

City of Salem

In the year Two Thousand and Twenty-Four

An Ordinance to replace the existing flood hazard overlay district to maintain eligibility for the Federal Flood Insurance Program in the City of Salem.

Be it ordained by the City Council of the City of Salem, as follows:

Section I. Section 8.1 of the City of Salem Zoning Ordinance, Flood Hazard Overlay District (FHOD), is hereby amended by deleting this section in its entirety and replacing it with the following new Section 8.1:

“8.1 - FLOOD HAZARD OVERLAY DISTRICT (FHOD)

8.1.1 Purpose. The FHOD Ordinance is adopted to maintain the City of Salem’s National Flood Insurance Program (NFIP) designation. The FHOD is established as an overlay to all other districts. In Massachusetts, the FHOD is part of a federal requirement for communities that choose to participate in the NFIP. All development in the FHOD, including structural and non-structural activities, whether permitted by right or by building permit, must comply with, 780 CMR (the Massachusetts Statewide Building Code, the “MA Building Code”), 310 CMR (the Department of Environmental Protection Regulations), the Salem Wetlands Protection & Conservation Ordinance (Chapter 50) and its implementing regulations.

The goal of the FHOD is furthermore to:

1. Ensure the safety of the public, the environment, and property through reducing threats to life and personal injury;
2. Eliminate new hazards to emergency response officials;
3. Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
4. Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
5. Eliminate costs associated with the response and cleanup of flooding conditions; and
6. Reduce damage to public and private property resulting from flood waters.

8.1.2 Definitions. The defined terms in this Section are for terms used in this FHOD Ordinance. To the extent not defined herein or elsewhere in the Ordinance, words used herein shall have the definitions found in Title 44 of the Code of Federal Regulations, section 59.1, or in the current edition of the MA Building Code where undefined federally.

1. *Development* means any human-made change to improved or unimproved land, including but not limited to construction of buildings or other structures, mining, dredging, filling, grading, paving, excavating, or drilling operations or storage of equipment or materials. [US Code of Federal Regulations, Title 44, Part 59]
2. *Floodway* means the channel of the river, creek, or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.
3. *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 but is not limited to docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.
4. *Highest adjacent grade* means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
5. *Historic structure* means any structure that is:
 - a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - c. Individually listed on a state inventory of historic places with historic preservation programs which have been approved by the Secretary of the Interior; or
 - d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 1. By an approved state program as determined by the Secretary of the Interior or
 2. Directly by the Secretary of the Interior in states without approved programs.[US Code of Federal Regulations, Title 44, Part 59]
6. *New construction*. Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such structures. New construction includes work determined to be substantial improvement. [Referenced Standard ASCE 24-14]
7. *Recreational vehicle* means a vehicle which is:
 - a. Built on a single chassis;
 - b. 400 square feet or less when measured at the largest horizontal projection;
 - c. Designed to be self-propelled or permanently towable by a light duty truck; and
 - d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.[US Code of Federal Regulations, Title 44, Part 59]
8. *Regulatory floodway* - see *Floodway*.
9. *Special flood hazard area*. The land area subject to flood hazards and shown on a Flood Insurance Rate Map (FIRM) or other flood hazard boundary map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE or V1-30.
10. *Start of construction*. The date of issuance of a building permit for New Construction (which includes substantial Repair, Rehabilitation, or Improvement), provided the actual Start of Construction is within 180 days after the date of issuance of said permit. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings, or construction of columns. For a Substantial Repair, Rehabilitation, or Improvement, the actual "Start of Construction" means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external

dimensions of the building. “Permanent construction” as referenced above does not include land preparation (such as clearing, excavation, grading or filling); the installation of streets or walkways; excavation for a basement, footings, piers (including in-water piers) or foundations; the erection of temporary forms; or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building.

