

Chapter 8

FLOOD DAMAGE PREVENTION\*

- Art. I. In General, §§ 8-1—8-35
- Art. II. Administration, §§ 8-36—8-60
- Art. III. Standards, §§ 8-61—8-64

ARTICLE I. IN GENERAL

Sec. 8-1. Statutory authorization.

The legislature of the state has in R.S. 38:84 delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses. Therefore, the mayor and selectmen hereby ordain the following in this chapter.  
(Ord. No. 746, Art. 1, § A, 2-2-87)

FLOOD PLAIN  
TOWNS

Sec. 8-2. Findings of fact.

(a) The flood hazard areas of the town are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety and general welfare.

(b) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities, and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed or otherwise protected from flood damage.  
(Ord. No. 746, Art. 1, § B, 2-2-87)

Sec. 8-3. Statement of purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed 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;

\*Cross references—Buildings and building regulations, Ch. 5; planning, Ch. 13; zoning, App. A; subdivision regulations, App. C.  
State law reference—Flood control and related matters, R.S. 38:81 et seq.

- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
  - (6) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas; and
  - (7) Ensure that potential buyers are notified that property is in a flood area.
- (Ord. No. 746, Art. 1, § C, 2-2-87)

#### Sec. 8-4. Definitions.

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

*Appeal* means a request for a review of the building inspector's interpretation of any provision of this chapter or a request for a variance.

*Area of shallow flooding* means a designated AO, AH, or VO Zone on a community's flood insurance rate map (FIRM) with a one-percent chance or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

*Area of special flood hazard* is the land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. The area may be designated as Zone A on the flood hazard boundary map (FHBM). After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zone A, AE, AH, AO, A1-99, VO, V1-30, VE or V.

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

*Critical feature* means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

*Development* means any manmade change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

*Elevated building* means a nonbasement building built, in the case of a building in Zones A1-30, AE, A, A99, AO, AH, B, C, X, and D, to have the top of the elevated floor, or in the case of a building in Zone V1-30, VE, or V, to have the bottom of the lowest horizontal structure member of the elevated floor elevated above the ground level by means of pilings, columns (posts and piers), or shear walls parallel to the floor of the water and adequately anchored so as not to impair the structural integrity of the building during a flood of up to the magnitude of the base flood. In the case of Zones A1-30, AE, A, A99, AO, AH, B, C, X, D, "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls

with openings sufficient to facilitate the unimpeded movement of floodwaters. In the case of Zone V1-30, VE, or V, "elevated building" also includes a building otherwise meeting the definition of "elevated building," even though the lower area is enclosed by means of break-away walls if the breakaway walls meet the standards of section 60.3(e)(5) of the national flood insurance program regulations.

*Existing construction* means for the purposes of determining rates, structures 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."

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

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

*Flood insurance rate map (FIRM)* means an official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

*Flood insurance study* is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, water surface elevation of the base flood, as well as the flood boundary-floodway map.

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

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

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

*Habitable floor* means any floor usable for the following purposes; which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used for storage purposes only is not a "habitable floor."

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

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

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

*Lowest floor* means the lowest floor of the lowest enclosed area including basement. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirement of section 60.3 of the national flood insurance program regulations.

*Manufactured home* means a structure transportable in one (1) or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

*Mean sea level* means, for purposes of the national flood insurance program, the national geodetic vertical datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

*New construction* means, for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community.

*Start of construction* for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Pub. L. 97-348), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

*Structure* means a walled and roofed building, including a gas or liquid storage tank, that is principally aboveground, as well as a manufactured home.

*Substantial improvement* means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either, before the improvement or repair is started, or if the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

*Variance* is a grant of relief to a person from the requirements of this chapter when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this chapter. For full requirements see section 60.6 of the national flood insurance program regulations.

*Violation* means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) of the national flood insurance program regulations is presumed to be in violation until such time as that documentation is provided.

