

CHAPTER I – MODEL FLOODPLAIN ORDINANCES

Chapter Summary

Community participation in the National Flood Insurance Program (NFIP) requires the adoption and enforcement of floodplain management measures that are compliant with [Section 60.3](#) of the NFIP regulations. A floodplain management ordinance must meet the requirements of federal and state floodplain management laws. Maine's state Floodplain Management Standards are found in several statutes. In this Chapter we have tried to bring all of the state and federal requirements into one comprehensive model for our towns to use. In Maine the Mandatory Shoreland Zoning Act and Natural Resources Protection Act also play significant roles in managing floodplain development. Maine law dictates the manner by which ordinances are adopted. If your community does not have a building permit system in place, your floodplain ordinance must establish one. It is conceivable that the floodplain regulations can be integrated into the local zoning ordinance.

A. Overview of Participation in the NFIP

The organizational relationships of federal, state, local, and private sectors with regard to the National Flood Insurance Program (NFIP) forms a unique set up of overlapping partnerships. Each group of players is necessary to make the NFIP work.

Local Government

For the purposes of this handbook and the NFIP Local Government is the community. This can include just about any political subdivision other than the state. Towns, cities, counties, and special districts are included in FEMA's definition of local government. In FEMA's regulations, Communities can also mean States and Indian Tribes. But for the purposes of this discussion we are going to use the term community to mean Local Unit of Government.

Federal Government



Information gathered by FEMA preliminary disaster assessment teams may be included in floodplain records as appropriate. This team surveyed damage in Shapleigh, ME, after the spring 2006 floods.

The Federal government provides federally backed flood insurance in exchange for good floodplain management, via an ordinance that regulates all development in the special flood hazard areas of a community. Flood hazard areas are identified on maps that have been developed by the federal government and distributed to states and communities. As discussed in the Introduction to this handbook the National Flood Insurance Act established the National Flood Insurance Program and the Act and subsequent NFIP Regulations at 44 CFR Parts 59 through 78 give us the frame work for the Federal, State, and Local requirement to implement and manage the Program. The NFIP is the basic underpinning for what we now call floodplain management in most national floodplain management discussions.

Congress authorizes the [Federal Emergency Management Agency \(FEMA\)](#), through the Federal Insurance Administrator, to identify the flood hazard areas, make maps available, and make (previously unavailable) flood insurance available at reasonable rates. On few occasions, a private insurer has provided flood insurance outside of the NFIP but these ventures have not only been rare but very expensive. One exception is coverage for manufactured housing. Again it is not always available but is on occasion in limited situations.

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Most private sector insurers drop the coverage when it is deemed too costly. Federally backed flood insurance is not available in communities that do not participate in the NFIP. The Federal government will make flood insurance available only in NFIP communities that agree to adopt and enforce an ordinance that meets certain minimum standards.

State Government

The state's primary role in the Program is to provide the authority for communities to adopt the proper ordinances. In the overall organization of the NFIP, FEMA has asked each state to appoint a coordinating agency and coordinating officer. In Maine, the state coordinating agency is the [State Planning Office \(SPO\)](#). The State NFIP Coordinator, also known as the State Floodplain Management Coordinator, and the [Maine Floodplain Management Program](#), are part of, and collocated with, the SPO.

As noted previously in the Introduction, the State's responsibilities are outlined in the NFIP Regulations at [44 CFR §60.25](#).

