

**BELFAST CITY COUNCIL
SECOND READING & PUBLIC HEARING - AUGUST 4, 2015
ADOPTED AMENDMENTS to CITY CODE of ORDINANCES
CHAPTER 78, FLOODS**

NOTE TO THE PUBLIC # 1:

All language in black font is language identified in the amended Ordinance that was adopted by the City Council at its meeting of June 16, 2015. All language in **red and bold font** is language proposed to be added to the Ordinance. All language in ~~bolded blue strike-through font~~ is language proposed to be deleted from this Ordinance.

NOTE TO THE PUBLIC # 2: The City Council adopted these amendments at its meeting of August 4, 2015. The amendments are largely minor technical revisions requested by the State of Maine Department of Community and Economic Development to the Ordinance amendments that the City adopted to Chapter 78, Floods, at its meeting of June 16, 2015.

TEXT OF ADOPTED AMENDMENTS

ARTICLE II. FLOOD HAZARD REDUCTION*

***State law references:** Floodplain management, 30-A M.R.S.A. §§ 3001--3007, 4352, 4401--4497; ordinances generally; 38 M.R.S.A. § 440

DIVISION 1. GENERALLY

Sec. 78-31. Purpose of article.

The City is aware that certain areas of Belfast are subject to periodic flooding, and that such flooding may cause damage to properties in these areas. The City also is aware that relief to such flooding is available in the form of flood insurance as authorized by the National Flood Insurance Act of 1968.

The city has chosen to become a participating community in the National Flood Insurance program and agrees to comply with the requirements of the National Flood Insurance Act of 1968 (PL 90-488, as amended) as delineated in this article.

Further, it is the intent of the City to require the recognition and evaluation of flood hazards in all official actions relating to land use in floodplain areas having special flood hazards. The City also has the legal authority to adopt land use and regulatory control measures to reduce future flood losses pursuant to Title 30-A MRSA, Sections 3001-3007, 4352, 4401-4407, and Title 38 MRSA, Section 440.

The National Flood Insurance Program, established in the aforesaid act, provides that areas of the city having a special flood hazard be identified by the Federal Emergency Management Agency and that floodplain management measures be applied in such flood hazard areas. This article establishes a flood hazard

development permit system and review procedure for development activities in the designated flood hazard areas of the city.

(Ord. of 4-17-1990, art. I)

Sec. 78-32. Basis for establishing areas of special flood hazard.

The areas of special flood hazard, Zones A, AE, and VE for the City, identified by the Federal Emergency Management Agency in a report entitled "Flood Insurance Study, - Waldo County," dated July 6, 2015 with accompanying "Flood Insurance Rate Map" (FIRM) dated July 6, 2015 with panels: 430E, 433E, 434E, 435E, 440E, 442E, 445E, 455E, 461E, 462E, 463E, 464E, and 610E derived from the county wide digital Flood Insurance Rate Map entitled "Digital Flood Insurance Rate Map, Waldo County, are hereby adopted by reference and declared to be a part of this article.

(Ord. of 4-17-1990, art. I)

Sec. 78-33. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Unless specifically defined in this section, words and phrases used in this article shall have the same meaning as they have at common law and to give this article it's most reasonable application. Also see definitions for all Ordinances at Chapter 66 and Shoreland Zoning definitions at Chapter 82. Definitions for Accessory Structure, Basement, Code Enforcement Officer, and Riverine are in Chapter 66.

Adjacent grade means the natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

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

Area of special flood hazard means the land in the floodplain having a one percent or greater chance of flooding in any given year, as specifically identified in the flood insurance study cited in section 78-32.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year, commonly called the 100-year flood.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation system.

Building. See *Structure*

Certificate of compliance means a document signed by the code enforcement officer stating that a structure is in compliance with all of the provisions of this article.

Coastal AE Zone means the portion of the Coastal High Hazard Area with wave heights between 1.5 feet and 3.0 feet and bounded by a line labeled the "Limit of Moderate Wave Action (LiMWA) on a Flood Insurance Rate Map (FIRM). VE Zone floodplain construction standards are applied to development, new construction and substantial improvements in the Coastal AE Zone.

Coastal high-hazard area means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high-velocity wave action from storms or seismic sources Coastal High Hazard Areas are designated as Zone VE and Zone AE bounded by a line labeled "Limit of Moderate Wave Action (LiMWA)" on a Flood Insurance Rate Map (FIRM).

Conditional Use means a use, because of its potential impact on surrounding areas and structures, is permitted only upon review and approval by the Planning Board pursuant to Sec 78-94.

Development means any man-made change caused by individuals or entities to improved or unimproved real estate, including but not limited to the construction of buildings or other structures; the construction of additions or substantial improvements to buildings or other structures; mining, dredging, filling, grading, paving, excavation, or drilling operations; and the storage, deposition, or extraction of materials, public or private sewage disposal systems or water supply facilities.