*Water surface elevation* means the height, in relation to the national geodetic vertical datum (NGVD) of 1929, or other datum, where specified, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

(Ord. No. 746, Art. 2, 2-2-87)

**Cross reference**—Definitions and rules of construction generally, § 1-2.

#### **Sec. 8-5. Methods of reducing flood losses.**

In order to accomplish its purposes, this chapter uses the following methods:

- (1) Restrict or prohibit uses that are dangerous to health, safety or property in times of flood, or cause excessive increases in flood heights or velocities;
- (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 are involved in the accommodation of floodwaters;
- (4) Control filling, grading, dredging and other development which may increase flood damage;

- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(Ord. No. 746, Art. 1, § D, 2-2-87)

**Sec. 8-6. Lands to which this chapter applies.**

This chapter shall apply to all areas of special flood hazard within the jurisdiction of the town.

(Ord. No. 746, Art. 3, § A, 2-2-87)

**Sec. 8-7. Basis for establishing the areas of special flood hazard.**

The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, The Flood Insurance Study for the Town of Homer, Louisiana, dated September 3, 1980, with accompanying flood insurance rate maps and flood boundary-floodway maps (FIRM and FBFM) and any revisions thereto are hereby adopted by reference and declared to be a part of this chapter.

(Ord. No. 746, Art. 3, § B, 2-2-87)

**Sec. 8-8. Compliance.**

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this chapter and other applicable regulations.

(Ord. No. 746, Art. 3, § D, 2-2-87)

**Sec. 8-9. Abrogation and greater restrictions.**

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

(Ord. No. 746, Art. 3, § E, 2-2-87)

**Sec. 8-10. Interpretation.**

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

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

(Ord. No. 746, Art. 3, § F, 2-2-87)

**Sec. 8-11. Warning and disclaimer of liability.**

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses

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# Louisiana Municipal Association Technical Assistance Bulletin

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## ENACTING MUNICIPAL ORDINANCES

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As provided by LRS 33:406(A)(1), any law enacted by a board of aldermen shall be in the form of an ordinance. This applies to all municipalities which operate under the Lawrason Act (LRS 33:321 et seq). Ordinances have the force and effect of law. They may be styled in similar form and wording to already enacted state laws, but cannot be more restrictive than current state law. Ordinances may cover almost any subject matter, but care must be taken that no individual's constitutional rights, either state or federal, are violated. Resolutions are different from ordinances in that they have no effect of law, but merely state an opinion of the board of aldermen.

Ordinances serve a variety of functions. They may be used to set out the procedures for the operation of the municipality, such as personnel policies, hours of operation, benefits, and salaries. Ordinances can also be used to enact rules and regulations, such as criminal statutes, zoning laws and other related purposes. The existence of ordinances also enables a municipality to collect funds for the treasury. These can be in the form of taxes, user fees, and even fines for criminal violations. For example, in order for a municipality to collect fines for traffic violations, an ordinance must be in place which would give the police officer statutory authority to cite a violator for a local violation. If no ordinance for a particular offense is enacted, then the citation must be written as a violation of state law and any fines paid would be placed in the state treasury, not the local treasury.

LSA R.S. 33:406(D)(1) charges the municipal clerk with the task of keeping the ordinance book. The book shall be entitled "Ordinances, City (or Town, or Village) of ....." In this book the clerk shall file the original of every ordinance which has been adopted by the board immediately after its passage and attach a note to the ordinance stating the date of its enactment and a reference to the book and page of the board's minutes containing the record of its adoption.

The Lawrason Act requires that certain actions taken by the municipality must be in the form of ordinances. LRS 33:404.1 requires that the board of aldermen **shall by ordinance** fix the compensation of the mayor, aldermen, clerk, chief of police, and all other municipal officers. The increase or decrease of the compensation of any non-elected municipal officer or elected official **must also be enacted by an ordinance**. This may be done by merely amending the

existing ordinance. LRS 33:404(5) assigns the mayor the duty of preparing and submitting an annual operations budget and capital improvements budget for the municipality to the board of aldermen. Any act of the board which would provide for the appropriation of funds, the incurrence of debt, or the issuance of bonds or other evidences of indebtedness **shall be by ordinance** (LRS 33:406(3)).

## **ORDINANCE VERSUS RESOLUTION**

As stated above, an ordinance has the effect and force of law. A resolution merely states the opinion or intentions of the board. Therefore, any act of the board which is not law shall be made by a resolution. A resolution shall be approved by an affirmative vote of a majority of the members present at a meeting. No resolution shall require the signature or other action of the mayor to become effective. In most cases, a mayor does not have veto power over resolutions adopted by the board. An exception is found in LRS 33:406(A)(3) which provides that the board may by resolution adopted by a majority of the members of the board require the expenditure of funds previously appropriated. This type of resolution must then be presented to the mayor **within three (3) days** after its adoption for his approval or disapproval following the procedures outlined below. The mayor may not veto a motion under any circumstances.

