

Meeting Notice & Agenda

# MARION CITY COUNCIL

Monday, November 18, 2019 – 5 p.m.

Marion City Hall, 217 South Main Street, Marion, KY

## Regular Meeting

Call to Order

Public Comments

## Business Agenda

1. Approval of the Minutes of October 21, 2019 Council Meeting and October 29, November 14 Special Council Meetings
2. Introduction and 1<sup>st</sup> Reading of Ordinance #19-16 entitled, "An Ordinance Granting to Franchisee, the Non-Exclusive Right to Erect, Maintain and Operate In, Under, Over, Along, Across the Streets, Lanes, Avenues, Sidewalks, Alleys, Bridges, Highways, Easements Dedicated for Compatible Uses and Other Public Places in the City of Marion, Kentucky, and the Subsequent Additions Thereto, Towers, Cables and Ancillary Facilities for the Purpose of Constructing, Operating, Maintaining and Repairing Cable Service for a Period of Fifteen (15) Years Regulating the Same and Providing for Compensation of the City"
3. 2<sup>nd</sup> Reading of Ordinance #19-15, entitled, "Flood Damage Prevention Ordinance"
4. 2<sup>nd</sup> Reading of Ordinance #19-14 entitled, "An Ordinance Amending Ordinance 01-23 to Change Zoning Status of 873 South Main Street"
5. Update on Marion TAP Sidewalk Project
6. Mayor/Council/Staff Comments & Questions
7. Adjourn

To: Mayor and City Council  
From: Adam Ledford, City Administrator  
Re: Agenda Description  
Date: November 18, 2019

Call to Order  
Public Comments

### Business Agenda

- I. Approval of Minutes 10/21/19 Council Meeting Along with the 10/29/19 & 11/14/19 Special Council Meetings  
Description:  
A council member does not have to be present at the previous meeting in order to approve the minutes for that meeting. A copy of the minutes is included in your packet.
- II. Intro & 1<sup>st</sup> Reading of Mediacom Franchise Agreement  
Description:  
The 15-year franchise is up with Mediacom and they have requested the City approve a new 15 period under the same terms. A copy of the proposed ordinance agreement is in your packet for discussion and consideration.
- III. 2<sup>nd</sup> Reading of Flood Damage Prevention Ordinance  
Description:  
This ordinance is a standard version suggested by the state in order to qualify for federal insurance. A copy is included in your packet. Once this is passed the City can then follow through with formal application to the program.
- IV. 2<sup>nd</sup> Reading of Zoning Ordinance  
Description:  
The ordinance would alter the use of the property in question to more align with current and future use plans. It is being recommended for approval by the Zoning Board. A copy is in your packet for consideration.
- V. Update on Sidewalk Project  
Description:  
Since the last council meeting the bids for the sidewalk project came in beyond the budget projected for the project. In your packet are documents detailing the changes. Over the last 2 weeks, PADD, Bell Engineering, and I have been able to reduce the over cost of the project, but since the cost still exceeds the original cost plans we need to update the council and get direction.  
At one point this project was going to cost the City roughly \$50,000 to \$65,000 dollars. With recent changes, the state had increased their grant funding and altered the in-kind situation resulting in the City's cost being reduced to roughly

\$10,000. When the bids came in high, this left a funding gap of roughly \$120,000 for the project (which thus would fall on the City, leaving our cost in the project \$130,000). The state has come back with an additional \$50,000 of grant funding to reduce the City's cost back down to around \$80,000. There may also be some additional savings associated with the curb work the state is currently conducting in the same project site, but it is too early to determine what those cost will be. At this point, to continue the project forward, we need to know if the Council is willing to move forward with the project as it may cost the City roughly \$20,000 more to complete the roughly \$315,000 project then what was even initially projected.

VI. Mayor/Council/Staff Forum

- This would be the time for any Council Member to share activities or issues going on at the liaison meetings they have attended.
- Designs and bidding for the new sewer plant project will be moving forward in the next couple of weeks.
- The Sewer system improvements project will have a progress meeting on 11/21. We will be discussing paving, timeline to complete underground work, and follow-up issues like those presented by Mr. Beard.
- The City received a low bid from Rogers Group on road repairs, It is looking more and more likely any road work will be delayed till Spring due to the State's late season projects.
- We have started to review option for a 2020 hydrant pressure program. I should have more on the overall improvements the Council has been requesting by the end of the calendar year.
- Wireless options for audio integration of the council chambers ranged from \$7,500 to \$4,500 so a wired method is being explored. I have no update from the last meeting associated with this project.
- We are working through updated job descriptions for all the staff positions before the end of the year.
- The 911 updates are complete. After speaking with Perry, the partners are planning to move forward with the new funding plans in January of 2020.
- The City is currently seeking an employee to replace the position created in the Maintenance Department.
- The Auditor has completed their onsite review of last fiscal year and plans to present his annual report at the meeting in December.

VII. Adjournment

**Meeting of the Marion City Council  
October 21, 2019**

The Marion City Council met in regular session October 21, 2019 at 5:00 p.m. with Mayor Jared Byford presiding. Council members present were Darrin Tabor, Phyllis Sykes, Dwight Sherer, D'Anna Browning, and Mike Byford. City employees in attendance were as follows: Adam Ledford, Layten Croft, Pam Enoch, and Ray O'Neal. A public sign-in sheet is attached and made part of these minutes.

**PUBLIC COMMENTS**

Paul Beard, a resident at 219 Leland Ave., was present at meeting requesting to know what the next step was to getting Leland Ave fixed. He stated the black top is to thick on the road and doesn't allow for drainage and that it is causing flooding issues. He said it only took an inch of rain to cause flooding. He said the last rain caused Peggy Rozwalka's basement to flood. He stated this had been an ongoing issue for a while and his main concern was when this issue would be resolved. He advised the city he was going to submit a bill to the city for damages to his (mothers, Emily Shelby's) property. Alan Robison, Eclipse Engineer, was present and the council requested to have him go look at the issue, to see what the best solution would be.

Mickey Alexander was present at the meeting concerning the city's leaf pick up collection this year. The mayor said hopefully there was a plan to continue leaf pick up but would have more information on it tomorrow.

**GENERAL GOVERNMENT**

Motion by Phyllis Sykes, second by D'Anna Browning to approve the minutes of September 16, 2019, September 23, 2019 special called meeting minutes submitted to the council. All voted yes.

Alan Robinson, Eclipse Engineer, was present at the meeting to update the council on the status of the Marion Sanitary Sewer Projects. (1) Additional crews were brought in today, making a total of 4 crews working on the collection project. He said the deadline for this project is March 2020, he believes this project will beat the deadline. (2) The plant project drawings are complete, still no letter of approval but should be soon, and will hope to open bids in December 2019.

Council member Mike Byford introduced ordinance #19-12 entitled, "An Ordinance of the City of Marion Kentucky, amending chapter 50, Water and Sewer System, Section 50.02, Rates and Charges". The city administrator gave the first reading of said ordinance. The city administrator said a special called meeting would be next week for second reading of this ordinance.

Motion by D'Anna Browning, second by Mike Byford to adopt resolution #19-03, entitled, "A Resolution of the City of Marion, Kentucky, authorizing the mayor to enter into an agreement with the Kentucky Transportation Cabinet to facilitate and administer the sale of right-of-way or property for their Crooked Creek Bridge deficiencies project". Vote being as follows: Darrin Tabor no, Phyllis Sykes yes, Donnie Arflack yes, Dwight Sherer yes, D'Anna Browning yes, and Mike Byford yes. A copy of said resolution is attached and made part of these minutes.

The city administrator gave the second reading of ordinance #19-10, entitled, "An Ordinance amending the Pay Plan for Classified City Employees and Non-Elected Officials". Motion by Darrin Tabor, second by Phyllis Sykes to amend ordinance #19-10 by striking section 2 of the ordinance. All voted yes. Motion by Mike Byford, second by Phyllis Sykes to adopt ordinance #19-10 minus section 2 with a vote being as follows: Darrin Tabor yes, Phyllis Sykes yes, Donnie Arflack yes, Dwight Sherer yes, D'Anna Browning yes, and Mike Byford yes. Motion carried.

The city administrator gave the second reading of ordinance #19-11, entitled, "An Ordinance Annexing Territory by the City of Marion, Kentucky, A City of Home Class Rule, of 17.03 Acres along U.S. 641 South". Motion by Dwight Sherer, second by Darrin Tabor to adopt said ordinance with vote being as follows: Darrin Tabor yes, Phyllis Sykes yes, Donnie Arflack yes, Dwight Sherer yes, D'Anna Browning yes, and Mike Byford. Motion carried.

The Leaf Collection Program was discussed. In conclusion it was advised that a city employee would be trained to supervise inmate labor from the Crittenden County Detention Center. This will require the city employee to have training through the Crittenden County Detention Center, this training will need to be scheduled and completed before leaf pick up would begin.

#### **OTHER BUSINESS**

Council member Darrin Tabor inquired about having a turning lane at McDonald's. He stated he wasn't in favor of the lane if it meant losing four on-street parking spots in front of Louise's Flowers, CPA Michael Overby and Johnson's Furniture & Appliances annex. The council had been asking for a turning lane at the restaurant for a while, but it wasn't ever intended to lose three parking spaces. The city administrator said the engineer who designed the project is currently out of the country, but city officials plan to meet next week with KyTC officials and discuss the loss of on-street parking.

Council member Phyllis Sykes had a call about a tree growing in a sidewalk on South College Street.

Council member Donnie Arflack asked for the initial budget numbers carried over from last year's budget. The city administrator said he would have them ready by next council meeting.

Council member Dwight Sherer asked for any new updates on the \$350K road project on Country Club Drive/Industrial Drive.

Council member D'Anna Browning said she was totally against removing the three parking spots on North Main Street for the turning lane in front of McDonald's.

Council member Mike Byford advised the cross walks needed to be worked on.

Police Chief, Ray O'Neal requested the 07 and 08 police cruisers to be surplus. A man from Oakland City Indiana Police Department wanted them. Motion by Darrin, second by Dwight to give the Police Chief authority to surplus cruisers. All voted yes.

**ADJOURNMENT**

There being no further business to come before the council, meeting was adjourned at 6:29 p.m.

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JARED BYFORD, MAYOR

ATTEST:

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PAM ENOCH, CITY CLERK

**Special Called Meeting  
October 29, 2019**

The Marion City Council met in special session on October 29, 2019 at 5:15 p.m. with Mayor Jared Byford presiding. Council members present were: Darrin Tabor, Donnie Arflack, Dwight Sherer, and Mike Byford. Council members Phyllis Sykes and D'Anna Browning were absent. City employees present were: Adam Ledford, Layten Croft, Pam Enoch, Terri Hart Luisa, and the City Attorney Bart Frazer. A public sign-in sheet is attached and made part of these minutes.