Elevated building means a non-basement building

- (i) built, in the case of a building in Zones AE or A, to have the top of the elevated floor, or, in the case of a building in Zone VE or Coastal AE zone, to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of pilings, columns, post, piers, or stilts; and
- (ii) adequately anchored so as not to impair the structural integrity of the building during a flood of up to one foot above the magnitude of the base flood.

In the case of Zone AE or A, the term "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with hydraulic openings sufficient to facilitate the unimpeded movement of floodwater. In the case of Zone VE and Coastal AE Zone, the term "elevated building" also includes a building otherwise meeting the definition of "elevated building," even though the lower area is enclosed by means of breakaway walls, if the breakaway walls meet the standards of section 78-92(b)(32)c.

Elevation certificate means an official form (FEMA Form 81-31, [February 2006](#), as amended) that is used to verify compliance with the floodplain management regulations of the National Flood Insurance Program, and is required as a condition for purchasing flood insurance.

Flood and flooding mean:

- (1) 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 water from any source.
- (2) 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 as defined in subsection (1)a of this definition.

Flood elevation study means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood Insurance Rate Map (FIRM) means an official map of a community on which the administrator of the Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood insurance study. See *Flood elevation study.*

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

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

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as a floodplain ordinance, grading ordinance, or erosion control ordinance) and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

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

Floodway. See *Regulatory floodway*.

Floodway encroachment lines means the lines marking the limits of floodways on federal, state, and local floodplain maps.

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

Functionally dependent use, as used in this chapter, 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.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the 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 of the Interior 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

Limit of Moderate Wave Action (LiMWA) means the landward limit of the 1.5 foot breaking wave within a Coastal AE Zone. These areas are bounded by a line labeled "Limit of Moderate Wave Action" (LiMWA) on a Flood Insurance Rate Map (FIRM). The LiMWA line delineates that portion of the Special Flood Hazard Area (SFHA) landward of a VE zone in which the principal sources of flooding are astronomical high tides,

storm surges, or tsunamis, not riverine sources. These areas may be subject to wave effects, velocity flows, erosion, scour, or combinations of these forces. The floodplain development and construction standards for VE Zones will be applied in the Coastal AE Zone.

Locally established datum means an elevation established for a specific site to which all other elevations at the site are referenced. This elevation is generally not referenced to the National Geodetic Vertical Datum (NGVD) or any other established datum and is used in areas where mean sea level data is too far from a specific site to be practically used.

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 non-elevation design requirements of Division 3 Section 78-91.

Manufactured home means a structure, transportable in one 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 longer than 180 consecutive days.

Manufactured Home Park or subdivision means a parcel, or contiguous parcels, of land divided into two or more manufactured home lots for rent or sale.

Mean sea level means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum of 1929 or other datum to which base flood elevations shown on a community's flood insurance rate map are referenced.

Minor Development, as used in this chapter, means all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. It also includes, but is not limited to accessory structures as provided for in Sec. 78-89.6, mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage disposal systems or water supply facilities that do not require structures; and non-structural projects such as bridges, dams towers, fencing, pipelines, wharves, and piers.

National Geodetic Vertical Datum (NGVD) means the national vertical datum, whose standard was established in 1929, which is used by the National Flood Insurance Program (NFIP). NGVD was based upon the mean sea level in 1929 and is as been called the "1929 Mean Sea Level (MSL)".

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

North American Vertical Datum (NAVD) means the national datum whose standard was established in 1988, which is the new vertical datum used by the National Flood Insurance Program (NFIP) for all new Flood Insurance Rate Maps. NAVD is based upon vertical datum used by other North American countries such as Canada and Mexico and was established to replace NGVD because of constant movement of the earth's crust, glacial rebound, and subsidence and the increasing use of satellite technology.

100-year flood. See *Base flood*

Recreational Vehicle (RV), as used in this chapter, means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection, not including slideouts; (c) designed to be self-propelled or permanently towable by a motor vehicle; and (d) designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway.

- (1) Regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.
- (2) In Zone A the regulatory floodway is considered to be the channel of a river or other watercourse and the adjacent land areas to a distance of one-half the width of the floodplain, as measured from the normal high-water mark to the upland limit of the floodplain.

Start of construction means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, substantial improvement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slabs 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 basements, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling or floor, or other structural part of the building, or modification of any construction element, whether or not that alteration affects the external dimensions of the building.

Structure means, for floodplain management purposes, a walled and roofed building. A gas or liquid storage tank that is principally above ground is also a structure.

