempt from the development standards of this section.
  - viii. In AO Zones, new construction and substantial improvement shall have adequate drainage paths around structures on slopes to guide floodwaters around and away from the structure.
- (5) Nonresidential Structures.
- i. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet the requirements of the preceding subsection 4 excluding paragraph iv.
  - ii. New construction and substantial improvement of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, elevated to or above the level of the flood protection elevation; or, together with attendant utility and sanitary facilities, shall meet all of the following standards:
    - (a) Be dry floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water to the level of the flood protection elevation;
    - (b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and,
    - (c) Be certified by a registered professional engineer or architect, through the use of a Federal Emergency Management Agency Floodproofing Certificate, that the design and methods of construction are in accordance with the applicable requirements of this chapter.
  - iii. In Zone AO areas with no elevations specified, the structure shall have the lowest floor, including basement, elevated at least two feet above the highest adjacent natural grade.
- (6) Accessory Structures. Relief to the elevation or dry floodproofing standards may be granted for accessory structures containing no more than 600 square feet. Such structures must meet the following standards:
- i. They shall not be used for human habitation;
  - ii. They shall be constructed of flood resistant materials;
  - iii. They shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters;
  - iv. They shall be firmly anchored to prevent flotation;
  - v. Service facilities such as electrical and heating equipment shall be elevated or floodproofed to or

above the level of the flood protection elevation; and

- vi. They shall meet the opening requirements of Section 1110.10 C (4) v. (c).
- (7) Recreational Vehicles. Recreational vehicles must meet at least one of the following standards:
  - i. They shall not be located on sites in special flood hazard areas for more than 180 days, or
  - ii. They must be fully licensed and ready for highway use, or
  - iii. They must meet all standards of Section 1110.10 C (4).
- (8) Above Ground Gas or Liquid Storage Tanks. All above ground gas or liquid storage tanks shall be anchored to prevent flotation or lateral movement resulting from hydrodynamic and hydrostatic loads.
- (9) Assurance of Flood Carrying Capacity. Pursuant to the purpose and methods of reducing flood damage stated in these regulations, the following additional standards are adopted to assure that the reduction of the flood carrying capacity of watercourses is minimized:
  - i. Development in Floodways.
    - (a) In floodway areas, development shall cause no increase in flood levels during the occurrence of the base flood discharge. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that the proposed development would not result in any increase in the base flood elevation; or
    - (b) Development in floodway areas causing increases in the base flood elevation may be permitted provided all of the following are completed by the applicant:
      - 1) Meet the requirements to submit technical data required by this chapter;
      - 2) An evaluation of alternatives, which would not result in increased base flood elevations and an explanation why these alternatives are not feasible;
      - 3) Certification that no structures are located in areas that would be impacted by the increased base flood elevation;
      - 4) Documentation of individual legal notices to all impacted property owners within and outside the community, explaining the impact of the proposed action on their property; and
      - 5) Concurrence of the Director of Public Service and the Mayor of the City of Tallmadge and the Chief Executive or other appropriate officer of any other communities impacted by the proposed actions.
  - ii. Development in Riverine Areas with Base Flood Elevations but No Floodways.
    - (a) In riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the base flood elevation more than 1.0 (one) foot at any point. Prior to issuance of a floodplain development permit, the applicant must submit a hydrologic and hydraulic analysis, conducted by a registered professional engineer, demonstrating that this standard has been met; or,
    - (b) Development in riverine special flood hazard areas identified by FEMA where base flood elevation data are provided but no floodways have been designated causing more than one

foot increase in the base flood elevation may be permitted provided all of the following are completed by the applicant:

- 1) An evaluation of alternatives which would result in an increase of one foot or less of the base flood elevation and an explanation why these alternatives are not feasible;
  - 2) Compliance with Section 1110.10 C (9) i. (b), items 1. and 3.-5.
- iii. Alterations of a Watercourse. For the purpose of these regulations, a watercourse is altered when any change occurs within its banks. The extent of the banks shall be established by a field determination of the “bankfull stage.” The field determination of “bankfull stage” shall be based on methods presented in Chapter 7 of the USDA Forest Service General Technical Report RM-245, Stream Channel Reference Sites: An Illustrated Guide to Field Technique or other applicable publication available from a Federal, State, or other authoritative source. For all proposed developments that alter a watercourse, the following standards apply:
- (a) The bankfull flood carrying capacity of the altered or relocated portion of the watercourse shall not be diminished. Prior to the issuance of a floodplain development permit, the applicant must submit a description of the extent to which any watercourse will be altered or relocated as a result of the proposed development, and certification by a registered professional engineer that the bankfull flood carrying capacity of the watercourse will not be diminished.
  - (b) Adjacent communities, the U.S. Army Corps of Engineers, and the Ohio Department of Natural Resources, Division of Water, must be notified prior to any alteration or relocation of a watercourse. Evidence of such notification must be submitted to the Federal Emergency Management Agency.
  - (c) The applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of said watercourse so that the flood carrying capacity will not be diminished. The Floodplain Administrator may require the permit holder to enter into an agreement with the City of Tallmadge specifying the maintenance responsibilities. If an agreement is required, it shall be made a condition of the floodplain development permit.
  - (d) The applicant shall meet the requirements to submit technical data required by this chapter when an alteration of a watercourse results in the relocation or elimination of the special flood hazard area, including the placement of culverts.

#### D. Appeals and Variances.

##### (1) Appeals Board Established.

- i. Pursuant to Article XII of the Tallmadge Charter, the Board of Zoning Appeals shall hear all appeals and variances from this Chapter.
- ii. All meetings of the Appeals Board shall be open to the public except that the Board may deliberate in executive sessions as part of quasi-judicial hearings in accordance with law. The Appeals Board shall keep minutes of its proceedings showing the vote of each member upon each question and shall keep records of all official actions. Records of the Appeals Board shall be kept and filed in the Office of the Planning and Zoning Department of the City of Tallmadge.

##### (2) Powers and Duties.

- i. The Appeals Board shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the Floodplain Administrator in the administration or enforcement of these regulations.

- ii. Authorize variances in accordance with this Chapter.
- (3) Appeals. Any person affected by any notice and order, or other official action of the Floodplain Administrator may request and shall be granted a hearing on the matter before the Appeals Board provided that such person shall file, within thirty (30) days of the date of such notice and order, or other official action, a brief statement of the grounds for such hearing or for the mitigation of any item appearing on any order of the Floodplain Administrator's decision. Such appeal shall be in writing on form(s) provided by the City together with payment of the required fee pursuant to Chapter 1137, signed by the applicant, and be filed with the Floodplain Administrator. Upon receipt of the appeal, the Floodplain Administrator shall transmit said notice and all pertinent information on which the Floodplain Administrator's decision was made to the Appeals Board.

Upon receipt of the notice of appeal, the Appeals Board shall fix a reasonable time for the appeal, give notice in writing to parties in interest, and decide the appeal within a reasonable time after it is submitted.

- (4) Variances. Any person believing that the use and development standards of these regulations would result in unnecessary hardship may file an application for a variance. The Appeals Board shall have the power to authorize, in specific cases, such variances from the standards of these regulations, not inconsistent with Federal regulations, as will not be contrary to the public interest where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations would result in unnecessary hardship.
- i. Application for a Variance.
    - (a) Any owner, or agent thereof, of property for which a variance is sought shall make an application for a variance by filing it with the Floodplain Administrator, who upon receipt of the variance shall transmit it to the Appeals Board.
    - (b) Such application shall be on a form provided by the City and at a minimum shall contain the following information: Name, address, and telephone number of the applicant; legal description of the property; parcel map; description of the existing use; description of the proposed use; location of the floodplain; description of the variance sought; and reason for the variance request.
    - (c) All applications for a variance shall be accompanied by a variance application fee set in the schedule of fees adopted by the City Council of the City of Tallmadge.
  - ii. Public Hearing. At such hearing the applicant shall present such statements and evidence as the Appeals Board requires. In considering such variance applications, the Appeals Board shall consider and make findings of fact on all evaluations, all relevant factors, standards specified in other sections of these regulations and the following factors:
    - (a) The danger that materials may be swept onto other lands to the injury of others.
    - (b) The danger to life and property due to flooding or erosion damage.
    - (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner.
    - (d) The importance of the services provided by the proposed facility to the community.
    - (e) The availability of alternative locations for the proposed use that are not subject to flooding or erosion damage.
    - (f) The necessity to the facility of a waterfront location, where applicable.



