

Chapter 14.1 - FLOOD PROTECTION

Sec. 14.1-1. - Purpose and statutory authorization.

- (a) *Statutory authorization [44 CFR 59.22(a)(2)].* This chapter is adopted pursuant to the statutory authority granted to localities by Code of Virginia § 10.1-600, et seq.
- (b) *Findings of fact.* The flood hazard areas of Portsmouth are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all which adversely affect the public health, safety, and general welfare. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise protected from flood damages.

Trends in tide data over the last 100 years suggest that Portsmouth is facing an increased danger of flooding caused by both sea level rise and subsidence. The data also suggest that Portsmouth may experience a rise in base flood elevations greater than four feet in the next 100 years.

- (c) *Statement of purpose.* The purpose of these provisions is to reduce the loss of life and property; to reduce the creation of health and safety hazards; to reduce the disruption of commerce and governmental services; to reduce the extraordinary and unnecessary expenditure of public funds for flood protection and relief; and to reduce the impairment of the tax base by:
 - (1) Regulating uses, activities and development which, alone or in combination with other existing or future uses, activities and development, will cause damaging increases in erosion or in flood heights, velocities, and frequencies.
 - (2) Restricting or prohibiting certain uses, activities and development from locating within districts subject to flooding.
 - (3) Requiring all those uses, activities and developments that do occur in flood-prone districts to be protected and/or flood-proofed against flooding and flood damage.
 - (4) Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.
 - (5) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters.
 - (6) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

(Ord. No. 2015-36, § 2(Exh. A), 6-9-2015)

Sec. 14.1-2. - Applicability.

The provisions of this chapter shall apply to all privately and publicly owned lands within the jurisdiction of the City of Portsmouth and (a) identified as areas of special flood hazard according to the flood insurance rate map (FIRM) that is provided to the City of Portsmouth by the Federal Emergency Management Agency (FEMA) and dated August 3, 2015 or any subsequent revisions or amendments thereto or (b) otherwise deemed special flood hazard areas pursuant to the provisions of this chapter.

(Ord. No. 2015-36, § 2(Exh. A), 6-9-2015)

Sec. 14.1-3. - Compliance and liability.

- (a) No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged or structurally altered except in full compliance with the terms and provisions of this chapter and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this chapter.
- (b) The degree of flood protection sought by the provisions of this chapter is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study, but does not imply total flood protection. Larger floods may occur on rare occasions. Flood heights may be increased by manmade or natural causes, such as excessive rainfall, ice jams, and bridge openings restricted by debris. This chapter does not imply that districts outside the floodplain district or that land use within such district will be free from flooding or flood damages.
- (c) The provisions of this chapter shall not impose liability on the City of Portsmouth or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision made hereunder.

(Ord. No. 2015-36, § 2(Exh. A), 6-9-2015)

Sec. 14.1-4. - Penalties.

- (a) Any person who fails to comply with any of the requirements or provisions of this chapter or any order of the floodplain administrator or his designee, or any authorized employee shall be guilty of the appropriate violation and subject to the penalties therefore. Any person who fails to comply with any of the requirements or provisions of this chapter or any order of the floodplain administrator or his designee or any other authorized employee shall be guilty of a class 1 misdemeanor.
- (b) In addition to the above penalties, all other actions are hereby reserved, including an action seeking equitable relief for the proper enforcement of this chapter by the floodplain administrator or his designee or other authorized employee. The imposition of a fine or penalty for any violation of, or noncompliance with, the provisions of this chapter shall not excuse the violation or noncompliance so as to permit it to continue, and all violations shall be corrected or remedied within a reasonable time. Any structure constructed, reconstructed, enlarged, altered, or relocated in noncompliance of this chapter may be declared by the City of Portsmouth to be a public nuisance and abatable as such. Flood insurance and/or certificates of occupancy may be withheld from structures constructed in violation of this chapter.

(Ord. No. 2015-36, § 2(Exh. A), 6-9-2015)

Sec. 14.1-5. - Specific definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Addition (to an existing building) means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by independent perimeter load-bearing walls is new construction.

Appurtenant or accessory structure means an accessory structure not to exceed 200 square feet.

