

FLOODPLAIN MANAGEMENT ORDINANCE UPDATE 1987-1996

If your Floodplain Management Ordinance or the Floodplain Management regulations your community adopted to stay compliant with the National Flood Insurance Program (NFIP) were adopted in 1987 or earlier, there is a definite possibility that your ordinance is no longer compliant.

If a community is found to be not in compliance with the NFIP requirements, it could be suspended from the program and those people in town who have flood insurance will lose their ability to purchase it. Furthermore, those who have floodprone property may experience extreme difficulty in seeking financing with a lending institution if the property can not be insured as part of a loan condition (A Federal Requirement).

Federal Emergency Management Agency (FEMA) has initiated several changes to the NFIP Regulations since the big changes in 1987. They did not, however, force these changes on the local governments as a demand for immediate action. The basic rule is once your community has been notified by the State Flood Insurance Coordinator (in Maine it is Lou Sidell at the State Planning Office [SPO]), it must revise it's ordinance to meet the new standards.

Here are the changes you should check for in your ordinance.

For Coastal Communities there is a change in Article VI as shown below.

In the old Article VI K.2(1) the statute references have changed. Article VI § K. Coastal Floodplains is now identified as Article VI. § L. It now should read as follows:

- (1) the area is zoned for general development or its equivalent, as defined in the Mandatory Shoreland Zoning guidelines adopted pursuant to 38 M.R.S.A. §438- A; or,
- (2) the area is designated as densely developed as defined in 38 M.R.S.A. §436-A, subsection 3.

All ordinances should be changed to reflect the following language. Note: This language will not be found in ordinances for communities that do not have Base Flood Elevations (BFEs) shown on the flood map.

In Article VI Development Standards, a new § I. is inserted in regard to Recreational Vehicles and the subsequent § are re-lettered. The new § I. reads as follows:

- I. Recreational Vehicles located within:
 1. Zones A1-A30, AH, and AE shall: [Zone AE will not be found on maps dated prior to 1985]

- a. be on the site for fewer than 180 consecutive days and 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,
- b. Meet the permit requirements of elevation and anchoring requirements for "manufactured home" in Article VI. H. a & b.

In Article X Enforcement, the statute reference have been changed to read as follows:

- A. It shall be the duty of the _____ to enforce the provisions of this Ordinance pursuant to 30A MRSA § 4452.
- B. The penalties contained in 30A MRSA § 4452 shall apply to any violation of this ordinance.

The definition of **Development** in Article XIII has been changed by adding storage of equipment or materials to the list of items included in the definition. The underlined words were added.

Development - means any 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, drilling operations or storage of equipment or materials; and the storage, deposition, or extraction of materials, public or private sewage disposal systems or water supply facilities.

The definition of **Historic Structures** was added to Article XIII.

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 of the Interior to qualify as a registered historic district;
- c. 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
- 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.

The definition of **New Construction** in Article XIII has been changed by adding language to include subsequent improvements to post-FIRM buildings. The changes are as underlined below:

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.

The definition of **Recreational Vehicles** was added to Article XIII.

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.

The definition of **Start of Construction** in Article XIII has been changed by adding language to include rehabilitation and additions and subsequent improvements. The changes are as underlined below:

Start of Construction - means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, 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 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. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

The Definition for **Substantial Damage** was added to Article XIII.

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.

The Definition for **Substantial Improvement** in Article XIII was rewritten to include Substantial Damage and to close some prior loopholes.

Substantial Improvement - means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structures's continued designation as a historic structure.

If your ordinance does not reflect the same wording as the changes listed above, then it is not current with the National Flood Insurance Program (NFIP) and your community needs to implement the above changes as soon as possible. If you need assistance, please contact your Regional Planning Agency, or Lou Sidell, Bonnie Boulter, or Sue Baker at the Maine Floodplain Management Program in the State Planning Office. The phone number is 287-8050.