- (g) The compatibility of the proposed use with existing and anticipated development.
  - (h) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
  - (i) The safety of access to the property in times of flood for ordinary and emergency vehicles.
  - (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
  - (k) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- iii. Variances shall be granted upon a finding of:
- (a) Good and sufficient cause;
  - (b) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant;
  - (c) A determination that the granting of a variance will not result in increased flood heights beyond that which is allowed in these regulations; additional threats to public safety; extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with existing local laws;
  - (d) A determination that the structure or other development is protected by methods to minimize flood damages; and
  - (e) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

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

- iv. Other Conditions for Variances.
- (a) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
  - (b) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in Section 1110.10E.(4)ii. have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
  - (c) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (5) Procedure at Hearings.
- i. All testimony shall be given under oath.
  - ii. A complete record of the proceedings shall be kept, except confidential deliberations of the Board, but including all documents presented and a verbatim record of the testimony of all witnesses.



- iii. The applicant shall proceed first to present evidence and testimony in support of the appeal or variance.
  - iv. The Administrator may present evidence or testimony in opposition to the appeal or variance.
  - v. All witnesses shall be subject to cross-examination by the adverse party or their counsel.
  - vi. Evidence that is not admitted may be proffered and shall become part of the record for appeal.
  - vii. The Board shall issue subpoenas upon written request for the attendance of witnesses. A reasonable deposit to cover the cost of issuance and service shall be collected in advance.
  - viii. The Board shall prepare conclusions of fact supporting its decision. The decision may be announced at the conclusion of the hearing and thereafter issued in writing or the decision may be issued in writing within a reasonable time after the hearing.
- (6) Appeal to the Court. Those aggrieved by the decision of the Appeals Board may appeal such decision to the Summit County or Portage County Court of Common Pleas as appropriate, as provided in Chapter 2506 of the Ohio Revised Code.

E. Enforcement.

- (1) Compliance Required.
  - i. No structure or land shall hereafter be located, erected, constructed, reconstructed, repaired, extended, converted, enlarged or altered without full compliance with the terms of these regulations and all other applicable regulations which apply to uses within the jurisdiction of these regulations, unless expressly exempted under this chapter from filing for a development permit.
  - ii. Failure to obtain a floodplain development permit shall be a violation of these regulations.
  - iii. Floodplain development permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the use, and arrangement, set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction contrary to that authorized shall be deemed a violation of these regulations.
- (2) Notice of Violation. Whenever the Floodplain Administrator determines that there has been a violation of any provision of these regulations, he shall give notice of such violation to the person responsible therefor, including but not limited to the property owner, operator, agent, applicant, or other person, and order compliance with these regulations as hereinafter provided. Such notice and order shall:
  - i. Be put in writing on an appropriate form;
  - ii. Include a list of violations, referring to the section or sections of these regulations that have been violated, and order remedial action, which, if taken, will effect compliance with the provisions of these regulations;
  - iii. Specify a reasonable time for performance;
  - iv. Advise the person of the right to appeal;
  - v. Service shall be made in person or by certified mail to the person's last known mailing address, residence, or place of business, and/or a copy is posted in a conspicuous place in or on the property affected.
- (3) Violations and Penalties. Violation of the provisions of these regulations or failure to comply with any of its requirements shall be deemed to be a strict liability offense, and shall constitute a fourth degree misdemeanor. Any person who violates these regulations or fails to comply with any of its requirements

shall upon conviction thereof be fined and/or incarcerated as provided by the laws of the City of Tallmadge. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Tallmadge from taking such other lawful action as is necessary to prevent or remedy any violation.