**GENERAL GOVERNMENT**

The city attorney gave the second reading of ordinance #19-12 entitled, "An Ordinance of the City of Marion, Kentucky, amending chapter 50, Water and Sewer System, Section 50.02, rates and charges". Motion by Mike Byford, second by Dwight Sherer to adopt said ordinance with vote being as follows: Darrin Tabor yes, Donnie Arflack no, Dwight Sherer yes, and Mike Byford yes. Motion carried.

Council member Donnie Arflack had asked for a financial update for end of 2018-2019 Fiscal Year. The City Administrator provided the information in the council's packets. The city administrator explained the information that was provided to the council stressing it was preliminary and did not include the ongoing audit. Council member Donnie Arflack suggested moving \$118,000 from the general fund to the special fund. The city administrator expressed concerns with moving the funds without specific cause. Council member Dwight Sherer stated this had been discussed in the past and most of the council wasn't in favor of that decision. No action was taken as it was determined the issue was better resolved during the budgetary process.

Council member Donnie Arflack discussed the 911 meeting that included members of the Fiscal Court and Judge Executive that he and the city administrator had attended. It was discussed at the meeting about adding a 911 fee to the county tax bill for next year. Council member Donnie Arflack request that the City Administrator ask the Judge Executive to get this issue on the Fiscal Court's agenda for next month. The city administrator stated he has a meeting tomorrow with the Judge Executive and he will let him know.

Council member Darrin Tabor introduced ordinance #19-14 entitled, "An Ordinance amending ordinance 01-23 to change zoning start of 873 South Main Street. Code Enforcement Officer, Terri Hart, stated it was zoned residential and needed to be re-zoned commercial. The city attorney gave the first reading of said ordinance.

**ADJOURNMENT**

There being no more items on the special agenda; meeting was adjourned at 5:30 p.m.

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JARED BYFORD, MAYOR

ATTEST:

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PAM ENOCH, CITY CLERK

**Special Called Meeting  
November 14, 2019**

The Marion City Council met in special session on November 14, 2019 at 5:15 p.m. with Mayor Jared Byford presiding. Council members present were: Darrin Tabor, Phyllis Sykes, Donnie Arflack, Dwight Sherer, D'Anna Browning, and Mike Byford. City employees present were: Adam Ledford, Layten Croft, Pam Enoch, and the City Attorney Bart Frazer. A public sign-in sheet is attached and made part of these minutes.

**GENERAL GOVERNMENT**

Motion by Mike Byford, second by D'Anna Browning to adopt resolution #19-04m entitled, "Resolution of Intent". All voted yes. A copy of said resolution is attached and made part of these minutes.

Council member D'Anna Browning introduced ordinance #19-15 entitled, "Flood Damage Prevention Ordinance". The city attorney gave the first reading of said ordinance.

**ADJOURNMENT**

There being no more items on the special agenda; meeting was adjourned at 5:24 p.m.

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JARED BYFORD, MAYOR

ATTEST:

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PAM ENOCH, CITY CLERK



ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE GRANTING TO FRANCHISEE, THE NON-EXCLUSIVE RIGHT TO ERECT, MAINTAIN AND OPERATE IN, UNDER, OVER, ALONG, ACROSS THE STREETS, LANES, AVENUES, SIDEWALKS, ALLEYS, BRIDGES, HIGHWAYS, EASEMENTS DEDICATED FOR COMPATIBLE USES AND OTHER PUBLIC PLACES IN THE CITY MARION, KENTUCKY, AND THE SUBSEQUENT ADDITIONS THERETO, TOWERS, CABLES AND ANCILLARY FACILITIES FOR THE PURPOSE OF CONSTRUCTING, OPERATING, MAINTAINING AND REPAIRING CABLE SERVICE FOR A PERIOD OF FIFTEEN (15) YEARS REGULATING THE SAME AND PROVIDING FOR COMPENSATION OF THE CITY.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF MARION, KENTUCKY.

**SECTION 1**  
**Definition of Terms**

- 1.1 **Terms.** For the purpose of this Franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:
- A. “Basic Cable Service” is the lowest priced tier of Cable Service that includes the retransmission of local broadcast television signals.
  - B. “Cable Act” means Title VI of the Cable Act of 1934, as amended.
  - C. “Cable Services” shall mean (1) the one-way transmission to Subscribers of (a) video programming, or (b) other programming service, and (2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
  - D. “Cable System” shall mean the Grantee’s facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes video programming and which is provided to multiple Subscribers within the Service Area.
  - E. “FCC” means Federal Communications Commission or successor governmental entity thereto.
  - F. “Franchising Authority” means Marion, Kentucky.
  - G. “Grantee” means Mediacom Southeast LLC, or the lawful successor, transferee, or assignee thereof.

- H. “Person” means an individual, partnership, association, joint stock company, trust, corporation, or governmental entity.
- I. “Public Way” shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses now or hereafter held by the Franchising Authority in the Service Area which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System.
- J. “Service Area” means the present boundaries of the Franchising Authority, and shall include any additions thereto by annexation or other legal means, subject to the exceptions in subsection 3.9.
- K. “Standard Installation” is defined as 125 feet from the nearest tap to the Subscriber’s terminal.
- L. “Subscriber” means a Person who lawfully receives Cable Service of the Cable System with the Grantee’s express permission.

**SECTION 2**  
**Grant of Franchise**

- 2.1 **Grant.** The Franchising Authority hereby grants to the Grantee a nonexclusive Franchise which authorizes the Grantee to construct and operate a Cable System in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area, and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way such facilities and equipment as may be necessary or appurtenant to the Cable System for the transmission and distribution of Cable Services, data services, information and other communications services or for any other lawful purposes.
- 2.2 **Other Ordinances.** The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinance, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Franchise. Neither party may unilaterally alter the material rights and obligations set forth in this Franchise. In the event of a conflict between any ordinance and this Franchise, the Franchise shall control.
- 2.3 **Other Authorizations.** The Franchising Authority shall not permit any person to provide services similar to those provided by the Grantee in the Service Area without first having secured a non-exclusive franchise from the Franchising Authority. The Franchising Authority agrees that any grant of additional franchises or other authorizations including OVS authorizations by the Franchising Authority to provide services similar to those provided by the Grantee pursuant to this Agreement to any other entity shall cover the

entire Service Area and shall not be on terms and conditions more favorable or less burdensome to the grantee of any such additional franchise or other authorization than those which are set forth herein. In any renewal of this Franchise, the Franchising Authority, should it seek to impose increased obligations upon the Grantee, must take into account any additional franchise(s) or authorizations previously granted and find that the proposed increased obligations in the renewal, are not more burdensome and/or less favorable than those contained in any such additional franchise(s) or authorizations.

### SECTION 3 Standards of Service

- 3.1 **Conditions of Occupancy.** The Cable System installed by the Grantee pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways.
- 3.2 **Restoration of Public Ways.** If during the course of the Grantee's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by the Grantee, Grantee shall replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.
- 3.3 **Relocation for the Franchising Authority.** Upon its receipt of reasonable advance written notice, to be not less than ten (10) business days, the Grantee shall protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way, any property of the Grantee when lawfully required by the Franchising Authority by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of public structures or improvements which are not used to compete with the Grantee's services. The Grantee shall in all cases have the right of abandonment of its property.
- 3.4 **Relocation for a Third Party.** The Grantee shall, on the request of any Person holding a lawful permit issued by the Franchising Authority, protect, support, raise, lower, temporarily disconnect, relocate in or remove from the Public Way as necessary any property of the Grantee, provided: (A) the expense of such is paid by said Person benefiting from the relocation, including, if required by the Grantee, making such payment in advance; and (B) the Grantee is given reasonable advance written notice to prepare for such changes. For purposes of this subsection, "reasonable advance written notice" shall be no less than thirty (30) business days in the event of a temporary relocation, and no less than one hundred twenty (120) days for a permanent relocation.
- 3.5 **Trimming of Trees and Shrubbery.** The Grantee shall have the authority to trim trees or other natural growth in order to access and maintain the Cable System.
- 3.6 **Safety Requirements.** Construction, operation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be

performed in substantial accordance with generally applicable federal, state, and local regulations and the National Electric Safety Code.

- 3.7 **Underground Construction.** In those areas of the Service Area where all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, the Grantee likewise shall construct, operate, and maintain its Cable System underground. Nothing contained in this subsection shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances.
- 3.8 **Access to Open Trenches.** The Franchising Authority agrees to include the Grantee in the platting process for any new subdivision. At a minimum, the Franchising Authority agrees to require as a condition of issuing a permit for open trenching to any utility or developer that (A) the utility or developer give the Grantee at least ten (10) days advance written notice of the availability of the open trench, and (B) that the utility or developer provide the Grantee with reasonable access to the open trench. Notwithstanding the foregoing, the Grantee shall not be required to utilize any open trench.
- 3.9 **Required Extensions of the Cable System.** Grantee agrees to provide Cable Service to all residences in the Service Area subject to the density requirements specified in this subsection. Whenever the Grantee receives a request for Cable Service from a potential Subscriber in an unserved area contiguous to Grantee's existing distribution facilities where there are at least 10 residences within 1320 cable-bearing strand feet (one-quarter cable mile) from the portion of the Grantee's trunk or distribution cable which is to be extended, it shall extend its Cable System to such Subscribers at no cost to said Subscribers for the Cable System extension, other than the published Standard/non-Standard Installation fees charged to all Subscribers. Notwithstanding the foregoing, the Grantee shall have the right, but not the obligation, to extend the Cable System into any portion of the Service Area where another operator is providing Cable Service, into any annexed area which is not contiguous to the present Service Area of the Grantee, or into any area which is financially or technically infeasible due to extraordinary circumstances, such as a runway or freeway crossing.
- 3.10 **Subscriber Charges for Extensions of the Cable System.** No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of subsection 3.9 above, the Grantee shall only be required to extend the Cable System to Subscriber(s) in that area if the Subscriber(s) are willing to share the capital costs of extending the Cable System. Specifically, the Grantee shall contribute a capital amount equal to the construction cost per mile, multiplied by a fraction whose numerator equals the actual number of residences per 1320 cable-bearing strand feet from the Grantee's trunk or distribution cable, and whose denominator equals 10. Subscribers who request service hereunder shall bear the remaining cost to extend the Cable System on a pro rata basis. The Grantee may require that payment of the capital contribution in aid of construction borne by such potential Subscribers be paid in advance. Subscribers shall also be responsible for any Standard/non-Standard Installation charges to extend the Cable System from the tap to the residence.