## **STEPS TO ENACT AN ORDINANCE**

LRS 33:406(B)(1) reads that a proposed ordinance may be introduced by any alderman at any board meeting. Each proposed ordinance shall:

1. Be in writing,
2. Shall contain only one subject which shall be indicated in its title (except for ordinances involving the annual operating budget, capital improvement budget, or a codification of municipal ordinances).

After a proposed ordinance has been introduced, copies of it shall be provided to all members of the board and the mayor (LRS 33:406(B)(2)). The **title** of the proposed ordinance, (except ordinances enacted in cases of extreme emergency - LRS 33:405(D)) shall be published **once** in the municipality's official journal. The notice shall contain the time and place where the board will consider its adoption. No ordinance, except those enacted under LRS 33:405(D), shall be adopted until a public hearing is held. The notice should also contain the time and place of the public hearing.

It is important to emphasize that no ordinance, except one authorized by LRS 33:405(D), can be adopted at the meeting at which it is introduced.

After the public hearing is held and public comments heard, the proposed ordinance is now ready for consideration by the board. A proposed ordinance can be amended before final consideration (LRS 33:406(B)(3)). To amend an ordinance, each proposed amendment shall be presented in writing or reduced to writing before a final vote is taken on the ordinance. An amendment shall not nullify the purpose of the proposed ordinance nor, except for those



iving budget and money matters, add a new subject to it.

After a vote is taken on any proposed amendments, the board may vote for final passage. A proposed ordinance shall be read by the title when called for final passage. The vote on an ordinance at final passage shall be taken by "yeas" and "nays". The municipal clerk shall enter the names of the aldermen voting for and against each proposed ordinance or amendment in the municipal minutes (LRS 33:406(B)(4)).

LRS 33:406(C)(1) requires that every ordinance adopted by the board shall be signed by the municipal clerk and presented by the clerk to the mayor **within three days** after its adoption.

#### **MAYORAL OPTIONS: APPROVAL, VETO OR NON-ACTION (LRS 33:406(C)(2))**

1. The mayor, within ten days of receipt of an ordinance, shall return it to the clerk **with or without his approval or with his disapproval**.
2. If the ordinance is approved by the mayor or returned with neither his approval nor disapproval, the **ordinance becomes law** upon return to the clerk.
3. If the mayor **fails or refuses** to return an ordinance to the clerk within **ten days** of receipt of the ordinance, it shall **become law at midnight of the tenth day after the receipt of the ordinance by the mayor**.
4. If the mayor disapproves the ordinance, he shall, within **ten days** after receipt of the ordinance, **return the ordinance along with his written statement of reasons for his veto** to the municipal clerk for transmittal to the board of aldermen.

#### **BOARD OF ALDERMEN VETO OVERRIDE AUTHORITY**

LRS 33:406(C)(3) allows the board of aldermen to reconsider an ordinance which has been vetoed by the mayor. An ordinance which has been vetoed shall be considered again by the board of alderman at its **next regular meeting after the veto**. The board may vote on the ordinance at that meeting or at a continuance of that meeting. In order to override a mayoral veto, the following rules apply:

1. If a board consists of **three (3)** members, an affirmative vote by **all** board members **shall be required** to override a veto.
2. If a board consists of **more than three (3)** members, an affirmative vote of **two-thirds** of the board's members shall be required to override a veto.

The two-thirds vote of the board must comprise the entire board, not two-thirds of the members present at the particular meeting. If a board overrides an ordinance vetoed by the mayor, the ordinance becomes law upon its enactment by the board.

#### **POST - ADOPTION ACTION**

Additional steps are required to be taken to ensure the proper enactment of a municipal

ordinance. After adoption, the clerk shall publish each ordinance adopted by the board **once** in the municipality's official journal **within twenty days of its adoption and prior to its effective date**, except as otherwise provided in LRS 33:405(D) and (LRS 33:406(D)(2)). Unless an ordinance specifies an earlier or later effective date, it shall take effect on the **thirtieth day after the meeting in which the ordinance was adopted** (LRS 33:406(E)).