The Coordinating Agency's role in Maine includes but is not limited to:

- ensuring there is adequate enabling legislation for communities to perform their role
- encourage and assist communities in qualifying for NFIP participation
- encourage and assist communities with joining the Community Rating System
- coordination of Flood Insurance Studies and subsequent mapping
 - administer Map Modernization
- coordinate local floodplain activities
- technical assistance
- offering workshops and training:
 - to local officials
 - to professional groups
 - to homeowners
 - on how to administer a local floodplain management Program
 - on how to read and use flood maps
 - on assistance with ordinance interpretation,
- assistance with local planning to mitigate flooding hazards,
- providing interagency reviews
 - for state and federal agencies for compliance with state laws, NFIP, and Governor's executive order
 - Permit applications and grant proposals for compliance with state and federal floodplain standards, on behalf of other state agencies.
 - Executive order 11988
- monitoring community Program performance via:
 - Community Assistance Visits
 - Community Assistance Contacts
 - Reviewing Submit for Rate issues

Enabling Legislation

There are several statutory references in Maine that relate to floodplain management and the ability of communities to adopt floodplain management regulations. Below is a listing of most of Maine's laws regarding floodplain management:

5 MRSA § 3305 (A): Directs SPO to coordinate the preparation of policies to guide and carry forward the wise and coordinated development of the State's economy and its energy resources and the conservation of the State's natural resources.

5 MRSA § 3305 (D): Directs SPO to oversee delivery of technical assistance and resources to municipalities for the purpose of floodplain management activities and enhancing and expanding parks, open spaces and recreational opportunities as a part of comprehensive community development.

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38 MRSA § 440: Provides for municipalities to enact zoning and subdivision controls, consistent with comprehensive plans, to avoid problems associated with floodplain development.

37-B MRSA § 1112: Directs the Department of Defense, Veterans and Emergency Management to coordinate with SPO on administering the State's dam safety laws.

Code of Federal Regulations, Title 44, Volume 1, Parts 0 to End, Revised October 1, 1999: Emergency Management and Assistance: Lays out duties and responsibilities of State National Flood Insurance Program Coordinating Agencies that include, among others, assisting communities in qualifying for participation in the Program; assisting public agencies with developing, implementing, and maintaining local floodplain management regulations; providing public information; recommending priorities for Federal floodplain management activities; and assuring coordination and consistency of flood plain management activities among agencies.

Joining the NFIP

Communities can assist its citizens in protecting their property investment from flood losses by joining the National Flood Insurance Program (NFIP). The NFIP is a voluntary federal program that offers homeowners the opportunity to purchase federal flood insurance in communities that meet the necessary standards for participation.

The NFIP is designed as a *quid pro quo* program. The Federal Government underwrites flood insurance in those communities that agree to regulate development in their floodplains. They must adopt and enforce regulations that meet minimum federal standards. The MFMP assists participating towns as well as those interested in joining the NFIP with developing and administering the necessary local floodplain management regulations so that they comply with NFIP. The staff also provides information on the NFIP to homeowners, professionals, businesses, lenders, realtors, and others.

MFMP staff reviews local ordinances for compliance with the NFIP standards. The State, working with FEMA, develops model ordinances for towns to enact as a requirement of participation. The model ordinance is periodically updated and towns are encouraged to adopt revisions so that local standards remain consistent with state and national standards. There is another good reason for towns to comply with NFIP standards: communities that do not update their ordinances run the risk of being suspended and thus losing federal disaster assistance in the event of a Presidential disaster declaration.

Joining the Community Rating System

Assistance is also provided to those communities in the NFIP that seek to lower their flood insurance premiums through the NFIP's Community Rating System (CRS). The Community Rating System is a means of recognizing those communities that exceed minimum standards. The community earns points for different activities designed to reduce flood risk. For each 500 points earned, the flood insurance premiums in the town are reduced by 5%. 21 Maine communities participate in the CRS, more than any other New England state. And Maine homeowners save money from lower premium costs.

Coordination of Flood Insurance Studies and Mapping

Assist in the delineation of riverine and coastal flood-prone areas, whenever possible, and provide all relevant technical information to the Federal Insurance Administrator. With the advent of the Map Modernization Program in 2004 the State developed a business plan laying out it's priorities for what parts of the state should be mapped and in what order. Maine also created a MapMod Program Coordinator position to ensure it was aware of the new mandates and that the state continued to garner its fair share of the Program funding. This plan is continually updated as the federal "metrics" change and the funding fluctuates. Maine was ahead of the curve on Map Mod by doing a map needs assessment in 2002 based on a basin approach. The FEMA national metrics forced Maine to abandon its river basin approach and rethink its priorities based on a county wide mapping mandate.