- 3.11 **Emergency Alert.** Any Emergency Alert System (“EAS”) provided by Grantee shall be operated in accordance with FCC regulations. Any use of such EAS by the Franchising Authority will be only in accordance with the applicable state and local plans as approved in accordance with such FCC regulations. Except to the extent expressly prohibited by law, the Franchising Authority will hold the Grantee, its employees, officers and assigns harmless from any claims arising out of use of the EAS, including but not limited to reasonable attorneys’ fees and costs.
- 3.12 **Reimbursement of Costs.** If funds are available to any Person using the Public Way for the purpose of defraying the cost of any of the foregoing, the Franchising Authority shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Franchising Authority shall make application for such funds on behalf of the Grantee.

**SECTION 4**  
**Regulation by the Franchising Authority**

- 4.1 **Telecommunications Tax.** The Grantee shall comply with the Telecommunications Tax requirements of the Kentucky Revised Statutes, Chapter 136, as amended.
- 4.2 **Rates and Charges.** The Franchising Authority may regulate rates for the provision of Basic Cable Service and equipment as expressly permitted by federal law.
- 4.3 **Renewal of Franchise.**
- A. The Franchising Authority and the Grantee agree that any proceedings undertaken by the Franchising Authority that relate to the renewal of the Grantee’s Franchise shall be governed by and comply with the renewal provisions of federal law.
  - B. In addition to the procedures set forth in the Cable Act, the Franchising Authority agrees to notify the Grantee of all of its assessments regarding the identity of future cable-related community needs and interests, as well as the past performance of the Grantee under the then current Franchise term. The Franchising Authority further agrees that such assessments shall be provided to the Grantee promptly so that the Grantee has adequate time to submit a proposal pursuant to the Cable Act and complete renewal of the Franchise prior to expiration of its term.
  - C. Notwithstanding anything to the contrary set forth in this subsection 4.3, the Grantee and the Franchising Authority agree that at any time during the term of the then current Franchise, while affording the public appropriate notice and opportunity to comment in accordance with the provisions of federal law the Franchising Authority and the Grantee may agree to undertake and finalize informal negotiations regarding renewal of the then current Franchise and the Franchising Authority may grant a renewal thereof.

D. The Grantee and the Franchising Authority consider the terms set forth in this subsection 4.3 to be consistent with the express renewal provisions of the Cable Act.

4.4 **Conditions of Sale.** If a renewal or extension of the Grantee's Franchise is denied or the Franchise is lawfully terminated, and the Franchising Authority either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at the price determined pursuant to the provisions set forth in Section 627 of the Cable Act.

The Grantee and the Franchising Authority agree that in the case of a final determination of a lawful revocation of the Franchise, the Grantee shall be given at least twelve (12) months to effectuate a transfer of its Cable System to a qualified third party. Furthermore, the Grantee shall be authorized to continue to operate pursuant to the terms of its prior Franchise during this period. If, at the end of that time, the Grantee is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to the Franchising Authority, the Grantee and the Franchising Authority may avail themselves of any rights they may have pursuant to federal or state law. It is further agreed that the Grantee's continued operation of the Cable System during the twelve (12) month period shall not be deemed to be a waiver, nor an extinguishment of, any rights of either the Franchising Authority or the Grantee.

4.5 **Transfer of Franchise.** The Grantee's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with the Grantee, without prior written notice to the Franchising Authority. No such notice shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or Cable System in order to secure indebtedness.

## **SECTION 5** **Books and Records**

The Grantee agrees that the Franchising Authority, upon thirty (30) days written notice to the Grantee and no more than once annually may review such of its books and records at the Grantee's business office, during normal business hours and on a nondisruptive basis, as is reasonably necessary to ensure compliance with the terms of this Franchise. Such notice shall specifically reference the subsection of the Franchise that is under review so that the Grantee may organize the necessary books and records for easy access by the Franchising Authority. Alternatively, if the books and records are not easily accessible at the local office of the Grantee, the Grantee may, at its sole option, choose to pay the reasonable travel costs of the Franchising Authority's representative to view the books and records at the appropriate location. The Grantee shall not be required to maintain any books and records for Franchise compliance purposes longer than three (3) years. Notwithstanding anything to the contrary set forth herein, the Grantee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature, nor disclose books and records of any affiliate which is not providing Cable Service in the Service Area. The Franchising Authority agrees to treat any information disclosed by the Grantee as confidential and only to disclose it to employees, representatives, and agents thereof that have a

need to know, or in order to enforce the provisions hereof. The Grantee shall not be required to provide Subscriber information in violation of Section 631 of the Cable Act.

## **SECTION 6** **Insurance and Indemnification**

- 6.1 Insurance Requirements. The Grantee shall maintain insurance in full force and effect, at its own cost and expense, during the term of the Franchise. The Franchising Authority shall be designated as an additional insured and such insurance shall be noncancellable except upon thirty (30) days prior written notice to the Franchising Authority. Upon written request, the Grantee shall provide a Certificate of Insurance showing evidence of the coverage required by this subsection.
- 6.2 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Franchising Authority, its officers, boards and employees, from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury (including accidental death), which arise out of the Grantee's construction, operation, or maintenance of its Cable System in the Service Area provided that the Franchising Authority shall give the Grantee written notice of its obligation to indemnify the Franchising Authority within ten (10) days of receipt of a claim or action pursuant to this subsection. Notwithstanding the foregoing, the Grantee shall not indemnify the Franchising Authority for any damages, liability or claims resulting from the willful misconduct or negligence of the Franchising Authority.

## **SECTION 7** **Enforcement and Termination of Franchise**

- 7.1 **Notice of Violation**. In the event that the Franchising Authority believes that the Grantee has not complied with the any material term of the Franchise, the Franchising Authority shall informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Franchising Authority shall notify the Grantee in writing of the exact nature of such alleged noncompliance.
- 7.2 **The Grantee's Right to Cure or Respond**. The Grantee shall have thirty (30) days from receipt of the notice described in subsection 7.1: (A) to respond to the Franchising Authority, contesting the assertion of such noncompliance, or (B) to cure such default, or (C) in the event that, by the nature of such default, it cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Franchising Authority of the steps being taken and the projected date that they will be completed.
- 7.3 **Public Hearing**. In the event that the Grantee fails to respond to the notice described in subsection 7.1 pursuant to the procedures set forth in subsection 7.2, or in the event that the alleged default is not remedied within thirty (30) days or the date projected pursuant to 7.2(C) above, if it intends to continue its investigation into the default, then the Franchising Authority shall schedule a public hearing. The Franchising Authority shall provide the

Grantee at least ten (10) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, and provide the Grantee the opportunity to be heard.

7.4 **Enforcement.** Subject to applicable federal and state law, in the event the Franchising Authority, after the hearing set forth in subsection 7.3, determines that the Grantee is in material default of any provision of the Franchise, the Franchising Authority may:

- A. Commence an action at law for monetary damages or seek other equitable relief; or
- B. In the case of repeated or ongoing substantial non-compliance with a material term or terms of the Franchise, seek to revoke the Franchise in accordance with subsection 7.5.

7.5 **Revocation.** Should the Franchising Authority seek to revoke the Franchise after following the procedures set forth in subsections 7.1-7.4 above, the Franchising Authority shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the repeated or ongoing substantial noncompliance with a material term or terms of the franchise. The Grantee shall have ninety (90) days from such notice to object in writing and to state its reasons for such objection. In the event the Franchising Authority has not received a satisfactory response from the Grantee, it may then seek termination of the Franchise at a public hearing. The Franchising Authority shall cause to be served upon the Grantee, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise.

At the designated hearing, Grantee shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to introduce relevant evidence, to require the production of evidence, to compel the relevant testimony of the officials, agents, employees or consultants of the Franchising Authority, to compel the testimony of other persons as permitted by law, and to question witnesses. A complete verbatim record and transcript shall be made of such hearing.

Following the hearing, the Franchising Authority shall determine whether or not the Franchise shall be revoked. If the Franchising Authority determines that the Franchise shall be revoked, the Franchising Authority shall promptly provide Grantee with its decision in writing. The Grantee may appeal such determination of the Franchising Authority to an appropriate court which shall have the power to review the decision of the Franchising Authority *de novo*. Grantee shall be entitled to such relief as the court finds appropriate. Such appeal must be taken within sixty (60) days of Grantee's receipt of the determination of the Franchising Authority.

The Franchising Authority may, at its sole discretion, take any lawful action which it deems appropriate to enforce the Franchising Authority's rights under the Franchise in lieu of revocation of the Franchise.

7.6 **Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to



service or monitor their utility poles to which the Grantee's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

Furthermore, the parties hereby agree that it is not the Franchising Authority's intention to subject the Grantee to penalties, fines, forfeitures or revocation of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweigh the benefit to be derived by the Franchising Authority and/or Subscribers.

## SECTION 8 Miscellaneous Provisions

- 8.1 **Actions of Parties.** In any action by the Franchising Authority or the Grantee that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.
- 8.2 **Entire Agreement.** This Franchise constitutes the entire agreement between the Grantee and the Franchising Authority and supersedes all other prior understandings and agreements oral or written. Any amendments to this Franchise shall be mutually agreed to in writing by the parties.
- 8.3 **Reservation of Rights.** Acceptance of the terms and conditions of this franchise will not constitute, or be deemed to constitute, a waiver, either expressly or impliedly, by Grantee of any constitutional or legal right which it may have or may be determined to have, either by subsequent legislation or court decisions. The Franchising Authority acknowledges that Grantee reserves all of its rights under applicable Federal and State Constitutions and laws.

If at any time during the term of this franchise, federal, state or local law permits any provider of video programming to provide services such as those provided pursuant to this franchise either without obtaining a franchise from the Franchising Authority or on terms or conditions more favorable than those applicable to the Franchisee (Grantee), then this franchise shall at the sole discretion of the Franchisee (Grantee): (1) cease to be in effect; or (2) be deemed to expire at a date prior to the original expiration date selected by the Franchisee (Grantee); or (3) will be automatically reformed to grant to the Franchisee (Grantee) the more favorable terms, benefits and conditions available to the other provider.

- 8.4 **Notice.** Unless expressly otherwise agreed between the parties, every notice or response required by this Franchise to be served upon the Franchising Authority or the Grantee shall be in writing, and shall be deemed to have been duly given to the required party when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand delivered with receipt/acknowledgment, b) upon receipt when sent certified, registered mail, c) within five (5) business days after having been posted in the regular mail or d) the next business day if sent by express mail or overnight air courier.