## **SUSPENSION OF AN ORDINANCE**

Only the board may suspend an ordinance, and then only by the same vote and, except for mayoral veto, according to the same procedures and formalities required for enactment of that ordinance. After January 1, 1986, every resolution suspending an ordinance shall fix the period of suspension, which shall not exceed beyond **one year and thirty days** after the date of the meeting in which the ordinance was suspended.

## **EMERGENCY ORDINANCES - LRS 33:405(D)(1) & (2)**

In cases of extraordinary emergencies, such as a natural disaster, civil disturbances, or other reasons as defined in LRS 42:6.1(5), the mayor or any alderman may call an emergency meeting of the board of aldermen. The members of the board and the mayor shall be notified of the meeting in the most practicable manner available, and the purpose of the meeting may be stated in general terms. Notice of the meeting shall be given through the process outlined in LRS 42:7.

The board may adopt an ordinance in any emergency meeting that it has not previously considered. The ordinance shall:

1. Specify the nature of the emergency; and
2. A two-thirds vote of the members of the board shall be required for its adoption.

No emergency ordinance can continue in force for more than sixty days and any emergency ordinance that specifies a longer duration or no duration shall become void sixty days after it becomes effective.

It is imperative that all the requirements involved in enacting an ordinance as outlined in LRS 33:406 be followed. Failure to follow these procedures could cause the ordinance to be challenged and ruled null and void by a court of law. However, any ordinance which is enacted is considered effective unless it is challenged and a court rules otherwise.

If you feel that your municipality has an ordinance which may have been enacted without following these procedures, please consult with you municipal attorney. Should you have any questions, please feel free to contact me by phone at (225) 344-5001 or toll free at (800)234-8274. You may contact me in writing at the Louisiana Municipal Association, Post Office Box 4327, Baton Rouge, Louisiana 70821-4327.

§ 406. Enactment, recording, and publication of ordinances and resolutions

*Resolutions do not have to be published*

A. (1) Any law enacted by a board of aldermen shall be by ordinance. The style of all ordinances shall be: "Be it ordained by the board of aldermen of the City (or Town or Village, as the case may be) of ....." No ordinance shall be adopted except by the affirmative vote of a majority of the members of the board.

*Adopt Budget ordinance amended to Resolution*

(2) Any act of the board which is not law shall be by resolution. A resolution shall be approved by an affirmative vote of a majority of the members of the board present at a meeting. No resolution shall require the signature or other action of the mayor to become effective.

(3) Any act of the board which would provide for the appropriation of funds, the incurrence of debt, or the issuance of bonds or other evidences of indebtedness shall be by ordinance. Notwithstanding the provisions of Paragraph (2) of this Subsection, the board may by resolution adopted by the affirmative vote of a majority of the members of the board require the expenditure of funds previously appropriated. Such resolution shall be presented to the mayor within three days after its adoption for his approval or disapproval in accordance with and subject to Subsection C of this Section.

*New accounts be opened at bank by resolution for grants*

B. (1) A proposed ordinance may be introduced by any alderman at any board meeting. Each proposed ordinance shall be in writing. An ordinance shall contain only one subject which shall be indicated in its title except for ordinances involving the annual operating budget, a capital improvements budget, or a codification of municipal ordinances.

*publish the title of the ordinance not the whole ordinance*

(2) After a proposed ordinance has been introduced, copies of it shall be provided to all members of the board and the mayor. The title of a proposed ordinance, except those specifically authorized by R.S. 33:405(D), shall be published once in the municipality's official journal. The notice shall indicate the time and place where the board will consider its adoption. No ordinance, except one authorized by R.S. 33:405(D), shall be adopted until a public hearing on it has been held. No ordinance, except one authorized by R.S. 33:405(D), can be adopted at the meeting at which it is introduced.

*publish it 3 times have public hearing*

(3) Each proposed amendment to an ordinance shall be presented in writing or reduced to writing before its final consideration. An amendment to a proposed ordinance shall not nullify the purpose of the proposed ordinance nor, except for ordinances involving the annual operating budget, a capital improvements budget, or a codification of municipal ordinances, add a new subject matter to it.