## **SECTION 1110.11**    **ILLICIT DISCHARGE AND ILLEGAL CONNECTION CONTROL**

### **A. Purpose and Scope.**

The purpose of this regulation is to provide for the health, safety, and general welfare of the citizens of the City of Tallmadge through the regulation of illicit discharges to the municipal separate storm sewer system (MS4). This regulation establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process as required by the Ohio Environmental Protection Agency (Ohio EPA). The objectives of this regulation are:

- (1) To prohibit illicit discharges and illegal connections to the MS4.
- (2) To establish legal authority to carry out inspections, monitoring procedures, and enforcement actions necessary to ensure compliance with this regulation.

### **B. Applicability.**

This regulation shall apply to all residential, commercial, industrial, or institutional facilities responsible for discharges to the MS4 and on any lands in the City of Tallmadge, except for those discharges generated by the activities detailed in Section 1110.11 G 1.i to iii of this regulation.

### **C. Definitions.**

The words and terms used in this regulation, unless otherwise expressly stated, shall have the following meaning:

- (1) **Best Management Practices (BMPs):** means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to storm water. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.
- (2) **Community:** means the City of Tallmadge, its designated representatives, boards, or commissions.
- (3) **Environmental Protection Agency or United States Environmental Protection Agency (USEPA):** means the United States Environmental Protection Agency, including but not limited to the Ohio Environmental Protection Agency (Ohio EPA), or any duly authorized official of said agency.
- (4) **Floatable Material:** in general this term means any foreign matter that may float or remain suspended in the water column, and includes but is not limited to, plastic, aluminum cans, wood products, bottles, and paper products.
- (5) **Hazardous Material:** means any material including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.
- (6) **Illicit Discharge:** as defined at 40 C.F.R. 122.26 (b)(2) means any discharge to an MS4 that is not composed entirely of storm water, except for those discharges to an MS4 pursuant to a NPDES permit or

noted in Section 1110.11 G of this regulation.

- (7) **Illegal Connection:** means any drain or conveyance, whether on the surface or subsurface, that allows an illicit discharge to enter the MS4.
- (8) **Municipal Separate Storm Sewer System (MS4):** as defined at 40 C.F.R. 122.26 (b)(8), municipal separate storm sewer system means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):
  - i. Owned or operated by a State, city, town, borough, county, parish, district, municipality, township, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over sewage, industrial wastes, including special districts under State law such as a sewer district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Clean Water Act that discharges to waters of the United States;
  - ii. Designed or used for collecting or conveying storm water;
  - iii. Which is not a combined sewer; and
  - iv. Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 C.F.R. 122.2.
    - (a) **National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit:** means a permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general areawide basis.
- (9) **Off-Lot Discharging Household Sewage Treatment System:** means a system designed to treat household sewage on-site and discharges treated wastewater effluent off the property into a storm water or surface water conveyance or system.
- (10) **Owner/Operator:** means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or on the owner's behalf.
- (11) **Pollutant:** means anything that causes or contributes to pollution. Pollutants may include, but are not limited to, paints, varnishes, solvents, oil and other automotive fluids, non-hazardous liquid and solid wastes, yard wastes, refuse, rubbish, garbage, litter or other discarded or abandoned objects, floatable materials, pesticides, herbicides, fertilizers, hazardous materials, wastes, sewage, dissolved and particulate metals, animal wastes, residues that result from constructing a structure, and noxious or offensive matter of any kind.
- (12) **Storm Water:** any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.
- (13) **Wastewater:** The spent water of a community. From the standpoint of a source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants, and institutions.

D. **Disclaimer of Liability.**

Compliance with the provisions of this regulation shall not relieve any person from responsibility for damage to any person otherwise imposed by law. The provisions of this regulation are promulgated to promote the health, safety, and welfare of the public and are not designed for the benefit of any individual or for the benefit of any particular parcel of property.