The notices or responses to the Franchising Authority shall be addressed as follows:

Mayor  
City of Marion  
217 South Main Street  
Marion, KY 42064

The notices or responses to the Grantee shall be addressed as follows:

Mediacom Southeast LLC  
3900 26<sup>th</sup> Avenue  
Moline, IL 61265  
Attn: Government Relations

With a copy to:

Mediacom Southeast LLC  
C/o Mediacom Communications Corporation  
One Mediacom Way  
Mediacom Park, NY 10918  
Attn: Vice President Legal and Regulatory Affairs

The Franchising Authority and the Grantee may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this subsection.

- 8.5 Descriptive Headings.** The captions to Sections and subsections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.
- 8.6 Severability.** If any Section, subsection, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, subsection, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise.
- 8.7 Term and Effective Date.** The Effective Date of this Franchise is the date of final adoption by the Franchising Authority as set forth below subject to Grantee's acceptance by countersigning where indicated below. This Franchise shall be for a term of fifteen (15) years from such Effective Date and shall expire on \_\_\_\_\_.

Considered and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Franchise Authority: City of Marion, Kentucky

Signature: \_\_\_\_\_

Printed Name: Jared Byford

Title: Mayor

Grantee: Mediacom Southeast LLC

Signature: \_\_\_\_\_

Printed Name: Bruce Gluckman

Title: Group Vice President  
Legal and Regulatory Affairs

Commonwealth of Kentucky

Ordinance #19-15

**FLOOD DAMAGE PREVENTION  
ORDINANCE**

**FOR**

**City of Marion, Kentucky**

November 14, 2019

# FLOOD DAMAGE PREVENTION ORDINANCE

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

**SECTION A. STATUTORY AUTHORIZATION**

The Legislature of the Commonwealth of Kentucky has in Kentucky Revised Statutes 100 (KRS 100) delegated to local government units the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City Council of the City of Marion, Kentucky, hereby adopts the following floodplain management ordinance, as follows:

**SECTION B. FINDINGS OF FACT**

- 1) The flood hazard areas of the City of Marion are subject to periodic inundation which 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, all which adversely affect the public health, safety, and general welfare.
- 2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increased flood height and velocity, and by the location in flood hazard areas of uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise protected from flood damage.

**SECTION C. STATEMENT OF PURPOSE**

It is the purpose of this ordinance to promote the public health, safety, and general welfare and to minimize public and private loss due to flooding by provisions designed to:

- 1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water erosion hazards, or which result in damaging increases in erosion or in flood height or velocity;
- 2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- 3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which accommodate or channel flood waters;
- 4) Control filling, grading, dredging, and other development which may increase erosion or flood damage, and
- 5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other areas.

**SECTION D. OBJECTIVES**

The objectives of this ordinance are to:

- 1) Protect human life and health;
- 2) Minimize expenditure of public money for costly flood control projects;
- 3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- 4) Minimize prolonged business interruptions;
- 5) 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;

- 6) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard or other flood-prone areas in such a manner as to minimize future flood blighted areas caused by flooding;
- 7) Ensure that potential homebuyers are on notice that property is in a Special Flood Hazard Area; and,
- 8) Ensure that those who occupy a Special Flood Hazard Area assume responsibility for their actions.

**ARTICLE 2.                    DEFINITIONS**

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

**A Zone** - Special Flood Hazard Areas inundated by the 1% annual chance flood (100-year flood). Base flood elevations (BFEs) are **not** determined.

**Accessory structure (Appurtenant structure)** - A structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal initial investment, may not be used for human habitation, and should be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

**Accessory use** - A use which is incidental and subordinate to the principal use of the parcel of land on which it is located.

**Addition (to an existing structure)** - Any walled and roofed expansion to the perimeter or height of a structure.

**AE zones** - Special Flood Hazard Areas inundated by the 1% annual chance flood (100-year flood). Base flood elevations (BFEs) are determined.

**AH zone** - An area of 100-year shallow flooding where depths are between one and three feet (usually shallow ponding). Base flood elevations are determined.

**AO zone** - An area of 100-year shallow flooding where water depth is between one and three feet (usually sheet flow on sloping terrain). Flood depths are determined.

**Appeal** - A request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance or from the floodplain administrator's ruling on a request for a variance.

**AR/A1 – A30, AR/AE, AR/AH, AR/AO, and AR/A zones** - Special Flood Hazard Areas (SFHAs) that result from the de-certification of a previously accredited flood protection system that is in the process of being restored to provide a 100-year or greater level of flood protection. After restoration is complete these areas will still experience residual flooding from other flooding sources.

**A99 zone** - That part of the SFHA inundated by the 100-year flood which is to be protected from the 100-year flood by a Federal flood protection system under construction. No base flood elevations are determined.

**Area of shallow flooding** - A designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) where the base flood depths range from one to three feet, there is no clearly defined channel, the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**Base flood** - A flood which has a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood"). Base flood is the term used throughout this ordinance.

**Base Flood Elevation (BFE)** - The elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-30, AR, AR/A, AR/AE, AR/A1-A30, AR/AH, and AR/AO that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

**Basement** - any area of a structure having its floor sub-grade (below ground level) on all sides.

**Building** - See definition for structure.

**Community** - A political entity having the authority to adopt and enforce floodplain ordinances for the area under its jurisdiction.

**Community Rating System (CRS)** - A program developed by the Federal Insurance Administration to provide incentives to those communities in the Regular Program to go beyond the minimum floodplain management requirements to develop extra measures for protection from flooding.

**Community Flood Hazard Area (CFHA)** - An area that has been determined by the Floodplain Administrator (or other delegated, designated, or qualified community official) from available technical studies, historical information, and other available and reliable sources, which may be subject to periodic inundation by floodwaters that can adversely affect the public health, safety and general welfare. This includes areas downstream from dams.

**Critical facility** - Any property that, if flooded, would result in severe consequences to public health and safety or a facility which, if unusable or unreachable because of flooding, would seriously and adversely affect the health and safety of the public. Critical facilities include, but are not limited to: housing likely to contain occupants not sufficiently mobile to avoid injury or death unaided during a flood; schools, nursing homes, hospitals, police, fire and emergency response installations, vehicle and equipment storage facilities, emergency operations centers likely to be called upon before, during and after a flood, public and private utility facilities important to maintaining or restoring normal services before, during and after a flood, and those facilities or installations which produce, use or store volatile, flammable, explosive, toxic and/or water-reactive materials, hazardous materials or hazardous waste.

**D zone** - An area in which the flood hazard is undetermined.

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

**Elevated structure** - For insurance purposes, a non-basement structure built to have the lowest floor elevated above ground level by foundation walls, shear walls, posts, piers, pilings or columns.

**Elevation Certificate** - A statement certified by a registered professional engineer or surveyor on the FEMA-approved form in effect at the time of certification that verifies a structure's elevation and other related information to verify compliance with this ordinance.

**Emergency Program** - The initial phase under which a community participates in the NFIP, intended to provide a first layer amount of insurance at subsidized rates on all insurable structures in that community before the effective date of the initial FIRM.

**Enclosure** - That portion of a structure below the lowest floor used solely for parking of vehicles, limited storage, or access to the structure.

**Encroachment** - The physical advance or infringement of uses, plant growth, fill, excavation, structures, or development into a floodplain, which may impede or alter the flow capacity of a floodplain.



**Existing construction** - Any structure for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. Existing construction may also be referred to as existing structures.

**Existing Manufactured Home Park or Subdivision** - A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the first floodplain management ordinance adopted by a community.

**Expansion to an existing Manufactured Home Park or Subdivision** - The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**Five-Hundred Year Flood** - The flood that has a 0.2 percent chance of being equaled or exceeded in any year. Areas subject to the 500-year flood have a moderate risk of flooding.

**Flood or Flooding** - A general and temporary condition of partial or complete inundation of normally dry land areas from:

- a.) The overflow of inland or tidal waters.
- b.) The unusual and rapid accumulation or runoff of surface waters from any source.
- c.) Mudslides which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- d.) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

**Flood Boundary and Floodway Map (FBFM)** -A map on which the Federal Emergency Management Agency (FEMA) has delineated the areas of flood hazards and the regulatory floodway.

**Flood Hazard Boundary Map (FHBM)** -A map on which the boundaries of the flood, mudslide (i.e. mudflow), and flood-related erosion areas having special hazards have been designated as Zones A, M, and/or E by the Federal Emergency Management Agency (FEMA).

**Flood Insurance Rate Map (FIRM)** - A map on which the Federal Emergency Management Agency (FEMA) has delineated special flood hazard areas and risk premium zones.

**Flood Insurance Study** - The report provided by the Federal Emergency Management Agency (FEMA) containing flood profiles, the Flood Insurance Rate Map (FIRM), and/or the Flood Boundary Floodway Map (FBFM), and the water surface elevation of the base flood.

**Floodplain or flood-prone area** - Any land area susceptible to being inundated by flood waters from any source.

**Floodplain Administrator** - The individual appointed by the community to administer and enforce the floodplain management ordinances.

**Floodplain Management** - The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing natural resources in the floodplain, including but not

limited to emergency preparedness plans, flood control works, floodplain management ordinances, and open space plans.

**Floodplain Management Regulations** - This ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as grading and erosion control), and other applications of police power, which control development in flood-prone areas. This term describes federal, state and/or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

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

**Floodproofing Certificate** - A certification by a registered professional engineer or architect, the FEMA form in effect at the time of certification stating that a non-residential structure, together with attendant utilities and sanitary facilities is watertight to a specified design elevation with walls that are substantially impermeable to the passage of water and all structural components are capable of resisting hydrostatic and hydrodynamic flood forces, including the effects of buoyancy and anticipated debris impact forces.

**Floodway** - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as the "regulatory floodway".

**Floodway fringe** - That area of the floodplain on either side of the regulatory floodway.

**Freeboard** - A factor of safety, usually expressed in feet above the BFE, which is applied for the purposes of floodplain management. It is used to compensate for the many unknown factors that could contribute to flood heights greater than those calculated for the base flood. Freeboard must be applied not just to the elevation of the lowest floor or floodproofing level, but also to the level of protection provided to all components of the structure, such as building utilities, HVAC components, etc.

**Fraud and victimization** - As related in Article 6, **Appeals and Variance Procedures**, of this ordinance, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the Marion City Council will consider the fact that every newly constructed structure adds to government responsibilities and remains a part of the community for fifty to one hundred years. Structures that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages may incur. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

**Functionally dependent use facility** - A facility, structure, or other development, which cannot be used for its intended purpose unless it is located or carried out in close proximity to water. The term includes only a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

**Governing body** - The local governing unit, i.e. county or municipality that is empowered to adopt and implement ordinances to provide for the public health, safety and general welfare of its citizenry.