*Mayor cannot veto resolution only ordinance*

(4) A proposed ordinance shall be read by the title when called for final passage. The vote on an ordinance at final passage shall be taken by "yeas" and "nays", and the municipal clerk shall enter the names of the aldermen voting for and against each proposed ordinance or amendment on the municipal minutes.

C. (1) Every ordinance adopted by the board of aldermen shall be signed by the municipal clerk and presented by the municipal clerk to the mayor within three days after its adoption.

(2) The mayor, within ten days of receipt of an ordinance, shall return it to the municipal clerk with or without his approval, or with his disapproval. If the ordinance is approved by the mayor or is returned by the mayor with neither his approval nor disapproval, the ordinance shall become law upon its return to the municipal clerk. If the mayor fails or refuses to return an ordinance to the municipal clerk within ten days of receipt of an ordinance, it shall become law at midnight of the tenth day after the receipt of the ordinance

permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

(Ord. No. 746, Art. 3, § G, 2-2-87)

**Secs. 8-12—8-35. Reserved.**

## ARTICLE II. ADMINISTRATION\*

### **Sec. 8-36. Designation of building inspector as floodplain administrator.**

The building inspector is hereby appointed the floodplain administrator to administer and implement the provisions of this chapter and other appropriate sections of 44 C.F.R. (national flood insurance program regulations) pertaining to floodplain management.

(Ord. No. 746, Art. 4, § A, 2-2-87)

### **Sec. 8-37. Duties and responsibilities of the building inspector.**

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

- (1) Maintain and hold open for public inspection all records pertaining to the provisions of this chapter;
- (2) Review permit application to determine whether proposed building site will be reasonably safe from flooding;
- (3) Review, approve or deny all applications for development permits required by adoption of this chapter;
- (4) Review permits for proposed development to ensure that all necessary permits have been obtained from those federal, state or local governmental agencies (including section 404 of the Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. 1334) from which prior approval is required;
- (5) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the building inspector shall make the necessary interpretation;
- (6) Notify, in riverine situations, adjacent communities and the state department of urban and community affairs prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;

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\*Cross reference—Administration generally, Ch. 2.

- (7) Ensure that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained;
- (8) When base flood elevation data has not been provided in accordance with section 8-7 the building inspector shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, in order to administer the provisions of article III of this chapter;
- (9) When a regulatory floodway has not been designated, the building inspector must require that no new construction, substantial improvements, or other development, including fill, shall be permitted within Zones A1-30 and AE on the town's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the town.

(Ord. No. 746, Art. 4, § B, 2-2-87)

**Sec. 8-38. Development permit.**

(a) *Required.* A development permit shall be required to ensure conformance with the provisions of this chapter.

(b) *Application.* Application for a development permit shall be presented to the building inspector on forms furnished by him and may include, but not be limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, and the location of the foregoing in relation to areas of special flood hazard. Additionally, the following information is required:

- (1) Elevation, in relation to mean sea level, of the lowest floor, including basement, of all new and substantially improved structures;
- (2) Elevation, in relation to mean sea level to which any nonresidential structure shall be floodproofed;
- (3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure shall meet the floodproofing criteria of section 8-62(2);
- (4) Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development;
- (5) Maintain a record of all such information in accordance with section 8-37(1).

(c) *Approval, denial.* Approval or denial of a development permit by the building inspector shall be based on all of the provisions of this chapter and the following relevant factors:

- (1) The danger to life and property due to flooding or erosion damage;
- (2) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

- (3) The danger that materials may be swept onto other lands to the injury of others;
  - (4) The compatibility of the proposed use with existing and anticipated development;
  - (5) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (6) The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
  - (7) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
  - (8) The necessity to the facility of a waterfront location, where applicable;
  - (9) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
  - (10) The relationship of the proposed use to the comprehensive plan for that area.
- (Ord. No. 746, Art. 3, § C, Art. 4, § C, 2-2-87)

**Sec. 8-39. Variance procedures.**

(a) The appeal board composed of the mayor and board of selectmen shall hear and render judgment on requests for variances from the requirements of this chapter.

(b) The mayor and board of selectmen shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the building inspector in the enforcement or administration of this chapter.