E. Conflicts, Severability, Nuisances and Responsibility.

- (1) Where this regulation is in conflict with other provisions of law or ordinance, the most restrictive provisions, as determined by the City of Tallmadge, shall prevail.
- (2) If any clause, section, or provision of this regulation is declared invalid or unconstitutional by a court of competent jurisdiction, the validity of the remainder shall not be affected thereby.
- (3) This regulation shall not be construed as authorizing any person to maintain a nuisance on their property, and compliance with the provisions of this regulation shall not be a defense in any action to abate such a nuisance.
- (4) Failure of the City of Tallmadge to observe or recognize hazardous or unsightly conditions or to recommend corrective measures shall not relieve the site owner from the responsibility for the condition or damage resulting therefrom, and shall not result in the City of Tallmadge, its officers, employees, or agents being responsible for any condition or damage resulting therefrom.

F. Responsibility for Administration.

The City of Tallmadge shall administer, implement, and enforce the provisions of this regulation. The City of Tallmadge may contract with the Summit County Public Health or the Portage County Health Department to conduct inspections and monitoring and to assist with enforcement actions.

G. Discharge and Connection Prohibitions.

- (1) Prohibition of Illicit Discharges. No person shall discharge, or cause to be discharged, an illicit discharge into the MS4. The commencement, conduct, or continuance of any illicit discharge to the MS4 is prohibited except as described below:
  - i. Water line flushing; landscape irrigation; diverted stream flows; rising ground waters; uncontaminated ground water infiltration; uncontaminated pumped ground water; discharges from potable water sources; foundation drains; air conditioning condensate; irrigation water; springs; water from crawl space pumps; footing drains; lawn watering; individual residential car washing; flows from riparian habitats and wetlands; dechlorinated swimming pool discharges; street wash water; and discharges or flows from fire fighting activities. These discharges are exempt until such time as they are determined by the City of Tallmadge to be significant contributors of pollutants to the MS4.
  - ii. Discharges specified in writing by the City of Tallmadge as being necessary to protect public health and safety.
  - iii. Discharges from off-lot discharging household sewage treatment systems existing prior to January 1, 2007, and permitted by the Summit County Public Health or the Portage County Health Department for the purpose of discharging treated sewage effluent in accordance with Ohio Administrative Code 3701-29, or other applicable Summit County Public Health or the Portage County Health Department regulations, until such time as the Ohio Environmental Protection Agency issues an NPDES permitting mechanism for household sewage treatment systems existing prior to January 1, 2007. These discharges are exempt unless such discharges are deemed to be creating a public health nuisance by the Summit County Public Health or the Portage County Health Department. Discharges from new or replacement off-lot household sewage treatment systems installed after January 1, 2007, are not exempt from the requirements of this regulation.

In compliance with the City of Tallmadge Storm Water Management Program, discharges from all

offlot discharging household sewage treatment systems must either be eliminated or have coverage under an appropriate NPDES permit issued and approved by the Ohio Environmental Protection agency. When such permit coverage is available for systems existing prior to January 1, 2007, discharges from off-lot discharging household sewage treatment systems existing prior to January 1, 2007, will no longer be exempt from the requirements of this regulation.

- (2) Prohibition of Illegal Connections. The construction, use, maintenance, or continued existence of illegal connections to the MS4 is prohibited.
  - i. This prohibition expressly includes, without limitation, illegal connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
  - ii. A person is considered to be in violation of this regulation if the person connects a line conveying illicit discharges to the MS4, or allows such a connection to continue.