**Hazard potential** - The possible adverse incremental consequences that result from the release of water or stored contents due to failure of a dam or miss-operation of a dam or appurtenances. The hazard potential classification of a dam does not reflect in any way the current condition of a dam and its appurtenant structures (e.g. safety, structural integrity, flood routing capacity).

**Highest adjacent grade** - The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.

**Historic Structure** - Any structure that is:

- 1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- 2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district.
- 3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- 4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
  - a) By an approved state program as determined by the Secretary of the Interior, or
  - b) Directly by the Secretary of the Interior in states without approved programs.

**Increased Cost of Compliance (ICC)** – Increased cost of compliance coverage means under the standard flood insurance policy the cost to repair a substantially flood damaged building that exceeds the minimal repair cost and that is required to bring a substantially damaged building into compliance with the local flood damage prevention ordinance. Acceptable mitigation measures are floodproofing (nonresidential), relocation, elevation, demolition, or any combination thereof.

ICC coverage is available on residential and non-residential buildings (this category includes public or government buildings, such as schools, libraries, and municipal buildings) insured under the NFIP.

**Letter of Map Change (LOMC)** – An official FEMA determination, by letter, to amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, and Flood Insurance Studies. LOMC's include the following categories:

- 1) **Letter of Map Amendment (LOMA)** – A revision based on technical data showing that a property was inadvertently included in a designated SFHA. A LOMA amends the current effective FIRM and establishes that a specific property is not located in a SFHA.
- 2) **Letter of Map Revision (LOMR)** - A revision based on technical data that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features.
- 3) **Letter of Map Revision – Based on Fill (LOMR-F)** – A determination that a structure or parcel has been elevated by properly placed engineered fill above the BFE and is, therefore, excluded from the SFHA.

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

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

**Limited storage** - An area used for storage and intended to be limited to incidental items which can withstand exposure to the elements and have low flood damage potential. Such an area must be of flood resistant material, void of utilities except for essential lighting, and cannot be temperature controlled.

**Lowest adjacent grade (LAG)** – The lowest elevation of the sidewalk, patio, attached garage, deck support, basement entryway or grade immediately next to the structure and after the completion of construction.

**Lowest Floor** - The lowest floor of the lowest enclosed area **including basement**. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, structure access, or storage in an area **other than**

**a basement area** is not considered a structure's lowest floor, **provided** that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

**Manufactured Home** - A structure, transportable in one or more sections, which is built on a permanent chassis and is designed to be used with or without a permanent foundation when connected or attached to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property. The term "manufactured home" does not include a "recreational vehicle" (see Recreational Vehicle).

**Manufactured home park or subdivision** - A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**Map** - The Flood Hazard Boundary Map (FHBM) or the Flood Insurance Rate Map (FIRM) for a community issued by the Federal Emergency Management Agency (FEMA).

**Map Panel Number** - The four-digit number on a flood map, followed by a letter suffix, assigned by FEMA. The first four digits represent the map panel. The letter suffix represents the number of times the map panel has been revised. (The letter "A" is not used by FEMA, the letter "B" is the first revision.)

**Market value** - The property value (as agreed between a willing buyer and seller), excluding the value of the land as established by what the local real estate market will bear. Market value of the structure can be established by independent certified appraisal; replacement cost depreciated by age of structure (Actual Cash Value) or adjusted assessed values.

**Mean Sea Level (MSL)** - The average height of the sea for all stages of the tide. For the purposes of the National Flood Insurance Program, the MSL is used as a reference for establishing various elevations within the floodplain as shown on the community's FIRM. For purposes of this ordinance, the term is synonymous with either National Geodetic Vertical Datum (NGVD) of 1929 or North American Vertical Datum (NAVD) of 1988.

**Mitigation** - Sustained actions taken to reduce or eliminate long-term risk to people and property from hazards and their effects. The purpose of mitigation is twofold: to protect people and structures, and to minimize the costs of disaster response and recovery.

**Mudslide (i.e. mudflow)** - Describes a condition where there is a river, flow, or inundation of liquid mud down a hillside, usually as a result of a dual condition of loss of brush cover and the subsequent accumulation of water on the ground, preceded by a period of unusually heavy or sustained rain. A mudslide (i.e. mudflow) may occur as a distinct phenomenon while a landslide is in progress, and will be recognized as such by the Floodplain Administrator only if the mudflow, and not the landslide, is the proximate cause of damage that occurs.

**Mudslide (i.e. mudflow) area management** - The operation of and overall program of corrective and preventative measures for reducing mudslide (i.e. mudflow) damage, including but not limited to emergency preparedness plans, mudslide control works, and floodplain management regulations.

**Mudslide (i.e. mudflow) prone area** - An area with land surfaces and slopes of unconsolidated material where the history, geology, and climate indicate a potential for mudflow.

**National Flood Insurance Program (NFIP)** - The federal program that makes flood insurance available to owners of property in participating communities nationwide through the cooperative efforts of the federal government and the private insurance industry.

**National Geodetic Vertical Datum (NGVD)** - As corrected in 1929, a vertical control used as a reference for establishing varying elevations within the floodplain. (Generally used as the vertical datum on the older FIRM's. Refer to FIRM legend panel for correct datum.)

**New Construction** - Structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**New manufactured home park or subdivision** - A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by a community.

**Non-Residential** – Structures that are not designed for human habitation, including but is not limited to: small business concerns, churches, schools, farm structures (including grain bins and silos), pool houses, clubhouses, recreational structures, mercantile structures, agricultural and industrial structures, warehouses, and hotels or motels with normal room rentals for less than 6 months duration.

**North American Vertical Datum (NAVD)** – As corrected in 1988, a vertical control used as a reference for establishing varying elevations within the floodplain. (Generally used on the newer FIRM's and Digitally Referenced FIRM's (DFIRM's). (Refer to FIRM or DFIRM panel legend for correct datum.)

**Obstruction** - Includes but is not limited to any dam, wall, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, structure, wire, fence, rock, gravel, refuse, fill, structure, vegetation or other material in, along, across or projecting into any watercourse which may alter, impede, retard or change the direction and/or velocity of the flow of water, due to its location, its propensity to snare or collect debris carried by the flow of water, or its likelihood of being carried downstream.

**One-Hundred Year Flood** (100-Year Flood) (see Base Flood) - The flood that has a 1-percent or greater chance of being equaled or exceeded in any given year. Any flood zone that begins with the letter A is subject to inundation by the 100-year flood. Over the life of a 30-year loan, there is a 26-percent chance of experiencing such a flood with the SFHA.

**Participating Community** - A community that voluntarily elects to participate in the NFIP by adopting and enforcing floodplain management regulations that are consistent with the standards of the NFIP.

**Pre-FIRM Construction** - New construction or substantial improvements for which start of construction occurred on or before December 31, 1974, or before the effective date of the initial FIRM of the community, whichever is later.

**Post-FIRM Construction** – New construction or substantial improvements for which start of construction occurred after December 31, 1974, or on or after the effective date of the initial FIRM of the community, whichever is later.

**Probation** – A FEMA imposed change in community's status resulting from violations and deficiencies in the administration and enforcement of the local floodplain management regulations.

**Program Deficiency** - A defect in a community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management standards.

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

**Recreational Vehicle** - A vehicle that is:

- 1) Built on a single chassis;
- 2) 400 square feet or less when measured at the largest horizontal projection;
- 3) Designed to be self-propelled or permanently towable to a light duty truck; and
- 4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Regular Program** - The phase of a community's participation in the NFIP where more comprehensive floodplain management requirements are imposed and higher amounts of insurance are available based upon risk zones and flood elevations determined in the FIS.

**Regulatory floodway** - The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. See Base Flood.

**Remedy a violation** - The process by which a community brings a structure or other development into compliance with State or local floodplain management regulations, or, if this is not possible, to reduce the impact of non-compliance. Reduced impact may include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing state or federal financing exposure with regard to the structure or other development.

**Repair** - The reconstruction or renewal of any part of an existing structure.

**Repetitive Loss** - Flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

**Repetitive Loss Property** - Any insurable building for which two or more claims of more than \$1,000 were paid by the National Flood Insurance Program (NFIP) within any rolling 10-year period, since 1978. At least two of the claims must be more than ten days apart but, within ten years of each other. A RL property may or may not be currently insured by the NFIP.

**Riverine** - Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

**Section 1316** - That section of the National Flood Insurance Act of 1968, as amended, which states that no new or renewal flood insurance coverage shall be provided for any property that the Administrator finds has been declared by a duly constituted state or local zoning authority or other authorized public body to be in violation of state or local laws, regulations, or ordinances that are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas.

**Severe Repetitive Loss Structure** - Any insured property that has met at least one of the following paid flood loss criteria since 1978, regardless of ownership:

1. Four or more separate claim payments of more than \$5,000 each (including building and contents payments); or
2. Two or more separate claim payments (building payments only) where the total of the payments exceeds the current market value of the property.

In either case, two of the claim payments must have occurred within ten years of each other. Multiple losses at the same location within ten days of each other are counted as one loss, with the payment amounts added together.

**Sheet flow area** - see "Area of shallow flooding".

**Special flood hazard area (SFHA)** - That portion of the floodplain subject to inundation by the base flood and/or flood-related erosion hazards as shown on a FHBM or FIRM as Zone A, AE, A1 – A30, AH, AO, or AR.

**Start of Construction** (includes substantial improvement and other proposed new development) - The date a building permit is issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement or other improvement is within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including manufactured home) on a site, such as

the pouring of slabs or footings, the installation of piles, construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; the installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the structure.

**Structure** - A walled and roofed building, including gas or liquid storage tank that is principally above ground, as well as a manufactured home.

**Subdivision** - Any division, for the purposes of sale, lease, or development, either on the installment plan or upon any and all other plans, terms and conditions, of any tract or parcel of land into two (2) or more lots or parcels.

**Subrogation** – A legal action brought by FEMA to recover insurance money paid out where all or part of the damage can be attributed to acts or omissions by a community or other third party.

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

**Substantial Improvement** - Any reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during a 1-year period in which the cumulative percentage of improvements equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- a.) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local Code Enforcement Official and which are the minimum necessary to assure safe living conditions, or
- b.) Any alteration of a “historic structure” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

**Substantially improved existing manufactured home parks or subdivisions** - Repair, reconstruction, rehabilitation, or improvement of the streets, utilities, and pads equaling or exceeding 50 percent of the value of the streets, utilities, and pads before the repair, reconstruction, or improvement commenced.

**Suspension** - Removal of a participating community from the NFIP for failure to enact and/or enforce floodplain management regulations required for participation in the NFIP.