(c) Any person aggrieved by the decision of the mayor and board of selectmen may appeal such decision in the courts of competent jurisdiction.

(d) The building inspector shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.

(e) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the state inventory of historic places, without regard to the procedures set forth in the remainder of this chapter.

(f) Variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in section 8-38(c) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(g) Upon consideration of the factors noted above and the intent of this chapter, the mayor and board of selectmen may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this chapter.

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

(i) Prerequisites for granting variances are as follows:

- (1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
- (2) Variances shall only be issued upon:
  - a. Showing a good and sufficient cause;
  - b. Determination that failure to grant the variance would result in exceptional hardship to the applicant; and
  - c. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (3) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(j) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria outlined in subsections (a) through (i) of this section are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(Ord. No. 746, Art. 4, § D, 2-2-87)

**Secs. 8-40—8-60. Reserved.**

### ARTICLE III. STANDARDS

#### Sec. 8-61. General standards.

In all areas of special flood hazards the following provisions are required for all new construction and substantial improvements:

- (1) All new construction or substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;

- (3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
  - (4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
  - (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
  - (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharge from the systems into floodwaters; and,
  - (7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (Ord. No. 746, Art. 5, § A, 2-2-87)

**Sec. 8-62. Specific standards.**

In all areas of special flood hazards where base flood elevation data has been provided as set forth in section 8-7, 8-37(8) or 8-63(c), the following provisions are required:

- (1) *Residential construction.* New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the building inspector that the standard of this subsection as proposed in section 8-38(b)(1) is satisfied.
- (2) *Nonresidential construction.* New construction and substantial improvements of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to or above the base flood level or, together with attendant utility and sanitary facilities, be designed so that below the base flood level the structure 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. A registered professional engineer or architect shall develop or review structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification which includes the specific elevation in relation to mean sea level to which such structures are floodproofed, shall be maintained by the building inspector.
- (3) *Enclosures.* New construction and substantial improvements, with fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a



registered professional engineer or architect or meet or exceed the following minimum criteria:

- a. A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided;
  - b. The bottom of all openings shall be no higher than one (1) foot above grade;
  - c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (4) *Manufactured homes.* Standards for manufactured homes shall be as follows:
- a. All manufactured homes to be placed within Zone A, shall be installed using methods and practices which minimize flood damage. For the purpose of this requirement, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.
  - b. All manufactured homes shall be in compliance with subsection (1) of this section.
  - c. All manufactured homes to be placed or substantially improved within Zones A1-30, AH and AE on town's FIRM shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation; and be securely anchored to an adequately anchored foundation system in accordance with the provision of this subsection.

(Ord. No. 746, Art. 5, § B, 2-2-87)

**Sec. 8-63. Standards for subdivision proposals.**

(a) All subdivision proposals including manufactured home parks and subdivisions shall be consistent with sections 8-2, 8-3 and 8-5.

(b) All proposals for the development of subdivisions including manufactured home parks and subdivisions shall meet development permit requirements of section 8-38 and the provisions of article III of this chapter.

(c) Base flood elevation data shall be generated for subdivision proposals and other proposed development including manufactured home parks and subdivisions which is greater than fifty (50) lots or five (5) acres, whichever is lesser, if not otherwise provided pursuant to section 8-7 or 8-37(8).

(d) All subdivision proposals including manufactured home parks and subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.

(e) All subdivision proposals including manufactured home parks and subdivisions shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.

(Ord. No. 746, Art. 5, § C, 2-2-87)

**Cross reference—**Subdivision regulations, App. C.

**Sec. 8-64. Standards for areas of shallow flooding (AO/AH Zones).**

Located within the areas of special flood hazard established in section 8-7 are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following provisions apply:

- (1) All new construction and substantial improvements of residential structures have the lowest floor including basement elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified);
- (2) All new construction and substantial improvements of nonresidential structures:
  - a. Have the lowest floor including basement elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM (at least two (2) feet if no depth number is specified), or;
  - b. Together with attendant utility and sanitary facilities be designed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.
- (3) A registered professional engineer or architect shall submit a certification to the building inspector that the standards of this section, as proposed in section 8-38(b)(1), are satisfied;
- (4) Require within Zone AH or AO adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

(Ord. No. 746, Art. 5, § D, 2-2-87)