Coordinate Local Floodplain Activities

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The state is responsible for recommending priorities for federal floodplain management activities in relation to the needs of the communities within the state. The Coordination Agency is also responsible for notifying the FIA in the event of an apparent irreconcilable difference between a community's local Floodplain Management Regulation and the federal minimum requirements of the NFIP. Our goal is to work with the communities to try to avoid this necessary function. Only when it is clear that a community is refusing or is not responding to all the efforts of communication has the state program found it necessary to contact the FEMA Regional Office.

Technical Assistance

It is also the MFMP's role to provide technical assistance to the communities.

Over the past 10 years, the number of calls for floodplain technical assistance has increased by 85%. In 1999 alone, there was a 23% increase in requests for technical assistance. These requests come from banks, surveyors, towns, code officers, and the public. In the early 1990's the majority of GTA requests came from local officials but as the program has matured and more individuals have become aware of the needs for floodplain management the interest groups have shifted. The breakdown of the assistance offered today is much different but not only in the groups involved but also the complexity of the questions being asked.

The following GTA tally is based on the Coordinator's e-mail and telephone logs in 2006.

▪ Professional Groups	37%
▪ State & Fed. Agencies	28%
▪ Local Officials	25%
▪ Property Owners	10%
Total	100%

Workshops

It is also the state's role to provide training. The MFMP conducts approximately four annual workshops each year for Code Enforcement Officers (CEO) as its part in participating with the Code Enforcement Officer Training and Certification Program. It also does numerous workshops each year for several professional groups including the Maine Professional Land Surveyors (PLS) Association as well as the lending and insurance professionals. Training has been conducted for the majority of other state agencies and in some instances more than one session has been provided such as with the Maine Department of Environment Protection/Land and Water Bureau, State Department of Conservation/Land Use Regulation Commission and Department of Economic and Community Development's office of Community Development. This has led to a better understanding of floodplain management and better compliance with National Flood Insurance Program regulations. In turn, these groups help with community education in their day-to-day work with community and homeowner clients.



MFMP staffer conducting a Code Enforcement Officer's Floodplain Management Workshop at the Augusta Civic Center

Interagency Reviews

The MFMP is also responsible for assuring coordination and consistency of floodplain management activities with other State, area wide and local planning, and enforcement agencies.

Federal Executive Order 11988 requires federally-funded projects to avoid floodplains if practical. Maine has a similar standard contained in a 1968 Executive Order issued by Governor Curtis. The MFMP reviews projects to determine whether they are reasonably safe from flooding and what impact the proposed development may have on surrounding natural resources. Reviews cover state projects as well as state-funded projects in flood areas such as sidewalks, parks, or building rehabilitation that are part of Community Development Block Grant projects; development that needs approval from the Department of Environmental Protection or the Land Use Regulation Commission; snowmobile trails constructed by the Department of Conservation; bridge or road

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work conducted or funded by the Department of Transportation; and improvements made by the Army Corps of Engineers.

Monitoring Community Program Performance and Progress towards Goals and Objectives

The MFMP conducts a number of Community Assistance Visits (CAVs) and Community Assistance Contacts (CACs) annually to ensure that our cities and towns are having no problems in understanding their ordinances and maps and to provide any needed assistance to help keep in compliance with the state and federal standards.

To achieve its goal of stimulating the development of the State's economy and the conservation of its natural resources, SPO strives to ensure that municipalities have the appropriate building standards in place to reduce losses from flooding. SPO measures its performance by tracking the number of municipalities with up-to-date ordinances.