**Utilities** – Include, but not limited to, electrical, heating, ventilation, plumbing, and air conditioning equipment that service the structure and the site.

**Variance** - Relief from some or all of the requirements of this ordinance.

**Violation** - Failure of a structure or other development to fully comply with this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

**Watercourse** - A lake, river, creek, stream, wash, channel or other topographic feature on or over which water flows at least periodically.

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

**Watershed** - All the area within a geographic boundary from which water, sediments, dissolved materials, and other transportable materials drain or are carried by water to a common outlet, such as a point on a larger stream, lake, or underlying aquifer.

**X (shaded) and B zones** - Areas of the 0.2% annual chance (500-year) flood that are outside of the SFHA, areas subject to the 100-year flood with average depths of less than one foot or with contributing drainage area less than 1 square mile, and areas protected by levees from the base flood

**X (un-shaded) and C zones** - Areas determined to be outside the 500-year floodplain.

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

### **ARTICLE 3.                    GENERAL PROVISIONS**

#### **SECTION A.    LANDS TO WHICH THIS ORDINANCE APPLIES**

This ordinance shall apply to all Special Flood Hazard Areas (SFHA), areas applicable to KRS 151.250 and, as determined by the Floodplain Administrator or other delegated, designated, or qualified community official as determined by the City Council of the City of Marion from available technical studies, historical information, and other available and reliable sources, areas within the jurisdiction of the City Council of the City of Marion which may be subject to periodic inundation by floodwaters that can adversely affect the public health, safety, and general welfare of the citizens of the City of Marion.

#### **SECTION B.    BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS**

The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) for Crittenden County, dated June 30, 2006, with the accompanying Flood Insurance Rate Maps (FIRMS), other supporting data and any subsequent amendments thereto, are hereby adopted by reference and declared to be a part of these regulations by the City of Marion, and for those land areas acquired by the City of Marion through annexation. This FIS and attendant mapping are the minimum area of applicability of this ordinance and may be supplemented by studies for other areas which allow implementation of this ordinance and which are recommended to the City Council by the Floodplain Administrator and are enacted by City Council pursuant to statutes governing land use management regulations. The FIS and/or FIRM are permanent records of the City of Marion and are on file and available for review by the public during regular business hours at Marion City Hall.

#### **SECTION C.    ESTABLISHMENT OF DEVELOPMENT PERMIT**

A Development Permit shall be required in conformance with the provision of this ordinance prior to the commencement of any development activities in the special flood hazard areas (SFHA). See Article 4, Section B for instructions and explanation.

Application for a Development Permit shall be made on forms furnished by the Floodplain Administrator.

#### **SECTION D.    COMPLIANCE**

No structure or land shall hereafter be constructed, located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable state regulations. Violation of the requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein shall prevent the Marion City Council from taking such lawful action as is necessary to prevent or remedy any violation.



#### **SECTION E. ABROGATION AND GREATER RESTRICTIONS**

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

#### **SECTION F. INTERPRETATION**

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

- 1) Considered minimum requirements;
- 2) Liberally construed in favor of the governing body; and
- 3) Deemed neither to limit nor repeal any other powers granted under state statutes.

#### **SECTION G. WARNING AND DISCLAIMER OF LIABILITY**

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damage. This ordinance shall not create liability on the part of the City Council of the City of Marion, any officer or employee, thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

#### **SECTION H. ENFORCEMENT, VIOLATION NOTICE AND PENALTIES**

- 1) **Civil Offense:** If, at any time, development occurs which is not in accordance with the provisions of this ordinance including obtaining or complying with the terms and conditions of a floodplain development permit and any approved modifications, such development shall constitute a civil offense.
- 2) **Notice of Violation:** If, at any time, a duly authorized employee or agent of the Floodplain Administrator has reasonable cause to believe that a person has caused development to occur which is not in accordance with the provisions of this ordinance including obtaining or complying with the terms and conditions of a floodplain development permit and any approved modifications thereof, a duly authorized employee of the Floodplain Administrator shall issue a notice to the person responsible for the violation and/or the property owner, stating the facts of the offense or violation, the section of this ordinance and/or of the permit violated, when it occurred, how the violation is to be remedied to bring the development into conformity with this ordinance or with the approved permit, and within what period of time the remedy is to occur, which period of time shall be reasonable and shall be determined by the nature of the violation and whether or not it creates a nuisance or hazard. The remedy may include an order to stop work on the development. The notice shall also state that a citation may be forthcoming in the event that the requested remedies and corrective actions are not taken, which citation will request a civil monetary fine and shall state the maximum fine which could be imposed. See below.
- 3) **Notice of Citation:** If, at any time, a duly authorized employee or agent of the Floodplain Administrator has reasonable cause to believe that a person has caused development to occur which is not in accordance with the provisions of this ordinance including obtaining or complying with the terms and conditions of a floodplain development permit and any approved modifications thereof, a duly authorized employee of the Floodplain Administrator may issue a citation to the offender stating the violation, prior notices of violation issued, how the violation is to be remedied to bring the development into conformity with this ordinance or with the approved permit, and within what period of time the remedy is to occur, and what penalty or penalties are recommended. When a citation is issued, the person to whom the citation is issued shall respond to the citation within seven (7) days of the date the citation is issued by either carrying out the remedies and corrections set forth in the citation, paying the civil fine set forth in the citation or requesting a hearing before the governing body. If the person to whom the citation is issued does

not respond to the citation within seven (7) days, that person shall be deemed to have waived the right to a hearing and the determination that a violation occurred shall be considered final.

- 4) Penalties: Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with granting of a variance or special exceptions, shall constitute a misdemeanor civil offense. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined no less than one hundred dollars (~~\$100.00~~) or imprisoned for not more than thirty (30) days, or both, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Floodplain Administrator from taking such other lawful action as is necessary to prevent or remedy any violation.

#### **ARTICLE 4.                    ADMINISTRATION**

##### **SECTION A.    DESIGNATION OF LOCAL ADMINISTRATOR**

The City Council of the City of Marion hereby appoints the City Administrator or his/her designee to administer, implement, and enforce the provisions of this ordinance by granting or denying development permits in accordance with its provisions, and is herein referred to as the Floodplain Administrator.

##### **SECTION B.    ESTABLISHMENT OF DEVELOPMENT PERMIT**

A Development Permit shall be obtained before any construction or other development begins within any special flood hazard area established in Article 3, Section B. Application for a Development Permit shall be made on forms furnished by Floodplain Administrator prior to any development activities, and may include, but not be limited to, the following: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Endorsement of floodplain administrator is required before a state floodplain construction permit can be processed. Specifically, the following information is required.

###### **1) Application Stage**

- a) Proposed elevation in relation to Mean Sea Level (MSL) of the proposed lowest floor (including basement) of all structures in Zone A and elevation of highest adjacent grade; or
- b) Proposed elevation in relation to Mean Sea Level to which any non-residential structure will be flood-proofed;
- c) All appropriate certifications from a registered professional engineer or architect that the non-residential flood-proofed structure will meet the flood-proofing criteria in Article 5, Section B (2) and Section D (2);
- d) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

###### **2) Construction Stage**

Upon placement of the lowest floor, **and before construction continues**, or floodproofing by whatever construction means, it shall be the duty of the permit holder to submit to the Floodplain Administrator and to the State a certification of the elevation of the lowest floor or flood-proofed elevation, as built, in relation to Mean Sea Level. In AE, A1-30, AH, and A zones where the Community has adopted a regulatory Base Flood Elevation, said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same.

When floodproofing is utilized for a particular structure, said certification shall be prepared by or under the direct supervision of a certified professional engineer or architect. Any continued work undertaken prior to the submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the lowest floor and floodproofing elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.

### **SECTION C. DUTIES AND RESPONSIBILITIES OF THE LOCAL ADMINISTRATOR**

The Floodplain Administrator and/or staff is hereby appointed, authorized and directed to administer, implement and enforce the provisions of this ordinance. The Floodplain Administrator is further authorized to render interpretations of this ordinance, which are consistent with its spirit and purpose by granting or denying development permits in accordance with its provisions.

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

- 1) **Permit Review:** Review all development permits to ensure that:
  - a) Permit requirements of this ordinance have been satisfied;
  - b) All other required state and federal permits have been obtained: review proposed development to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C 1334.;
  - c) Flood damages will be reduced in the best possible manner;
  - d) The proposed development does not adversely affect the carrying capacity of affected watercourses. For purposes of this ordinance, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one foot at any point.
- 2) **Review and Use of Any Other Base Flood Data.** When base flood elevation data has not been provided in accordance with Article 3, Section B, the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal or state agency, or other source, in order to administer the provisions of Article 5. Any such information shall be submitted to the **Marion City Council** for adoption.
- 3) **Notification of Other Agencies:**
  - a) Notify adjacent communities, the Kentucky Division of Water, and any other federal and/or state agencies with statutory or regulatory authority prior to any alteration or relocation of the watercourse, and
  - b) Submit evidence of such notification to the Federal Emergency Management Agency (FEMA); and
  - c) Assure that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained.

- 4) **Documentation of Floodplain Development.** Obtain and maintain for public inspection and make available as needed the following:
- a) Certification required by Article 5, Section B (1) (lowest floor elevations) as shown on an accurately completed and certified **Elevation Certificate**. Verify and record the actual elevation (in relation to Mean Sea Level) of the lowest floor (including basement) of all new and substantially improved structures, in accordance with Article 4, Section B (2);
  - b) Certification required by Article 5, Section B (2) (elevation or floodproofing of nonresidential structures) as shown on an accurately completed and certified FEMA floodproofing certificate. Verify and record the actual elevation (in relation to Mean Sea Level) to which the new and substantially improved structures have been flood-proofed, in accordance with Article 4, Section B (2);
  - c) Certification required by Article 5, Section B (3) (elevated structures),
  - d) Certification of elevation required by Article 5, Section E (1) (subdivision standards),
  - e) Certification required by Article 5, Section B (5) (floodway encroachments),
  - f) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained;
  - g) Review certified plans and specifications for compliance; and
  - h) Remedial Action. Take action to remedy violations of this ordinance as specified in Article 3, Section H.
- 5) **Map Determinations.** Make interpretations where needed, as to the exact location of the boundaries of the special flood hazard areas, for example, where there appears to be a conflict between a mapped boundary and actual field conditions.
- a) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Article 6, Section (3) a;
  - b) When base flood elevation data and floodway data have not been provided in accordance with Article 3, Section B, then the Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, in order to administer the provisions of Article 5;
  - c) When flood-proofing is utilized for a particular structure, the Floodplain Administrator shall obtain certification from a registered professional engineer or architect, in accordance with Article 5, Section B (2) a floodproofing certificate;
  - d) All records pertaining to the provisions of this ordinance shall be maintained in the office of the Floodplain Administrator and shall be open for public inspection.
- 6) **Right of Entry**
- a) Whenever necessary to make an inspection to enforce any of the provisions of this ordinance, or whenever the floodplain administrator has reasonable cause to believe that there exists in any structure or upon any premises any condition or ordinance violation which makes such building, structure or premises unsafe, dangerous or hazardous, the floodplain administrator may enter such building, structure or premises at all reasonable

times to inspect the same or perform any duty imposed upon the floodplain administrator by this ordinance.