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

Substantial improvement means any repair, reconstruction, **rehabilitation, addition** or improvement of a structure, the value of which equals or exceeds 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. In determining whether a development project constitutes a substantial improvement, the total cost (value) of all reconstructions, repairs, rehabilitations, additions, or other improvements that have accrued over a five year period, prior to the time of the current application shall be considered. For purposes of this definition, substantial improvement is considered to occur at the time the first alteration of any wall, ceiling, floor, or structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include either:

- (1) 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 ensure safe living conditions; or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Variance (as it applies to the flood plain) for purposes of the flood plain ordinance chaptered 78, Art. II, a variance means a grant of relief by the Zoning Board of Appeals:

- (1) From the terms of a floodplain management regulation; or
- (2) From any dimensional requirement of the floodplain ordinance, in accordance with 30-A MRSA § 4353(4).

Violation means the failure of a structure or other development to fully comply with a community's floodplain management regulations or ordinance.

(Ord.. of 4-17-1990, art. XIII)

Cross references: Definitions generally, Chapter 66§ 1-2.

Sec. 78-34. Violations; enforcement; penalties.

- (a) *Responsibility for enforcement.* It shall be the duty of the code enforcement officer to enforce the provisions of this article pursuant to 30-A M.R.S.A. §§ 4452.
- (b) *Penalties.* The penalties contained in 30-A M.R.S.A. §§ 4452 shall apply to any violation of this article.
- (c) *Declaration requesting denial of flood insurance.* In addition to any other actions, the code enforcement officer, upon determination that a violation exists, shall submit a declaration to the administrator of the Federal Emergency Management Agency requesting a denial of flood insurance. The valid declaration shall consist of:
 - (1) The name of the property owner and address or legal description of the property sufficient to confirm its identity or location (map and lot number);
 - (2) A clear and unequivocal declaration that the property is in violation of a cited state or local law, regulation, or ordinance;
 - (3) A clear statement that the public body making the declaration has authority to do so and a citation to that authority;
 - (4) Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance; and
 - (5) A clear statement that the declaration is being submitted pursuant to section 1316 of the National Flood Insurance Act of 1968, as amended.

(Ord. of 4-17-1990, art.X)

Sec. 78-35. Repeal of previous ordinances.

This article repeals and replaces any municipal ordinance previously enacted to comply with the National Flood Insurance Act of 1968 (PL 90-488, as amended).

(Ord. of 4-17-1990, art. XIV)

Sec. 78-36. Certificate of compliance.

No land in a special flood hazard area shall be occupied or used and no structure which is constructed or substantially improved shall be occupied until a certificate of compliance is issued by the code enforcement officer, subject to the following provisions:

- (1) For New Construction or Substantial Improvement of any elevated structure, the applicant shall submit an elevation certificate completed by:
 - a. a professional land surveyor, registered professional engineer or architect for compliance with section 78-87, 78-88, 78-89, or 78-92; and
 - b. for structures in Zones VE and Coastal AE Zone (as defined), certification by a registered professional engineer or architect for compliance with Section 78-92(eb).
- (2) The applicant shall submit written notification that the development is complete and complies with the provisions of this section.
- (3) The code enforcement officer shall review the application within ten working days of receipt of the application, and shall issue a certificate of compliance, provided the development conforms to the provisions of this section.

(Ord. of 4-17-1990, art. VII)

Sec 78-37 Standards for review of subdivision and development proposals

The Planning Board shall, when reviewing subdivisions and other proposed developments that require review under federal law, state law or local ordinances or regulations and all projects on five or more disturbed acres, or in the case of manufactured home parks divided into two or more lots, ensure that:

- (1) All such proposals are consistent with the need to minimize flood damage.
- (2) All public utilities and facilities, such as sewer, gas, electrical and water systems, are located and constructed to minimize or eliminate flood damages.
- (3) Adequate drainage is provided so as to reduce exposure to flood hazards.
- (4) All proposals include base flood elevation, **flood boundaries**, and, in a riverine floodplain, floodway data. These determinations shall be based on engineering practices recognized by the Federal Emergency Management Agency.

Any proposed development plan must include a condition of plan approval that structures on any lot in the development having any portion of its land within a Special Flood Hazard Area are to be constructed in accordance with division 3 of this article. Such requirement will be included in any deed, lease, purchase and sale agreement, or document transferring or expressing an intent to transfer any interest in real estate or structures, including but not limited to a timeshare interest. The condition shall clearly articulate that the city may enforce any violation of the construction requirements, and that fact shall also be included in the deed or any other document described in this subsection. The construction requirement shall also be clearly stated on any map, plat, or plan to be signed by the Planning Board or local reviewing authority as part of the approval process.

(Ord. of 4-17-1990, art. VIII)

Sec. 78-38. Appeals and variances.