Meeting Floodplain Management Standards

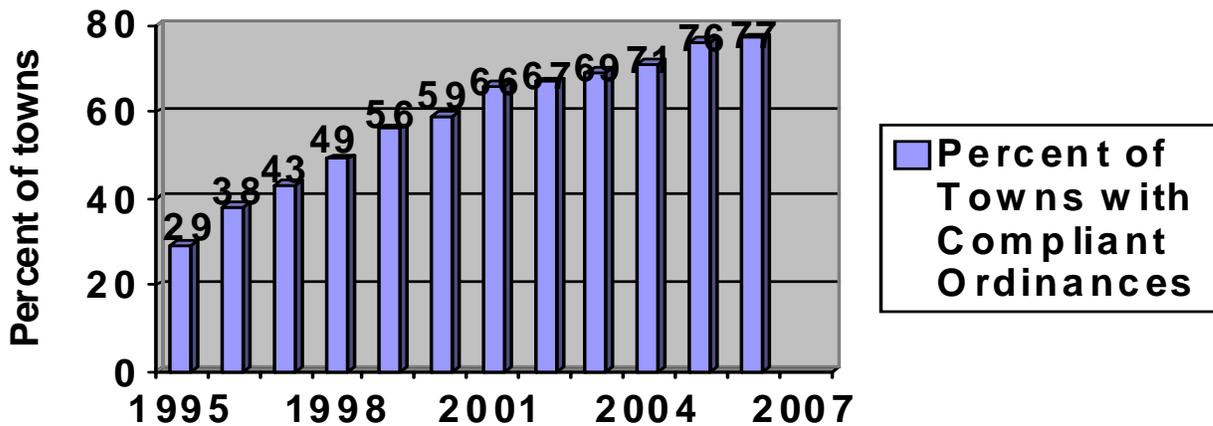


Figure 6: SPO's target is to have all requisite towns update their ordinances

Two additional functions that receive a lot of emphasis are: the Community Assistance Contact (CAC) and the Community Assistance Visit (CAV). Many of Maine's municipalities have been on the receiving end of one or the other, or in some cases both. A visit is exactly what it implies. Someone representing FEMA, usually the state comes to the community and sits down with the local officials and reviews the local floodplain management program as it relates to the NFIP.

The CAV is not intended to be a punitive action, but rather a method of offering assistance and guidance to the participating community if needed. This visit is followed with a report to FEMA and a letter to the community with recommendations or in some cases noting the good job that the community is doing. A CAC is generally a phone call to inquire about the administration and enforcement of the floodplain ordinance and ask if the local officials are having any difficulties. It may result in a follow-up CAV.

The Maine Floodplain Management Program (MFMP) is now averaging over 2,300 calls for assistance per year from communities, citizens, lenders, surveyors, insurance agents, and the public. The Program maintains copies of the ordinance and FIRMs for each community, as well as publications and videos for lending or distributing. The MFMP is available to provide help to any community that needs floodplain management assistance.

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The Community's Role

Because states have empowered communities to regulate land use, and because Congress believed it was more appropriate for development to be regulated at the local level, the NFIP was designed to function as a *Quid Pro Quo* type of program. Congress would underwrite flood insurance and provide the hazard identification (flood maps), the *Quid*, in return for the community's adoption of regulations for development in floodplains, the *Quo*. The literal English translation of the Latin, *Quid Pro Quo*, has been stated as - *This for That*.

The vast majority of communities with floodplain management ordinances have them because they wanted to join the National Flood Insurance Program. In order for your community to participate in the NFIP it must do three things;

- Fill out an application ([see Appendix H](#));
- Adopt a resolution ([see Appendix H](#)); and
- Adopt floodplain regulations that at least meet minimum [NFIP standards](#) (see model ordinance beginning on page 1-12).

The NFIP Application

Each community enters the program on its own volition. [The community's responsibilities are outlined in the [NFIP Regulations](#) at §59.22.]

The NFIP Application asks for the following information about the town. See [Appendix H](#) for a copy of the application.