- b) If such structure or premises are occupied, the floodplain administrator shall first present proper credentials and request entry. If such building, structure, or premises are unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of such request entry.
- c) If entry is refused, the floodplain administrator shall have recourse to every remedy provided by law to secure entry.
- d) When the floodplain administrator shall have first obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care or control of any building, structure, or premises shall fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the floodplain administrator for the purpose of inspection and examination pursuant to this ordinance.

7) **Stop Work Orders**

- a) Upon notice from the floodplain administrator, work on any building, structure or premises that is being done contrary to the provisions of this ordinance shall immediately cease. Such notice shall be in writing and shall be given to the owner of the property, or to his agent, or to the person performing the work, and shall state the conditions under which work may be resumed.

8) **Revocation of Permits**

- a) The floodplain administrator may revoke a permit or approval, issued under the provisions of this ordinance, in case there has been any false statement or misrepresentation as to the material fact in the application or plans on which the permit or approval was based.
- b) The floodplain administrator may revoke a permit upon determination that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the structure for which the permit was issued is in violation of, or not in conformity with, the provisions of this ordinance.

9) **Liability**

- a) Any officer, employee, or member of the floodplain administrator's staff, charged with the enforcement of this ordinance, acting for the applicable governing authority in the discharge of his/her duties, shall not thereby render personally liable, and is hereby relieved from all personal liability, for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his/her duties. Any suit brought against any officer, employee, or member because of such act performed by him/her in the enforcement of any provision of this ordinance shall be defended by the department of law until the final termination of the proceedings.

10) **Expiration of Floodplain Construction Permit**

- a) A floodplain development permit, and all provisions contained therein, shall expire if the "start of construction" has not occurred within one hundred and eighty (180) calendar days from the date of its issuance.

**ARTICLE 5.                    PROVISIONS FOR FLOOD HAZARD REDUCTION**

**SECTION A.    GENERAL CONSTRUCTION STANDARDS**

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

- 1) All new construction and substantial improvements shall be adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- 2) Manufactured homes shall be anchored to prevent flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces.
- 3) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- 4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;
- 5) Electrical, heating, ventilation, plumbing, air condition equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding; and if
- 6) Within Zones AH or AO, so that there are adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.
- 7) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- 8) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- 9) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
- 10) Any alteration, repair, reconstruction, or improvements to a structure, which is not in compliance with the provisions of this ordinance shall meet the requirements of "new construction" as contained in this ordinance;
- 11) Any alteration, repair, reconstruction, or improvements to a structure, which is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not furthered, extended, or replaced.

**SECTION B.    SPECIFIC STANDARDS**

In all special flood hazard areas where base flood elevation data have been provided, as set forth in Article 3, Section B, the following provisions are required:

- 1) **Residential Construction.** New construction and substantial improvement of any residential structure (including manufactured home) shall have the lowest floor, including basement, mechanical equipment, and ductwork elevated no lower than two (2) feet above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate automatic equalization of hydrostatic flood forces on walls shall be provided in accordance with standards of Article 5, Section B (3).

- a) In an AO zone, the lowest floor shall be elevated above the highest adjacent grade to a height equal to or higher than the depth number specified in feet on the FIRM, or elevated at least two feet above the highest adjacent grade if no depth number is specified.
- b) In an A zone, where no technical data has been produced by the Federal Emergency Management Agency, the Floodplain Administrator will determine the method by which base flood elevations are determined. Methods include, but are not limited to, detailed hydrologic and hydraulic analyses, use of existing data available from other sources, approximate methods, use of historical data, best supportable and reasonable judgment in the event no data can be produced. The lowest floor shall be elevated no lower than two (2) feet above such base flood elevation. Title 401 KAR (Kentucky Administrative Regulations) Chapter 4, Regulation 060, Section 5(5)a, states as a part of the technical requirements for a State Floodplain Permit: The applicant shall provide cross sections for determining floodway boundaries (and thereby Base Flood Elevations) at any proposed construction site where FEMA maps are not available. All cross sections shall be referenced to mean sea level and shall have vertical error tolerances of no more than + five-tenths (0.5) foot. Cross sections elevations shall be taken at those points which represent significant breaks in slope and at points where hydraulic characteristics of the base floodplain change. Each cross section shall extend across the entire base floodplain and shall be in the number and at the locations specified by the cabinet. If necessary to ensure that significant flood damage will not occur, the cabinet may require additional cross sections or specific site elevations which extend beyond those needed for making routine regulatory floodway boundary calculations.
- c) In all other Zones, elevated two (2) feet above the base flood elevation.

Upon the completion of the structure, the elevation of the lowest floor (including basement) shall be certified by a registered professional engineer or surveyor, and verified by the community building inspection department to be properly elevated. Such certification and verification shall be provided to the Floodplain Administrator.

- 2) **Non-residential Construction.** New construction and substantial improvement of any commercial, industrial, or non-residential structure (including manufactured homes used for non-residential purposes) shall be elevated to conform with Article 5, Section B (1) or together with attendant utility and sanitary facilities:
  - a) Be flood proofed to an elevation one (1) foot above the level of the base flood elevation so that the structure is watertight with walls substantially impermeable to the passage of water;
  - b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy and debris;
  - c) A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification along with the design and operational maintenance plans shall be provided to the Floodplain Administrator.
  - d) Manufactured homes shall meet the standards in Article 5, Section B (4).
  - e) All new construction and substantial improvement with fully enclosed areas below the lowest floor (including basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be constructed of flood resistant materials to an elevation one (1) foot above the base flood elevation, and, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Openings for meeting this requirement must meet or exceed the standards of Article 5, Section B (3).

- 3) **Elevated Structures.** New construction and substantial improvements of elevated structures on columns, posts, or pilings that include fully enclosed areas formed by foundation and other exterior walls below the lowest floor shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.
- a) Openings for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
    - (i) Provide a minimum of two (2) openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
    - (ii) The bottom of all openings shall be no higher than one foot above foundation interior grade (which must be equal to in elevation or higher than the exterior foundation grade); and
    - (iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.
  - b) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door), or entry to the living area (stairway or elevator); and
  - c) The interior portion of such enclosed areas shall not be finished or partitioned into separate rooms.

4) **Standards for Manufactured Homes and Recreational Vehicles.**

- a) All new and substantially improved manufactured homes placed on sites located within A, A1-30, AO, AH, and AE on the community's Flood Insurance Rate Map (FIRM) must meet all the requirements for new construction, including elevation and anchoring. Locations include:
  - On individual lots or parcels,
  - In expansions to existing manufactured home parks or subdivisions,
  - In new manufactured home parks or subdivisions or
  - In substantially improved manufactured home parks or subdivisions,
  - Outside of a manufactured home park or subdivision, and
  - In an existing manufactured home park or subdivision on a site upon which a manufactured home has incurred "substantial damage" as the result of a flood,

All such manufactured homes must be:

- (i) Elevated on a permanent foundation, and
  - (ii) Have its lowest floor elevated no lower than two (2) feet above the level of the base flood elevation, and
  - (iii) Be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- b) Except manufactured homes that have incurred substantial damage as a result of a flood, all manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that:



- (i) The manufactured home is securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement, so that either the:
  - o The lowest floor of the manufactured home is elevated no lower than two (2) feet above the base flood elevation, or
  - o The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength, of no less than 36 inches in height above the highest adjacent grade.
- c) All recreational vehicles placed on sites located within A, A1-30, AO, AH, and AE on the community's Flood Insurance Rate Map (FIRM) must either:
  - (i) Be on the site for fewer than 180 consecutive days,
  - (ii) Be fully licensed and ready for highway use, or
  - (iii) Meet the permit requirements for new construction of this ordinance, including anchoring and elevation requirements for "manufactured homes".

A recreational vehicle is ready for highway use if it is licensed and insured in accordance with the State of Kentucky motor vehicle regulations, is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

- 5) **Floodways.** Located within areas of special flood hazard established in Article 3, Section B, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and has erosion potential, the following provisions shall apply:
  - a) Prohibit encroachments, including fill, new construction, substantial improvements, and other developments unless certification (with supporting technical data) by a registered professional engineer is provided demonstrating that encroachments shall not result in any increase in the base flood elevation levels during occurrence of base flood discharge;
  - b) If Article 5, Section B (5) is satisfied, all new construction and substantial improvements and other proposed new development shall comply with all applicable flood hazard reduction provisions of Article 5.
- 6) **Standards for Utilities**
  - a) All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate:
    - (i) Infiltration of flood waters into the systems, and
    - (ii) Discharge from the systems into flood waters.
  - b) On-site waste disposal systems shall be located to avoid impairment to them, or contamination from them during flood.

**SECTION C. STANDARDS FOR STREAMS WITHOUT ESTABLISHED BASE FLOOD ELEVATION AND/OR FLOODWAYS**

Located within the special flood hazard areas established in Article 3, Section B, where streams exist but where no base flood data has been provided or where base flood data has been provided without floodways, the following provisions apply:

- 1) No encroachments, including fill material or structures shall be located within special flood hazard areas, unless certification by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community. The engineering certification should be supported by technical data that conforms to standard hydraulic engineering principles.
- 2) New construction and substantial improvements of structures shall be elevated or flood proofed to elevations established in accordance with Article 3, Section B.

**SECTION D. STANDARDS FOR SHALLOW FLOODING ZONES**

Located within the special flood hazard areas established in Article 3, Section B, are areas designated as shallow flooding areas. These areas have flood hazards associated with base flood depths of one to three feet (1 – 3'), where a clearly defined channel does not exist and the water path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

- 1) All new construction and substantial improvements of residential structures shall:
  - a) Have the lowest floor, including basement, elevated to or above either the base flood elevation or in Zone AO the flood depth specified on the Flood Insurance Rate Map above the highest adjacent grade. In Zone AO, if no flood depth is specified, the lowest floor, including basement, shall be elevated no less than two (2) feet above the highest adjacent grade.
- 2) All new construction and substantial improvements of non-residential structures shall:
  - a) Have the lowest floor, including basement, elevated to or above either the base flood elevation or in Zone AO the flood depth specified on the Flood Insurance Rate Map, above the highest adjacent grade. In Zone AO, if no flood depth is specified, the lowest floor, including basement, shall be elevated no less than two (2) feet above the highest adjacent grade.
  - b) Together with attendant utility and sanitary facilities be completely flood proofed either to the base flood elevation or above or, in Zone AO, to or above the specified flood depth plus a minimum of one foot so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required as stated in Article 5, Section B (2).