- (a) The Zoning Board of Appeals may, upon written application of an aggrieved party, hear and decide appeals where it is alleged that there is an error in an order, requirement, decision, or determination made by, or failure to act by the Code Enforcement Officer or Planning Board in the administration or enforcement of the provisions of this article.
- (b) A variance issued by the Zoning Board of Appeals shall be consistent with state law and the following criteria:
 - (1) Variances shall not be granted within any designated regulatory floodway if any increase in flood levels during the base flood discharge would result.
 - (2) Variances shall be granted only upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that, should a flood comparable to the base flood occur, the granting of a variance will not result in increased flood heights, additional threats to public safety, or public expense, or create nuisances, cause fraud or victimization of the public, or conflict with existing local laws or ordinances;
 - c. A showing that the existence of the variance will not cause a conflict with other state, federal or local laws or ordinances; and
 - d. A determination that failure to grant the variance would result in "undue hardship", which in this subsection means that:
 1. The land in question cannot yield a reasonable return unless a variance is granted;
 2. The need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
 3. The granting of a variance will not alter the essential character or the locality; and
 4. The hardship is not the result of action taken by the applicant or a prior owner.
 - (3) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief, and the Board of Appeals may impose such conditions to a variance as it deems necessary.
 - (4) Variances may be issued by a community for new construction, substantial improvements, or other development for the conduct of a functionally dependent use provided that:
 - a. Other criteria of this section and section 78-90 are met; and
 - b. 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.
 - (5) Variances may be issued by a community for the **repair**, reconstruction, rehabilitation, or restoration of Historic Structures upon a determination that:
 - a. the development meets the criteria of paragraphs (1) through (4) of this section; and
 - b. the proposed repair, reconstruction, rehabilitation, or restoration will not preclude the structure's continued designation as a Historic Structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
 - (6) Any applicant who meets the criteria of subsections (1)-(5) of this section shall be notified by the Zoning Board of Appeals in writing over the signature of the chair of the Board of Appeals that:
 - a. The issuance of a variance to construct a structure below the base flood level will result in greatly increased premium rates for flood insurance, up to amounts as high as \$25.00 per \$100.00 of insurance coverage;
 - b. Such construction below the base flood level increases risks to life and property; and
 - c. The applicant agrees in writing that the applicant is fully aware of all the risks inherent in the use of land subject to flooding, assumes those risks and agrees to indemnify and defend the city against any claims filed against it that are related to the applicant's

decision to use land located in a floodplain and that the applicant individually releases the city from any claims the applicant may have against the city that are related to the use of land located in a floodplain.

- (7) Appeal procedure for administrative and variance appeals: The process for filing and hearing an administrative appeal or variance is described in chapter 102, Zoning, Article II, Administration, division 4, Appeals and Variances. Section 102-131 et seq.

(b) (Ord. of 4-17-1990, art. IX; Ord. No. 25-2005, 12-7-2004)

Section 78-39. Conflict with other ordinances

The terms of this article (Ordinance) shall not in any way impair or remove the necessity of compliance with any other applicable rule, ordinance, regulation, bylaw, permit, or provision of law. Where this article imposes a greater restriction upon the use of land, buildings, or structures, the provisions of this article shall control.

Secs. 78-40--78-60. Reserved.

DIVISION 2. PERMIT

Sec. 78-61. Required.

Before any construction or other development, including the placement of manufactured homes, begins within any areas of special flood hazard established in section 78-32, a flood hazard development permit shall be obtained from the code enforcement officer. This permit shall be in addition to any other permits which may be required pursuant to the codes and ordinances of the city.

(Ord. of 4-17-1990, art. II)

Sec. 78-62. Contents of application.

- (a) The application for a flood hazard development permit shall be submitted to the code enforcement officer and shall include:
- (1) The name, address and phone number of the applicant, owner, and contractor.
 - (2) An address and a map indicating the location of the construction site.
 - (3) A site plan showing the location of existing and/or proposed development, including but not limited to structures, sewage disposal facilities, water supply facilities, areas to be cut and filled, and lot dimensions.
 - (4) A statement of the intended use of the structure and/or development.
 - (5) A statement of the cost of the development including all materials and labor.
 - (6) A statement as to the type of sewage system proposed.
 - (7) Specification of dimensions of the proposed structure and/or development.

[Paragraphs (8) through 11(c) apply only to New Construction and Substantial Improvements.]

- (8) The elevation, in relation to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD), or to a locally established datum in Zone A only, of:
- a. The base flood at the proposed site of all new or substantially improved structures, which is determined:
 1. In Zones, AE, VE, and Coastal AE, from data contained in the flood insurance study for the city as described in section 78-32; or
 2. In Zone A:

- (a) From any base flood elevation data from federal, state, or other technical sources, including information pursuant to sections 78-90 and 78-37(a)(4).;
 - (b) From the contour elevation extrapolated from a best fit analysis of the floodplain boundary when overlaid onto a USGS Quadrangle Map or other topographic map prepared by a professional land surveyor or registered professional engineer, if the floodplain boundary has a significant correlation to the elevation contour line(s); or in the absence of all other data,
 - (c) To the elevation of the ground at the intersection of the floodplain boundary and a line perpendicular to the shoreline which passes along the ground through the site of the proposed structure.
- b. The highest and lowest grades at the site adjacent to the walls of the proposed building;
 - c. The lowest floor, including basement, and whether or not such structures contain a basement; and
 - d. The level, in the case of nonresidential structures only, to which the structure will be floodproofed.
- (9) A description of an elevation reference point established on the site of all developments for which elevation standards apply as required in Division 3.
 - (10) A written certification by a professional land surveyor, registered professional engineer or architect, that the base flood elevations and grade elevations shown on the application are accurate.
 - (11) Certification by a registered professional engineer or architect that floodproofing methods that any:
 - a. nonresidential structures will meet the floodproofing criteria of subsection (8)d of this section, section 78-88 and other applicable standards in division 3 of this article;
 - b. construction in coastal high-hazard areas, Zones VE, will meet the floodproofing criteria of section 78-92 and other applicable standards in division 3 of this article;
 - c. a Hydraulic Openings Certificate to verify that engineered hydraulic openings in foundation walls will meet the standards of section 78-91. ~~(3)~~**a.(a)(2)a**;
 - d. a certified statement that bridges will meet the standards of section 78-91.5; and
 - e. a certified statement that containment walls will meet the standards of section 78-91.6;
 - (12) A description of the extent to which any watercourse will be altered or relocated as a result of the proposed development, and a copy of notification of the state department of environmental protection of this activity.
 - (13) A statement of construction plans describing in detail how each applicable development standard in division 3 of this article will be met.

(Ord. of 4-17-1990, art. III)

Sec. 78-63. Fees.

- (a) *Application fee.* A nonrefundable application fee of \$ 75.00 shall be paid to the city clerk, and a copy of a receipt for payment of the fee shall accompany the application.
- (b) *Expert's fee.* An additional fee may be charged if the code enforcement officer, Planning Board and/or Board of Appeals need the assistance of a professional engineer or other expert. The expert's fee shall be paid in full by the applicant within ten days after the city submits a bill to the applicant. Failure to pay the bill shall constitute a violation of this article and be grounds for the issuance of a stop work order. An expert shall not be hired by the city at the expense of an applicant until the applicant has either consented to such hiring in writing or been given an opportunity to be heard on the subject. An applicant who is dissatisfied with a decision of the code enforcement officer or Planning Board may appeal that decision to the Board of Appeals.

(Ord. of 4-17-1990, art. IV)

Sec. 78-64. Review of applications; duties of code enforcement officer.

The code enforcement officer shall:

- (1) Review all applications for flood hazard development permits to ensure that proposed developments are reasonably safe from flooding and to determine that all pertinent requirements of division 3 of this article have or will be met;
- (2) Utilize, in the review of all flood hazard development permit applications:
 - a. The base flood **and floodway** data contained in the flood insurance study for the city as described in section 78-32;
 - b. In special flood hazard areas where base flood elevation **and floodway** data is not provided, the code enforcement officer shall obtain, review and reasonably utilize any base flood elevation and floodway data from federal, state, or other sources, including information obtained pursuant to section 78-62(8)a.2, section 78-90, and section 78-37(a)(4), in order to administer division 3 of this article; and
 - c. When the city establishes a base flood elevation in a Zone A by methods outlined in section 78-62(8)a.2., the city shall submit the data to the Maine Floodplain Management Program
- (3) Make interpretations of the location of boundaries of special flood hazard areas shown on the maps described in section 78-32;
- (4) In the review of flood hazard development permit applications, determine that all necessary permits have been obtained from those federal, state, and local government agencies from which prior approval is required by federal or state law, including but not limited to section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1344;
- (5) Notify adjacent municipalities, the state department of environmental protection, and the Maine Floodplain Management Program prior to any alteration or relocation of a watercourse and submit copies of such notifications to the Federal Emergency Management Agency;
- (6) If the application satisfies the requirements of this Article, approve the issuance of one of the following Flood Hazard Development Permits, based on the type of development:
 - a. A two-part flood hazard development permit for elevated structures. Part I shall authorize the applicant to build a structure to and including the first horizontal floor only above the base flood level. At that time, the applicant shall provide the code enforcement officer with an application for part II of the flood hazard development permit and shall include an elevation certificate completed by a professional land surveyor, registered professional engineer or architect based on the Part I permit construction, “as built”, for verifying compliance with the elevation requirements of sections 78-87, 78-88, 78-89, or 78-92. Following review of the Elevation Certificate data, which review shall take place within 72 hours of receipt of the application, the code enforcement officer shall issue part II of the flood hazard development permit. Part II shall authorize the applicant to complete the construction project; or
 - b. a Flood Hazard Development Permit for Floodproofing of non-residential structures that are new construction or substantially improved non-residential structures that are not being elevated but that meet the floodproofing standards of section 78-88(a)(1), (2), and (3). The application for this permit shall include a Floodproofing Certificate signed by a registered professional engineer or architect; or,
 - c. a Flood Hazard Development Permit for Minor Development for all development that is not new construction or a substantial improvement, such as repairs, maintenance, renovations, or additions, whose value is less than 50% of the market value of the structure. Minor development also includes, but is not limited to: accessory structures as defined in Chapter 66, mining, dredging, filling, grading, paving, excavation, drilling operations, storage of equipment or materials, deposition or extraction of materials, public or private sewage

disposal systems or water supply facilities that do not involve structures; and non-structural projects such as bridges, dams, towers, fencing, pipelines, wharves, and piers.