- Community name
- County and State
- Chief Elected Official
- Address
- Program Coordinator [typically the Code Enforcement Officer]
- Location of repository for public inspection of maps [typically in the town hall in the Code Enforcement Office]
- Estimates of:
 - Community population/floodplain population
 - Number of 1-4 Family structures in community/floodplain
 - Number of small business structures in community/floodplain
 - Number of all other structures in community/floodplain

In reviewing the many applications on file, a common problem is that many of the towns did not provide reasonable estimates when it came to filling in the boxes asking for the number of people and structures in the floodplain. It is very important to provide the best information reasonably possible. While it may not be practical to do an actual count of structures, which some towns have done as part of the comprehensive planning process, it should not be too difficult to establish a reasonable estimate.

The Resolution

The second step the community must accomplish is the adoption of a resolution. For towns with a town meeting form of government, this action must be done at the town meeting. The vast majority of Maine's towns adopted the resolution and joined the Program in the mid 1970's. It is a good idea to go back and look at that resolution to see what promises the town made, and what is still expected of the community today.

The Community also must adopt a Resolution agreeing to:



(Kennebunk, ME) Rescue workers after April 2007 Nor'easter.

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- Adopt and enforce a floodplain management ordinance that meets the minimum standards of the program. [See Section C of this chapter which discusses the floodplain management ordinance.]
- Assist the FIA in delineating the SFHA.
- Maintain for public inspection information needed in determining risk premium rates, i.e. elevation certificates and permit information.
- Cooperate with Federal, State and local agencies and private firms to study, survey, map, and identify high-risk areas and cooperate with neighboring communities to manage adjoining floodplains.
- Notify the FIA of boundary changes or changes in legislative authority.

The required wording of the resolution is fairly specific. A copy of the model Resolution can be found in Appendix H.

Biennial Report

The community has a responsibility to FEMA under 44 CFR 59.22(b)(2) of the federal regulations to submit a Biennial Report to the Federal Insurance Administrator. On the form provided, the community must show the number of permits and variances issued for the prior two years. The community is also asked to update its estimated population and structure figures both in the entire town as well only in the floodplain. Although the population and structure information may not seem important, this information is used nationally to gauge the Program's effectiveness, for example: how many structures are at risk versus how many structures are covered by insurance. These figures also have other program implications as well.

See the sample Biennial Report in [Appendix K](#).

Basis for Regulation

More than 400 communities in Maine, or about 93%, are participating in the NFIP. See the [NFIP Community Status Book](#). They have agreed to adopt and enforce an ordinance regulating floodplain development. It is the ordinance, therefore, which forms the basis for a community's floodplain regulatory program. The Model Ordinance in this manual has been developed for use by Maine municipalities. The ordinance in this manual is different from the one in the last manual. The revision is ongoing, with the Ordinance refined based on community feedback. The Maine FMP will continue improve the model ordinances based on constructive input so that communities do not experience difficulties administering their own ordinances.

There are now five different model ordinances, depending on the type of maps a community has been given by the Federal Government identifying the hazard, and whether or not the area community is identified as being a coastal community. The model ordinances meet all the minimum requirements of the National Flood Insurance Program (NFIP) regulations (originally published in the Federal Register on October 26, 1976, re-designated as 44 CFR 59-60 May 31, 1979, and revised through November, 1997).

Even if you already have a floodplain ordinance in force, we urge you to read this chapter carefully. References to specific sections in the ordinance are made throughout the manual. The more familiar you are with the ordinance, the better you will understand the regulatory requirements.