11. *Structure* means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.
12. *Substantial repair of a foundation*. When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR.
13. *Variance* means a grant of relief by the Salem Zoning Board of Appeals from the terms of the FHOD.
14. *Violation* means the failure of a structure or other development to be fully compliant with this FHOD Ordinance. A structure or other development without an elevation certificate, other certifications, or other evidence of compliance required in §60.3 is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59]

8.1.3 Applicability. The City of Salem requires a permit for all proposed construction or other development in the floodplain overlay district, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.

8.1.4 Determination of Non-Applicability. Upon applicant’s submittal of a written description of the project scope, the Building Commissioner may issue a Determination of this Ordinance’s Non-Applicability in the event that activities within the FHOD boundaries will have no impact or de minimis impact on flooding.

8.1.5 FHOD Boundaries. The FHOD is herein established as an overlay district. The district includes all special flood hazard areas within Essex County designated as Zone A, AE, AH, AO, A99, V, or VE on the most recent Essex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program.

The exact boundaries of the FHOD shall be defined by the 1%-chance base flood elevations shown on the FIRM dated July 19, 2018 and further defined by the Essex County Flood Insurance Study (FIS) report dated July 19, 2018. The FIRM and FIS report are incorporated herein by reference and are on file with the City Clerk and Floodplain Administrator.

8.1.6 Designation of Community Floodplain Administrator. The City of Salem hereby designates the position of Building Commissioner to be the official Floodplain Administrator for the City.

8.1.7 Permit Application Procedure. An Applicant for a Permit shall file the application to the Office of Inspectional Services which shall comply with the following submittal requirements:

1. A site plan at an appropriate scale, typically one (1) inch equals forty (40) feet shall be prepared by the appropriate registered professional and shall show at least the following:
 - a. Lot lines within which the development is proposed in relation to the nearest road intersection;
 - b. The location, boundaries and dimensions of each lot in question;
 - c. One-foot contours of the existing and proposed land surface; and
 - d. Location of existing and proposed applicable FEMA zones, structures, watercourses, applicable Base Flood Elevation mapping, drainage, and drainage easements, means of access, utilities, and sewer disposal facilities including leaching fields, if any.
2. A written description of the proposed development or use relative to all applicable provisions of this FHOD Ordinance.
3. Signed attestation that all applicable federal, state, and other local permits required for the project have been obtained.

A permit shall be issued only if a project conforms to this article and all other applicable laws.

8.1.8 Permit Fees. Fees for FHOD permits shall be paid in accordance with the schedule of fees set forth in the Building Code.

8.1.9 Lapse. Rights authorized by a FHOD permit that are not exercised within one (1) year of the date of the grant of such permit shall lapse.

8.1.10 All Other Permits. The Proponent must acquire all other necessary permits prior to the issuance to an FHOD permit and must demonstrate that all necessary permits have been acquired to the extent lawfully feasible.

8.1.11 FHOD Permit Criteria.

1. In Zones A and AE, the proposed use, including filling or excavating, shall not increase the water surface elevation of the one-hundred-year flood more than a net zero or de minimis amount, with consideration of any compensatory flood storage or other mitigation provided.
2. Unnumbered A Zones. In A Zones, in the absence of FEMA Base Flood Elevation (BFE) data and floodway data, the Applicant shall obtain, review, and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other sources (including engineering studies). This shall apply to New Construction, Substantial Repair, Rehabilitation or Improvement, or other Development so defined herein within a Zone A. The Applicant shall elevate residential structures to or above the BFE, provide floodproofing or elevate nonresidential structures to or above the BFE, and prohibit encroachments into floodways.
3. Subdivision Proposals/Development Proposals. All Subdivision proposals and Development proposals in the FHOD district shall:
 - a. be reviewed to assure that:
 - Such proposals minimize flood damage.
 - All public utilities and facilities are located and constructed so as to minimize flood damage.
 - b. Base flood Elevation data. When proposing subdivisions or other developments greater than 50 lots or 5 acres (whichever is less), the proponent must provide

technical data to determine BFE on a Project Site, where the BFE is not established by FEMA.