- (7) Maintain, as a permanent record, copies of all flood hazard development permit applications, corresponding permits issued, and data relevant thereto, including reports of the Board of Appeals on variances granted under the provisions of section 78-38, and copies of elevation certificates, floodproofing certificates, certificates of compliance, and certifications of design standards required under the provisions of section 78-36, section 78-62, and Division 3.

(Ord. of 4-17-1990, art. V)

Secs. 78-65--78-80. Reserved.

DIVISION 3. DEVELOPMENT STANDARDS

Sec. 78-81. Generally.

All developments in areas of special flood hazard shall meet the applicable standards in this division.

(Ord. of 4-17-1990, art. VI)

Sec. 78-82. Standards applicable to all development.

(a) All development shall:

- (1) Be designed or modified and adequately anchored to prevent flotation (excluding piers and docks), collapse or lateral movement of the development resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) Use construction materials that are resistant to flood damage;
- (3) Use construction methods and practices that will minimize flood damage; and
- (4) Use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.

(Ord. of 4-17-1990, art. VI(A))

Sec. 78-83. Water supply systems.

All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwater into the systems.

(Ord. of 4-17-1990, art. VI(B))

Sec. 78-84. Sanitary sewage systems.

All new and replacement sanitary sewage systems shall be designed and located to minimize or eliminate infiltration of floodwater into the system and discharges from the system into flood waters.

(Ord. of 4-17-1990, art. VI(C))

Sec. 78-85. On-site waste disposal systems.

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

(Ord. of 4-17-1990, art. VI(D))

Sec. 78-86. Reduction of flood-carrying capacity prohibited.

All development associated with the altered or relocated portions of a watercourse shall be constructed and maintained in such a manner that no reduction occurs in the flood-carrying capacity of any watercourse.

(Ord. of 4-17-1990, art. VI(E))

Sec. 78-87. Residential structures.

- (a) New construction or substantial improvement of any residential structure located within Zone AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.
- (b) New construction or substantial improvement of any residential structure located within Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to section 78-62(8)a.2, section 78-64(2), or section 78-37(a)(4).
- (b) New construction or substantial improvement of any residential structure located within Zones VE and Coastal AE (as defined) shall meet the requirements of section 78-92.

(Ord. of 4-17-1990, art. VI(F))

Sec. 78-88. Nonresidential structures.

- (a) New construction or substantial improvement of any nonresidential structure located within Zone AE shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation, or together with attendant utility and sanitary facilities shall:
 - (1) Be floodproofed to at least one foot above the base flood elevation so that below that elevation the structure is watertight with walls substantially impermeable to passage of water;
 - (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - (3) Be certified by a registered professional engineer or architect that the floodproofing design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a flood hazard development permit, as required by section 78-62(11)(a), and shall include a record of the elevation above mean sea level to which the structure is floodproofed.
- (b) New construction or substantial improvement of any nonresidential structure located within Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to section 78-62(8)a.2., section 78-64(2), or section 78-37(a)(4).
 - (1) together with attendant utility and sanitary facilities meet the floodproofing standard of 78-88(a)(1) through (3).**
- (c) New construction or substantial improvement of any nonresidential structure located within Zones VE and Coastal AE (as defined) shall meet the requirements of section 78-92. (Ord. of 4-17-1990, art. VI(G)).

Sec. 78-89. Manufactured homes.

- (a) New or substantially improved manufactured homes located within Zone AE shall:
 - (1) Be elevated such that the lowest floor (including basement) is at least one foot above the base flood elevation; and

- (2) Be on a permanent foundation, which may be poured masonry slab or foundation walls, with hydraulic openings, or may be reinforced piers or block supports, any of which support the manufactured home so that no weight is supported by its wheels and axles; and
 - (3) Be securely anchored to an adequately anchored foundation system to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to:
 - a. Over-the-top ties anchored to the ground at the four corners of the manufactured home, plus two additional ties per side at intermediate points (manufactured homes less than 50 feet long require one additional tie per side); or by
 - b. Frame ties at each corner of the home, plus five additional ties along each side at intermediate points (manufactured homes less than 50 feet long require four additional ties per side).
 - c. All components of the anchoring system described in 78-89a.(3)(a) and (b) shall be capable of carrying a force of 4,800 pounds.
 - (b) New or substantially improved manufactured homes located within Zone A shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation utilizing information obtained pursuant to subsection 78-62(8)a.2, subsection 78-64(2), or subsection 78-37(a)(4), **and meet the anchoring requirements of 78-89(a)(3).**
 - (c) New or substantially improved manufactured homes located within Zones VE and Coastal AE (as defined) shall meet the requirements of section 78-92.
- (Ord. of 4-17-1990, art. VI(H))

Sec. 78-90. Development in floodways.