**SECTION E. STANDARDS FOR SUBDIVISION PROPOSALS**

- 1) All subdivision proposals shall identify the flood hazard area and the elevation of the base flood and be consistent with the need to minimize flood damage;
- 2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- 3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and,

- 4) In areas where base flood elevation and floodway data is not available, base flood elevation and floodway data for subdivision proposals and other proposed development (including manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, shall be provided.
- 5) All subdivision plans will include the elevation of proposed structure(s) and lowest adjacent grade. If the site is filled above the base flood elevation, the lowest floor and lowest adjacent grade elevations shall be certified by a registered professional engineer or surveyor and provided to the Floodplain Administrator.

**SECTION F. STANDARDS FOR ACCESSORY STRUCTURES IN ALL ZONES BEGINNING WITH THE LETTER 'A'**

For all accessory structures in special flood hazard areas designated 'A' the following provisions shall apply:

- 1) Must be non-habitable;
- 2) Must be anchored to resist floatation and lateral movement;
- 3) Must be provided with flood openings in accordance with the standards of Article 5, Section B (3);
- 4) Must be built of flood resistant materials to one (1) foot above the base flood elevation;
- 5) Must elevate utilities one (1) foot above the base flood elevation;
- 6) Can only be used for storage or parking; and
- 7) Must not be modified for a different use after permitting.

**SECTION G. CRITICAL FACILITIES**

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the SFHA (100-year floodplain). Construction of new critical facilities shall not be permissible within the floodway; however, they may be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated one foot or more above the base flood elevation at the site. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

**ARTICLE 6. APPEALS AND VARIANCE PROCEDURES**

**1) Nature Of Variances**

The variance criteria set forth in this section of the ordinance are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this ordinance would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

It is the duty of the **Marion City Council** to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below flood level is so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this ordinance

are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

**2) Designation of Variance and Appeal Board**

- a) The City Council of the City of Marion, shall establish a Variance and Appeal Board consisting of the City of Marion Board of Adjustment.

**3) Duties of Variance and Appeals Board**

- a) The Variance and Appeal Board shall hear and decide requests for variances from the requirements of this ordinance and appeals of decisions or determinations made by the Floodplain Administrator in the enforcement or administration of this ordinance.
- b) Any person aggrieved by the decision of the Variance and Appeal Board may appeal such decision to the Circuit Court, as provided in Kentucky Revised Statutes.

**4) Variance Procedures**

In passing upon such applications, the Variance and Appeal Board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and the:

- a) Danger that materials may be swept onto other lands to the injury of others;
- b) Danger to life and property due to flooding or erosion damage;
- c) Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the existing individual owner and future owners of the property;
- d) Importance to the community of the services provided by the existing or proposed facility;
- e) Necessity that the facility be located on a waterfront, in the case of functionally dependent use;
- f) Availability of alternative locations, which are not subject to flooding or erosion damage;
- g) Compatibility of the proposed use with existing and anticipated development;
- h) Relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- i) Safety of access to the property in times of flood for ordinary and emergency vehicles;
- j) Expected height, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- k) Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, water systems, streets, and bridges and culverts.

**5) Conditions for Variances**

Upon consideration of the factors listed above and the purposes of this ordinance, the Variance and Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

- a) Variances shall not be issued within any mapped regulatory floodway if any increase in flood levels during the base flood discharge would result.
- b) Variances shall only be issued upon a determination that the variance is the "minimum necessary" to afford relief considering the flood hazard. "Minimum necessary" means to afford relief with a **minimum** of deviation from the requirements of this ordinance. For example, in the case of variances to an elevation requirement, this means the City Council need not grant permission for the applicant to build at grade, or even to whatever elevation the applicant proposes, but only to that elevation which the City Council believes will both provide relief and preserve the integrity of the local ordinance.
- c) Variances shall only be issued upon:
  - (i) A showing of good and sufficient cause;
  - (ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
  - (iii) A determination that the granting of a variance will not result in increased flood height, additional threats to public safety, cause extraordinary public expense, create nuisance (as defined in the definition section under "Public safety and nuisance"), cause fraud or victimization of the public (as defined in the definition section) or conflict with existing local laws or ordinances.
- d) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the lowest floor being situated below the base flood elevation.
- e) The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency (FEMA) upon request
- g) Variances may be issued for new construction, substantial improvement, and other proposed new development necessary for the conduct of a functionally dependent use provided that the provisions of Article 6 (4) are satisfied and that the structure or other development is protected by methods that minimize flood damages during the base flood and does not result in additional threats to public safety and does not create a public nuisance.

#### 6) **Variance Notification**

Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

- a) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage;
- b) Such construction below the base flood level increases risks to life and property. A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the City of Marion Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.
- c) The Floodplain Administrator shall maintain a record of all variance actions, including justification for their issuance or denial, and report such variances issued in the community's biennial report submission to the Federal Emergency Management Agency.

7) **Historic Structures**

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

**ARTICLE 7. SEVERABILITY**

This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

If any clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.

This ordinance was adopted at a public meeting of the City Council of the City of Marion on November 18, 2019.

First Reading \_\_\_\_\_  
Second Reading \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Marion City Council)

CERTIFIED BY \_\_\_\_\_

DATE \_\_\_\_\_

**CITY OF MARION, KENTUCKY  
ORDINANCE NO. 19-14**

**AN ORDINANCE OF THE CITY OF MARION, KENTUCKY, AMENDING  
ORDINANCE NO. 01-23 TO REZONE PROPERTY AT 873 SOUTH MAIN STREET  
FROM R-1 RESIDENTIAL TO C-3 HIGHWAY BUSINESS DISTRICT**

**NOW THEREFORE, BE IT ORDAINED** by the City Council of the City of Marion, Kentucky, that an Ordinance is hereby adopted and the City of Marion Code of Ordinances is amended as follows:

**SECTION 1. Amendment**

This ordinance amends Ordinance No. 01-23, such that the property at 873 South Main Street, Marion, Kentucky, be changed from R-1 Residential, to C-3 Highway Business District, pursuant to 151.40-10 of the City of Marion Zoning Regulations.

**SECTION 2. Repealer**

All Ordinances or parts of Ordinances in conflict with the provisions of this Ordinance are repealed to the extent of such conflict.

**SECTION 3. Severability Clause**

If any section, provision or part of this ordinance shall be adjudged invalid or unconstitutional such adjudication shall not affect the validity of the ordinance as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

**SECTION 4. Effective Date**

This Order shall be in full force and effect upon its adoption and publication.

COUNCIL MEMBERS	YES	NO
Donald Arflack	_____	_____
Phyllis Sykes	_____	_____
Darrin Tabor	_____	_____

Michael Byford

\_\_\_\_\_

Dwight Sherer

\_\_\_\_\_

D'Anna Browning

\_\_\_\_\_

It appearing that \_\_\_\_\_ Council Members voted for the adoption of this ordinance, and \_\_\_\_\_ voted against, with \_\_\_\_\_ abstaining, the Mayor declared the ordinance adopted.

INTRODUCED AND GIVEN FIRST READING: \_\_\_\_\_

GIVEN SECOND READING AND PASSED: \_\_\_\_\_

PUBLISHED IN THE CRITTENDEN PRESS: \_\_\_\_\_

\_\_\_\_\_  
JARED BYFORD, MAYOR

ATTEST: \_\_\_\_\_  
PAM ENOCH, CITY CLERK



**Marion Sidewalk Project 676-18-01**  
**Engineer's Opinion of Probable Project Costs**  
**(Updated Per Bid Analysis & Additional Funds Commitment)**  
**November 15, 2019**

Summary - Project Costs & Budget

<u>Item</u>	<u>Contractor Bid</u>	
	Original Budget	Add'l Funds Budget
Engineering - Design, Bidding, Construction Admin	\$45,000	
Construction Total	\$269,000	
<b>Total Project Cost</b>	<b>\$314,000</b>	
Funded Project Total	\$193,200	\$255,700
Grant Funds Available (80%)	\$183,200	\$233,200
Match Funds Required (20%)	\$10,000	\$22,500
Additional Funds Required to Complete Project (Above 20%)	\$120,800	\$58,300
<b>Total City Funds Required</b>	<b>\$130,800</b>	<b>\$80,800</b>
(Percentage of Project Cost)	41.7%	25.7%

**Marion Sidewalk Project 676-18-01**  
**Engineer's Opinion of Probable Project Costs**  
**(Updated Per Bid Analysis & Additional Funds Commitment)**  
**November 15, 2019**

**Summary - Construction Costs**

<b><u>Engineer's OPCC</u></b> (Modified per Bid Analysis)		<b><u>Break-out Specific Items</u></b>	
Demolition-Main Street	\$9,395	Electrical	\$75,000
Construction - Main Street	\$142,750	Traffic Control	\$6,000
<b>Main Street Subtotal</b>	<b>\$152,145</b>	Handrail	\$9,000
Demolition - Carlisle Street	\$6,095	<b>Subtotal</b>	<b>\$90,000</b>
Construction - Carlisle Street	\$84,350	Selected work items broken out based upon contractor pricing.	
<b>Carlisle Street Subtotal</b>	<b>\$90,445</b>		
<b>Construction Total</b>	<b>\$242,590</b>		

**Summary - Project Costs & Budget**

<b><u>Engineer's OPCC</u></b> (Original Funding Budget)		<b><u>Contractor Bid</u></b>	
		Original Budget	Add'l Funds Budget
Engineering - Design, Bidding, Construction Admin	\$45,000	\$45,000	
Construction Total	\$242,590	\$269,000	
<b>Total Project Cost</b>	<b>\$287,590</b>	<b>\$314,000</b>	
Funded Project Total	\$193,200	\$193,200	\$255,700
Grant Funds Available (80%)	\$183,200	\$183,200	\$233,200
Match Funds Required (20%)	\$10,000	\$10,000	\$22,500
Additional Funds Required to Complete Project (Above 20%)	\$94,390	\$120,800	\$58,300
<b>Total City Funds Required</b>	<b>\$104,390</b>	<b>\$130,800</b>	<b>\$80,800</b>
(Percentage of Project Cost)	36.3%	41.7%	25.7%