4. Recreational vehicles. In A1-30, AH, AE Zones, V1-30, VE, and V Zones, all recreational vehicles to be placed on a site must be elevated and anchored in accordance with the applicable Zone's regulations for foundation and elevation requirements or be on the site for less than 180 consecutive days or be fully licensed and highway ready.
5. Protection of Dunes. Alteration of sand dunes is prohibited when the alteration would increase potential flood damage.
6. Watercourse alterations or relocations in riverine areas. In a riverine area, the Floodplain Administrator or their designee shall notify the following of any alteration or relocation of a watercourse:
 - a. Adjacent Communities, especially upstream and downstream
 - b. Bordering States, if affected
 - c. NFIP State Coordinator Massachusetts Department of Conservation and Recreation
251 Causeway Street, 8th floor, Boston, MA 02114
 - d. NFIP Program Specialist Federal Emergency Management Agency, Region I 99 High Street, 6th Floor, Boston, MA 02110
7. Requirement to Submit New Technical Data. If the City acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the City will, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s.) Notification shall be submitted to:
 - a. NFIP State Coordinator Massachusetts Department of Conservation and Recreation 251 Causeway Street, 8th floor, Boston, MA 02114
 - b. NFIP Program Specialist Federal Emergency Management Agency, Region I 99 High Street, 6th Floor, Boston, MA 02110
8. Violation and Floodway Encroachment. In Zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, Local, or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

In Zones A1-30 and AE, along watercourses that have a regulatory floodway designated on the Essex County FIRM, encroachments are prohibited, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

8.1.12 Variance and Hardships. Variances to Building Code floodplain standards.

For variances to the state Building Code, the City will request from the MA Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance and will maintain this record in the community's files.

The City shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official that (i) the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with the record of all variance actions for the referenced development in the FHOD.

8.1.13 Variances to FHOD Ordinance. The Salem Zoning Board of Appeals may grant a variance after due notice and a public hearing in accordance with Section 9.3.2 of the Ordinance so long as the Board finds the relief requested meets the requirements outlined below. A variance from this Ordinance must meet the requirements set out by State law (M.G.L. Chapter 40A, Section 10) and may only be granted if:

1. Good and sufficient cause and exceptional non-financial hardship exist;
2. the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and
3. the variance is the minimum action necessary to afford relief.

8.1.14 Abrogation and Greater Restriction Section. The floodplain management regulations found in this FHOD Ordinance shall take precedence over any less restrictive conflicting local laws, ordinances, or codes.

8.1.15 Disclaimer of Liability. The degree of flood protection required by this FHOD Ordinance is considered reasonable but does not imply total flood protection.

8.1.16 Severability. If any section, provision or portion of this FHOD Ordinance is deemed to be unconstitutional or invalid by a court, the remainder of the Ordinance shall be effective.

8.1.17 Local Enforcement. The Building Commissioner is authorized and directed to enforce all of the provisions of this Section.

8.1.18 Amendments to this Ordinance. The adoption of the FHOD Ordinance is a requirement for Salem's continued participation in the flood insurance program of the federal government. Future amendments to this FHOD Ordinance shall comply with applicable federal requirements.

8.1.19 Relation to Other Laws. The provisions of this FHOD Ordinance are not intended to repeal, amend, abrogate, annul or interfere with any lawfully adopted state or federal laws or regulations or any local ordinances, covenants, regulations or rules. However, where this FHOD Ordinance imposes greater restrictions, the provisions of this Ordinance shall govern. (Note: The jurisdiction of the Building Commissioner under the Salem FHOD ordinance includes areas not shown on the FEMA FIRM Maps)."

Section II. This Ordinance shall take effect as provided by City Charter.

In City Council March 14, 2024
Referred to the Planning Board to hold a Joint Public Hearing

ATTEST:

ILENE SIMONS
CITY CLERK