- (a) In Zone AE, encroachments, including fill, new construction, substantial improvement, and other development shall not be permitted in riverine areas for which a regulatory floodway is designated on the community's flood insurance rate map, unless a technical evaluation certified by a registered professional engineer is provided demonstrating that such encroachments will not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- (b) In Zones AE and A riverine areas, for which no regulatory floodway is designated, encroachments, including fill, new construction, substantial improvement, and other development, shall not be permitted in the floodway as determined in section 78-90(c) unless a technical evaluation certified by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development,
 - (1) Will not increase the water surface elevation of the base flood more than one foot at any point within the community, and
 - (2) Is consistent with the technical criteria contained in ~~Chapter 5 entitled "Hydraulic Analyses", Flood Insurance Study — Guidelines and Specifications for Study Contractors, (FEMA 37/January 1995, as amended)~~ **FEMA's guidelines and standards for flood risk analysis and mapping.**
- (c) In Zones AE and A riverine areas, for which no regulatory is designated, the regulatory floodway is determined to be the channel of the river or other watercourse and the adjacent land areas to a distance of one-half the width of the floodplain as measured from the normal high-water mark to the upland limit of the floodplain. (Ord. of 4-17-1990, art. VI(I)).

Sec. 78-91. Enclosed areas below the lowest floor.

- (a) New construction or substantial improvement of any structure in Zones AE, ~~AO~~, and A that meets the development standards of this division, including the elevation requirements of Sections 78-87, 78-88, or 78-89, and is elevated on posts, columns, piers, piles, stilts, or crawl spaces may be enclosed below the base flood elevation provided all the following criteria are met or exceeded:

- (1) Enclosed areas shall not be basements as defined in section 78-33;
- (2) Enclosed areas shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either:
 - a. Be **engineered and** certified by a registered professional engineer or architect; or
 - b. Meet or exceed the following minimum criteria:
 1. A minimum of two openings is required, having a total net area of not less than one square inch for every square foot of the enclosed area;
 2. The bottom of all openings shall be below the base flood elevation and no higher than one foot above the lowest grade; and
 3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the entry and exit of floodwater automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means; and
- (3) The enclosed area shall not be used for human habitation; and
- (4) The enclosed areas are usable solely for building access, parking of vehicles, or storage.

(Ord. of 4-17-1990, art. VI(J))

Sec 78-91.4 Recreational Vehicles

- (a) Recreational Vehicles located within Zones AE and A shall either:
 - (1) be on the site for fewer than 180 consecutive days,
 - (2) Be fully licensed and ready for highway use. A recreational vehicle is ready for highway use if it is 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; or
 - (3) Be permitted in accordance with the elevation and anchoring requirements for manufactured homes in section 78-89(a).
- (b) Zone VE and Coastal AE (as defined) shall meet the requirements of either section 78-91.4(a)(1) or (2), or section 78-92.

Sec 78-91.5 Bridges

New construction or substantial improvement of any bridge in Zones AE, A, VE and Coastal AE (as defined) shall be designed such that:

- (1) When possible, the lowest horizontal member (excluding pilings, or columns) is elevated to or at least one foot above the base flood elevation; and;
- (2) A registered professional engineer shall certify that:
 - a. The structural design and methods of construction shall meet the requirements of this section and the floodway standards of Section 78-90, and
 - b. the foundation or superstructure attached thereto are designed to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all structural components. Water loading values used shall be those associated with the base flood.

Sec 78-91.6 Containment walls

No new construction or substantial improvement of any containment wall located within:

- (1) Zones AE, A, VE and Coastal AE (as defined) shall:
 - a. have the containment wall elevated to at least one foot above the base flood elevation;

- b. have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
- c. be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section. Such certification shall be provided with the application for a flood Hazard Development Permit, as required by Section 78-62(11)(e).

Sec. 78-91.7 Wharves, Piers and Docks

New Construction or substantial improvement of wharves, piers, and docks are permitted in Zones AE, A, VE and Coastal AE (as defined), in and over water and seaward of the mean high tide if the following requirements are met:

- (1) Wharves, piers, and docks shall comply with all applicable local state and federal regulations, and
- (2) For commercial wharves, piers and docks, a registered professional engineer shall develop or review the structural design, specifications, and plans for construction.

Sec. 78-91.8 Accessory Structures

Accessory Structures, as defined in Chapter 66, located within Zones AE and A, shall be exempt from the elevation criteria required in Section 78-87 & Section 78-88 above, if all other requirements of Division 3 and all the following requirements are met. Accessory Structures shall:

- (1) be 500 square feet or less and have a value less than \$3000;
- (2) have unfinished interiors and not be used for human habitation;
- (3) have hydraulic openings, as specified in Section 78-91(2), in at least two different walls of the accessory structure;
- (4) be located outside the floodway;
- (5) when possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and placed further from the source of flooding than is the primary structure; and
- (6) have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Special Flood Hazard Area.