B. Ordinance Adoption

State Law Requirements

Title 30-A governs how ordinances are adopted. The normal procedure is delineated in Title 30-A MRSA § 2523. This section requires the proposed ordinance to be attested by the Municipal Clerk as a true copy of the ordinance as certified by the municipal officers and then posted where the municipal warrant is posted at least 7 days prior to the town meeting or city council meeting. In addition, copies of the ordinance must be available at the municipal office at least 14 days before the meeting as well as at the town or city council meeting for examination by interested citizens. The warrant article **must** read: "Shall an ordinance entitled "Floodplain Management Ordinance for the Town/City of _____, Maine _____, 20__" be enacted?" Once enacted, the ordinance shall be on file with the municipal clerk and shall be accessible to any member of the public. Copies shall be available at a reasonable cost.

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If the ordinance is to be voted on by secret ballot then the procedures spelled out in Title 30-A MRSA § 2528, subsection 5 must be adhered to. The statute requires that at least 45 days before the vote the municipal officers must order that the ordinance be voted on secretly. At least 17 days before the vote, the municipal officers must post a public hearing notice in the same manner that a town meeting warrant is posted. Posting shall include a copy of the proposed ordinance, as well as the time and place of the hearing. At least ten days before the vote, the municipal officers must hold a public hearing on the proposed ordinance, and the ordinance language must be available for viewing by the general public. If substantive changes are later made to the ordinance, another hearing must be held prior to the vote.

Repeal of or amendments to an existing ordinance

If the municipality already has a floodplain ordinance or ordinance provisions it proposes to delete, this is most easily accomplished by revising the current ordinance per the sample below:

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

Language to this effect is included as Article XV (Article XIV in the b, c, and d non-coastal models) of the Model Ordinance.

If the municipality proposes to amend an existing ordinance, such as amending the zoning ordinance to include floodplain provisions, then the procedures outlined above for enactment of an ordinance shall be followed exactly, although the ordinance title will be different. In this case, the ordinance should be titled "Floodplain Management Amendments to the Zoning Ordinance of the Town/City of _____, Maine enacted on _____, 20__."

C. Model Ordinance for Municipalities

What follows on the next several pages is one version of the Model Floodplain Management Ordinance. As mentioned above there are five different versions of the model because the NFIP has different requirements for municipalities depending upon their maps and location. Communities whose maps do not show base flood elevations, and who do not have detailed studies, have less detailed ordinances than communities whose maps contain more information. The ordinances are designated as "b" riverine, "b" coastal, "c and d" riverine, "c and d" coastal, and "e" ordinances.

- The "b" ordinances are used by communities which do not have detailed studies or elevations on their maps. The floodplains on those maps are designated only as "A" zones.
- The "c and d" ordinances are used by communities whose maps show floodplain elevations and almost always have detailed studies. Some of those communities also have floodway maps and floodway information in the Flood Insurance Study.
- The "e" ordinance is used by coastal communities whose maps show floodplain elevations and velocity zones (V Zones), and these communities usually have detailed flood studies. Ordinances for coastal communities should consider the special requirements imposed on coastal high hazard areas. Inland communities that experience only riverine flooding are not required to abide by the same regulations.



(Saco, ME) Mitigation measures such as bolting vertical surfaces to the foundation and using hurricane-resistant shingles paid off for owners of this home during 2007 Nor-Easter.

The ordinances are cumulative. In other words, no essential information is changed or deleted as you move from a "b" ordinance to one of the others; just added to.

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How can I tell which ordinance is right for my town?

The ordinance requirement is determined by the kind of flood hazard identification map that has been provided to your community by the Federal Insurance Administrator. Early maps (before 1979) were created by the Department of Housing and Urban Development (HUD). Maps from 1979 to present were done by the Federal Emergency Management Agency (FEMA).

The more detailed the flood maps that are available to the community, the more detailed the community's floodplain management regulations must be. The National Flood Insurance Program Regulations at 44 CFR, Part 60.3 further tie the type and scope of minimum local regulations to the types of map.