#### H. Monitoring of Illicit Discharges and Illegal Connections.

- (1) Establishment of an Illicit Discharge and Illegal Connection Monitoring Program. The City of Tallmadge shall establish a program to detect and eliminate illicit discharges and illegal connections to the MS4. This program shall include the mapping of the MS4, including MS4 outfalls and household sewage treatment systems; the routine inspection of storm water outfalls to the MS4, and the systematic investigation of potential residential, commercial, industrial, and institutional facilities for the sources of any dry weather flows found as the result of these inspections.
- (2) Inspection of Residential, Commercial, Industrial, or Institutional Facilities.
  - i. The City of Tallmadge shall be permitted to enter and inspect facilities subject to this regulation as often as may be necessary to determine compliance with this regulation.
  - ii. The City of Tallmadge shall have the right to set up at facilities subject to this regulation such devices as are necessary to conduct monitoring and/or sampling of the facility's storm water discharge, as determined by the City of Tallmadge.
  - iii. The City of Tallmadge shall have the right to require the facility owner/operator to install monitoring equipment as necessary. This sampling and monitoring equipment shall be maintained at all times in safe and proper operating condition by the facility owner/operator at the owner/operator's expense. All devices used to measure storm water flow and quality shall be calibrated by the City of Tallmadge or Summit County Public Health or the Portage County Health Department to ensure their accuracy.
  - iv. Any temporary or permanent obstruction to safe and reasonable access to the facility to be inspected and/or sampled shall be promptly removed by the facility's owner/operator at the written or oral request of the City of Tallmadge and shall not be replaced. The costs of clearing such access shall be borne by the facility owner/operator.
  - v. Unreasonable delays in allowing the City of Tallmadge access to a facility subject to this regulation for the purposes of illicit discharge inspection is a violation of this regulation.
  - vi. If the City of Tallmadge is refused access to any part of the facility from which storm water is discharged, and the City of Tallmadge demonstrates probable cause to believe that there may be a violation of this regulation, or that there is a need to inspect and/or sample as part of an inspection and sampling program designed to verify compliance with this regulation or any order issued hereunder, or to protect the public health, safety, and welfare, the City of Tallmadge may seek issuance of a search warrant, civil remedies including but not limited to injunctive relief, and/or

criminal remedies from any court of appropriate jurisdiction.

vii. Any costs associated with these inspections shall be assessed to the facility owner/operator.

I. Enforcement.

- (1) Notice of Violation. When the City of Tallmadge finds that a person has violated a prohibition or failed to meet a requirement of this regulation, the City of Tallmadge may order compliance by written Notice of Violation. Such notice must specify the violation and shall be hand delivered, and/or sent by registered mail, to the owner/operator of the facility. Such notice may require the following actions:
  - i. The performance of monitoring, analyses, and reporting;
  - ii. The elimination of illicit discharges or illegal connections;
  - iii. That violating discharges, practices, or operations cease and desist;
  - iv. The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; or
  - v. The implementation of source control or treatment BMPs.
- (2) If abatement of a violation and/or restoration of affected property is required, the Notice of Violation shall set forth a deadline within which such remediation or restoration must be completed. Said Notice shall further advise that, should the facility owner/operator fail to remediate or restore within the established deadline, a legal action for enforcement may be initiated.
- (3) Any person receiving a Notice of Violation must meet compliance standards within the time established in the Notice of Violation.
- (4) Administrative Hearing. If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, the City of Tallmadge shall schedule an administrative hearing to determine reasons for non-compliance and to determine the next enforcement activity. Notice of the administrative hearing shall be hand delivered and/or sent registered mail. Such administrative hearing shall be before the Director of Public Service, the Director of Law, and the Chairperson of the Public Utilities Committee of Council.
- (5) Injunctive Relief. It shall be unlawful for any owner/operator to violate any provision or fail to comply with any of the requirements of this regulation pursuant to Ohio R.C. 3709.211. If an owner/operator has violated or continues to violate the provisions of this regulation, the City of Tallmadge may petition for a preliminary or permanent injunction restraining the owner/operator from activities that would create further violations or compelling the owner/operator to perform abatement or remediation of the violation.

J. Remedies Not Exclusive.

The remedies listed in this regulation are not exclusive of any other remedies available under any applicable federal, state or local law and it is in the discretion of the City of Tallmadge to seek cumulative remedies.