Sec. 78-92. Development in coastal floodplains.

- (a) All new construction located within Zones AE, VE and Coastal AE (as defined) shall be located landward of the reach of mean high tide except as provided in section 78-93.
- (b) New construction or substantial improvement of any structure located within Zones VE and Coastal AE (as defined) shall:
 - (1) Be elevated on posts or columns such that:
 - a. The bottom of the lowest horizontal structural member of the lowest floor, (excluding the pilings or columns), is elevated to one foot above the base flood elevation;
 - b. The pile or column foundation and the elevated portion of the structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components; and
 - c. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state and local building standards.
 - (2) Have the space below the lowest floor:
 - a. Free of obstructions;

- b. Constructed with open wood latticework or insect screening intended to collapse under wind and water without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting piles or columns; or
 - c. Constructed **to enclose less than 300 square feet of area** with non-supporting breakaway walls that have a design safe loading resistance of not less than ten or more than 20 pounds per square foot.
- (3) A registered professional engineer or architect shall:
- a. develop or review the structural design, specifications, and plans for the construction, which must meet or exceed the technical criteria contained in the Coastal Construction Manual (FEMA-55/June, 2000) and
 - b. Certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the criteria of sub section 78-92(b).
- (c) The use of fill for structural support in Zones VE and Coastal AE (as defined) is prohibited.
- (d) Human alteration of sand dunes within Zones VE and Coastal AE (as defined) is prohibited unless it can be demonstrated that such alterations will not increase potential flood damage.
- (e) The areas below the lowest floor shall be used solely for parking vehicles, building access, and storage. (Ord. of 4-17-1990, art. VI(K))

Section 78-93 Conditional Use

Lobster sheds and fishing sheds may be located seaward of the mean high tide and shall be exempt from the elevation requirement in Section 78-88 only if permitted as a Conditional Use following review and approval by the Planning Board, as provided for in Section 78-94 and if all the following requirements and those of sections 78-82, 78-90, and 78-91 are met:

- a. The conditional use shall be limited to low value structures such as metal or wood sheds 200 square feet or less not exceeding one story.
- b. The structure shall be securely anchored to the wharf or pier to resist floatation, collapse, and lateral movement due to the effect of wind or water loads acting together on all building components.
- c. The structure will not adversely increase the wave or debris impact forces affecting nearby buildings.
- d. The structure shall have unfinished interiors and shall not be used for human habitation.
- e. Any mechanical, utility equipment and fuel storage tanks must be anchored and either be elevated or floodproofed to one foot above the base flood elevation.
- f. All electrical outlets shall be ground fault interrupt (GFCI) type. The electrical disconnect shall be located on shore above the base flood elevation and when possible outside of the Special Flood Hazard area.

Section 78-94 Conditional Use Review

The Planning Board shall hear and decide upon applications for conditional uses provided for in section 78-93. The Planning Board shall hear and approve or approve with conditions **or disapprove** all applications for Conditional Uses. An applicant informed by the Code Enforcement Officer that a Conditional Use Permit is required shall file an application for the permit with the Planning Board.

A. Review Procedure for a Conditional Use Permit

1. The Flood Hazard Development Permit Application, with additional information attached showing how each of the conditional use criteria specified in section 78-93 will be satisfied, may serve as the permit application for the Conditional Use Permit.
2. Before deciding any application the Planning Board shall hold a public hearing on the application within 30 days of their receipt of the application.

3. If the Planning Board finds that the application satisfies all relevant requirements of section 78-93, the Planning Board must approve the application or approve with conditions within 45 days of the date of the public hearing.
4. A Conditional Use Permit issued under the provisions of section 78-93 shall expire if the work or change involved is not commenced within 180 days of the approval of the permit by the Planning Board.
5. The applicant shall be notified by the Planning Board in writing over the signature of the Planning Board chairman that flood insurance is not available for structures located entirely over water or seaward of the mean high tide.

B. Expansion of Conditional Uses

No existing building or use of the premises may be expanded or enlarged without a permit issued under this section if that building or use was established or constructed under a previously issued Conditional Use Permit, or if it is a building or use which would require a Conditional Use Permit if being newly-established or constructed under section 78-93.

Sec 78-95. Effective date of amendments to this article.

Notwithstanding provisions of the City Charter, the amendments to Chapter 78, Floods, which the City Council considered and adopted at its meeting of June 16, 2015, shall take effect on July 6, 2015, which is the date that FEMA has identified as the effective date of the new FIRM maps for the City; reference section 78-32 of this article.

Amendments adopted to Chapter 78, Floods, by the City Council at its meeting of August 4, 2015 shall take effect upon the adoption of the amendments.