Your community should adopt a 60.3 (b) Floodplain Management Ordinance if the effective Flood Insurance Rate Map (FIRM) or Flood Hazard Boundary Map for your town meets the following criteria:

- the map is an 11" x 17" "Flat Map" also known as an "Approximate Method Map" without base flood elevations. The Special Flood Hazard Areas (SFHAs) are identified with a capital letter A without any number following the letter (i.e., A Zone);
- it is a Z-fold map without base flood elevations (**if there are any flood elevations anywhere** on any of the map panels, even though the majority of the zones are A zones then it is **not** a (b) community); or
- the map is listed in the FEMA Community Status Book as Minimally flood prone (an M is next to the community's map effective date in the Status Book).

Your community should adopt a 60.3(c) Floodplain Management Ordinance if the effective Flood Insurance Rate Map for your town:

- is a Z fold map with base flood elevations having Special Flood Hazard Areas identified as an AE, A1-30, AH, and/or AO Zone.
- **if there are base flood elevations anywhere** on any of the map panels, your community needs this ordinance, even if some panels may not have AE, A1-30, AH or AO and all zones are labeled on the panel as A.
- has no identified regulatory floodway or coastal high hazard area.

Your community should adopt a 60.3(d) Floodplain Management Ordinance if the effective FIRM for your town:

- has any Flood Hazard Areas identified with an AE, A1-A30, AH and/or AO Zone, and
- has the "floodway" portion of the floodplain delineated on the FIRM with a cross hatched pattern, or
- for older flood maps such as those dated prior to 1986, has a separate set of Flood Boundary and Floodway Maps delineating the floodway portion of the floodplain as a non-shaded area.

Your community should adopt a 60.3(e) Floodplain Management Ordinance if the effective FIRM for your town:

- has any coastal Special Flood Hazard Areas identified as a VE or V1-30 Zone

Community officials should make sure they use the proper model when preparing their own ordinance. Contact the Maine Floodplain Management Program at the State Planning Office if you need assistance in determining which ordinance is required for your community. The models are written for municipalities with a town meeting form of government, but can be adapted for cities or towns with a council form of government by substituting the appropriate language.

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The ordinance is comprised of fifteen articles and it assumes a building permit system does not already exist in the community. If your community has a building permit system in effect, and if the preference is not to have two separate permit systems, the model ordinance can be adapted to fit into the original, permit-establishing ordinance.

For the sake of practicality, we have chosen the "e" ordinance, which is the most detailed, to use as an example in this chapter. The ordinance, as presented in this handbook, is accompanied by commentary explaining the provisions and referencing federal and state regulations. The commentary also describes how to fill in the blanks, and points out those portions of the coastal model which are not applicable to inland communities. The text of the ordinance appears on the left side of the page, and the commentary is on the right side.

The Maine Floodplain Management Program in the State Planning Office maintains five different versions of the model ordinance and can provide a customized copy for your community, upon request. Assistance in modifying the model ordinance to suit your community is available from your regional council or the Maine Floodplain Management Program. Staff is also available if your community needs help in determining the appropriate terminology to fill in the blanks appropriately for your community. The ordinance should be reviewed by the City or Town Attorney prior to adoption since the attorney is the person responsible for defending any challenges to it.

If your community makes changes to the model ordinance, it is imperative that revisions be reviewed by the Maine Floodplain Management staff or FEMA prior to adoption. There have been Maine communities that have spent a tremendous amount of time and resources to develop their own ordinance, only to find out after it was adopted that it did not meet the minimum NFIP requirements. A community could be subject to suspension from the NFIP if lesser standards are adopted. If you have any questions, please contact the staff of the Maine Floodplain Management Program, your regional council, or FEMA, all of whom are available to provide assistance to community officials.

The model Floodplain Management Ordinances are also available on the SPO web site at: <http://www.Maine.gov/spo/flood>. Under the "floodplain management" heading, choose "ordinances and permit forms".

Carefully follow the instructions for choosing the appropriate ordinance.

FLOODPLAIN MANAGEMENT ORDINANCE

FOR THE

TOWN/CITY OF _____, MAINE

ENACTED:

Date

CERTIFIED BY:

Name

Title

Affix Seal