Base flood means a flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) means one percent annual chance water surface elevation designated by the Federal Emergency Management Agency. The water surface elevation of the base flood in relation to the datum specified on the community's flood insurance rate map. For the purposes of this ordinance, the base flood is the one percent annual chance flood.

Basement means any area of the building having its floor sub-grade (below ground level) on all sides.

Board means the board of zoning appeals.

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.

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.

Design flood elevation (DFE) means the higher of:

- (1) The base flood elevation at the depth of peak elevation (including wave height) which has a one percent or greater chance of being equaled in any given year plus 3.0 feet; or
- (2) The elevation of the base flood associated with the area designated on a flood hazard map adopted by the community, or otherwise legally designated plus 3.0 feet.

Development means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, the placement of manufactured homes, streets, mining, dredging filling, grading, paving, excavation or drilling operations or storage of equipment or materials, or the subdivision of land. For purposes of this chapter the date of development is considered the date of land disturbance or the date of issuance of a land disturbance permit, whichever is earlier.

Elevated building/structure means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Encroachment means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Existing construction means structures for which the start of construction commenced before the effective date of the most recent FIRM (August 3, 2015). "Existing construction" may also be referred to as "existing structures."

Flood or flooding means:

- (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 waters from any source; or
 - c. Mudflows which are proximately caused by flooding as defined in paragraph b. of this section and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- (2) The collapse or subsidence of land along the shore of a lake or other body of water as a result or 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 a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in subsection (1) of this section.

Flood insurance rate map (FIRM) means an official map of the city on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a digital flood insurance rate map (DFIRM).

Flood insurance study (FIS) means a report by FEMA that examines, evaluates, and determines flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudflow and flood-related erosion hazards.

Floodplain means any land area susceptible to being inundated by water from any source and subject to special restrictions as defined in section 14.1-10 and 14.1-11.

Floodprone area means any land area susceptible to being inundated by water from any source.

Floodproofing means any combination of structural and non-structural 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 their contents.

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 a designated height.

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

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

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 to qualify as a registered historic district; or
- (3) Individually listed by the commonwealth in an inventory of historic places.

Hydrologic and hydraulic engineering analysis means analysis performed by a professional engineer licensed by the Commonwealth of Virginia, in accordance with standard engineering practices that are accepted by the Virginia Department of Conservation and Recreation and FEMA, used to determine the base flood, other frequency floods, flood elevations, floodway information and boundaries, and flood profiles.

Letter of map change (LOMC) means an official FEMA determination, by letter, that amends or revises an effective FIRM or FIS. Letters of map change include LOMAs, LOMRs, and CLOMRs, which are defined as follows:

- (1) *Letter of map amendment (LOMA)* means an amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area (SFHA). A

LOMA amends the current effective FIRM and establishes that a land as defined by metes and bounds or a structure is not located in a special flood hazard area (SFHA).

- (2) *Letter of map revision (LOMR)* means a revision based on technical data that may show changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. A letter of map revision based on fill (LOMR-F) is a determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer exposed to flooding associated with the base flood. In order to qualify for this determination, the fill must have been permitted and placed in accordance with this chapter.
- (3) *Conditional letter of map revision (CLOMR)* means a formal review and comment as to whether a proposed flood protection project or other project complies with the minimum National Flood Insurance Program (NFIP) requirements for such projects with respect to delineation of SFHAs. A CLOMR does not revise the effective FIRM or FIS.

Limit of moderate wave action (LiMWA) means a boundary that identifies the landward location of the 1.5 foot wave height delineating a zone called the "Coastal A Zone."

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 Federal Code 44 CFR Section 60.3.

Manufactured home means, for purposes of this chapter, 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 greater than 180 consecutive days, but does not include a recreational vehicle.

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

Market value means the city assessment value of the building as prepared by the city assessor.

Mean sea level means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD88) of 1988 or other datum, to which base flood elevations shown on the FIRM are referenced.

New construction means, for the purposes of determining insurance rates, structures for which the start of construction commenced on or after December 31, 1974, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management ordinance adopted by the city, and includes any subsequent improvements to such structures.

NFIP means the National Flood Insurance Program.

Post-FIRM structure means a structure for which construction or substantial improvement occurred after December 31, 1974.

Pre-FIRM structure means a structure for which construction or substantial improvement occurred on or before December 31, 1974.

Primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is distinct change from a relatively steep slope to a relatively mild slope.

Recreational vehicle means a vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel or seasonal use.

Repetitive loss structure means a structure covered by a contract for flood insurance that has incurred flood related damage on two separate occasions during a ten-year period for which the cost of repairs, on the average, equaled or exceeded 25 percent of the market value of the structure before the damage occurred or \$10,000.00, whichever is less.

Severe repetitive loss structure means a structure that: (a) is covered under a contract for flood insurance made available under the NFIP; and (b) has incurred flood related damage — (i) For which four or more separate claims payments have been made under flood insurance coverage with the amount of each such claim exceeding \$5,000.00, and with the cumulative amount of such claims payments exceeding \$20,000.00; or (ii) For which at least two separate claims payments have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the insured structure before the damage occurred.

Shallow flooding area means a special flood hazard area with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by pending or sheet flow.

Special flood hazard area (SFHA) means the land in the floodplain subject to a one percent or greater chance of being flooded in any given year as determined as set forth in this ordinance. These areas are designated as AE, AO, A, and VE on the FIRM.

Start of construction means the date of issuance of the building permit, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means either:

- (1) 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
- (2) The placement of a manufactured home on a foundation.

Start of construction (Coastal Barriers Act) means, for other than new construction and substantial improvement, under the Coastal Barriers Resource Act (P.L.- 97-348), 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 a 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 the 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 term "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 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 on any wall, ceiling, floor or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

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.

Substantial damage means damage of any origin sustained by a structure when the cost of restoring the structure to its pre-damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. A structure that has been damaged two or more times by flood events during any consecutive ten-year period with a cumulative building loss equal to or exceeding 50 percent of the market value before the damage shall also be considered a substantial damaged structure.

Substantial improvement means any combination of repair, 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 either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not the alteration affects the external dimensions of the structure. This term includes structures which have incurred repetitive loss or 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 requirements and which are the minimum necessary to ensure safe living conditions; or
- (2) Any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Notwithstanding the foregoing, historic structures undergoing work that would constitute a substantial improvement as defined above, shall comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic Places shall be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

Violation means the failure of a structure or other development to be fully compliant with the provisions of this ordinance. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

VA USBC means the Virginia Uniform Statewide Building Code, as amended and supplemented from time to time.

Water surface elevation means the height, in relation to the North American Vertical Datum of 1988 (NAVD88) (or other datum, where specified) of floods of various magnitude and frequencies in the floodplains of coastal or riverine areas.

Watercourse means any natural or artificial lake, river, creek, stream, ditch, channel, waterway, gully, ravine, swale, or wash in which water flows, either continuously, periodically, or intermittently, and which has a definite channel, bed, or banks. Watercourse includes specifically designated areas in which substantial flood damage may occur.

(Ord. No. 2015-36, § 2(Exh. A), 6-9-2015)

Sec. 14.1-6. - Description of district.

- (a) Description of special flood hazard areas. The various special flood hazard districts shall include the special flood hazard areas (SFHAs). The basis for the delineation of these districts shall be the flood insurance study (FIS), and flood insurance rate map (FIRM) prepared for the City of Portsmouth by the Federal Emergency Management Agency, Federal Insurance Administration, dated August 3, 2015, and any subsequent revisions or amendments thereto. The City of Portsmouth may identify and regulate local flood hazard or pending areas that are not delineated on the FIRM. These areas may be delineated on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high water marks or approximate study methodologies.

The boundaries of the SFHA Districts are established as shown on the FIRM, which is declared to be a part of this ordinance and which shall be kept on file at the City of Portsmouth Department of Neighborhood Advancement, and which may include the following districts:

- (1) The floodway district is in an AE Zone and is delineated, for purposes of this chapter, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the one percent annual chance flood without increasing the water surface elevation of that flood more than one foot at any point. The areas included in this district, if any, are shown on the FIRM. Currently, according to the above-referenced FIRM (August 3, 2015), there are no floodways designated in the latest Portsmouth FIS.
 - (2) The AE or AH Zones on the FIRM accompanying the FIS shall be those areas for which one percent annual chance flood elevations have been provided and the floodway has not been delineated.
 - (3) The A Zone on the FIRM accompanying the FIS shall be those areas for which no detailed flood profiles or elevations are provided, but the one percent annual chance floodplain boundary has been approximated.
 - (4) The AO Zone on the FIRM accompanying the FIS shall be those areas of shallow flooding identified as AO on the FIRM.
 - (5) The Coastal A Zone shall be those areas, as defined by the VA USBC, that are subject to wave heights between 1.5 and 3 feet, and identified on the FIRM as areas between the V zone and the limit of moderate wave action (LiMWA).
 - (6) The VE or V Zones on the FIRMs accompanying the FIS shall be those areas that are known as coastal high hazard areas, extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity (three-foot and higher) wave action.
- (b) Overlay concept.
- (1) The floodplain districts described above shall be in addition to and shall overlay all other zoning districts designated on the Official Zoning Ordinance Map as adopted by section 40.1 of this Code. The provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.
 - (2) In any conflict between the Code requirements for the floodplain districts and those for any underlying zoning district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.
 - (3) In the event any provision concerning a floodplain district is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

(Ord. No. 2015-36, § 2(Exh. A), 6-9-2015)

Sec. 14.1-7. - Official zoning map.

The boundaries of the floodplain districts are established as shown on the flood insurance rate map, which is declared to be a part of this chapter and which shall be kept on file in the office of the department of neighborhood advancement.

(Ord. No. 2015-36, § 2(Exh. A), 6-9-2015)

Sec. 14.1-8. - District boundary changes.

The delineation of the floodplain districts may be revised by the Portsmouth City Council where natural or manmade changes have occurred, where more detailed studies have been conducted or undertaken by the U.S. Army Corps of Engineers or other qualified agency, or where an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency.

(Ord. No. 2015-36, § 2(Exh. A), 6-9-2015)

Sec. 14.1-9. - Interpretation of district boundaries.

Initial interpretations of the boundaries of the floodplain districts shall be made by the director of neighborhood advancement or his designee. Should a dispute arise concerning the boundaries of any of the districts, the board of zoning appeals shall make the necessary determination. The person questioning or contesting the location of the district boundary shall be given a reasonable opportunity to present his case to the board and to submit his own technical evidence if he so desires.

(Ord. No. 2015-36, § 2(Exh. A), 6-9-2015)

Sec. 14.1-10. - General provisions.

- (a) *Permit requirement.* All uses and development occurring within any floodplain district, including placement of manufactured homes, shall be undertaken only upon the issuance of the appropriate permit. Such development shall be undertaken only in strict compliance with the provisions of this chapter and with all other applicable codes and ordinances as amended, including the VA USBC and the City of Portsmouth development ordinances. Prior to the issuance of any such permit, the floodplain administrator shall require all applications to include compliance with all applicable state and federal laws and shall review all sites to assure they are reasonably safe from flooding. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.
- (b) *Site plans and permit applications.* All applications for development in any floodplain district and all building permits issued for activity in the floodplain district shall include the following information:
 - (1) The elevations of the "lowest floor" (including HVAC equipment and duct work), and the basement, or in Coastal A and V Zones, the lowest horizontal structural member (including HVAC equipment and duct work).
 - (2) For nonresidential structures to be flood-proofed, the elevation to which the structure will be flood-proofed. Such elevation shall be at least three feet above the base flood elevation for the district. Floodproofing design must be certified by a Virginia registered professional

engineer or architect. Documentation of certification by a registered professional engineer or architect of the design and methods of construction is required.

- (3) The elevation of the base flood at the site.
 - (4) Topographic information showing existing and proposed ground elevations.
- (c) *Standards for manufactured homes.* Section 14.1-11(e) prohibits the permanent placement of manufactured homes in floodplain districts. Manufactured homes may be temporarily placed in a floodplain district provided that:
- (1) Manufactured homes placed in the floodplain district temporarily on individual lots or parcels, must meet all the requirements for new construction, including the elevation and anchoring requirements in section 14.1-11 of this Code.
 - (2) Manufactured homes that are temporarily placed on sites shall be elevated on a permanent foundation so that the lowest floor of the manufactured home is elevated to or above the base flood elevation and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
 - (3) Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state anchoring requirements for resisting wind forces.
 - (4) The length of time a manufactured home may be left on a lot and be considered temporary shall not exceed the time limitations provided in the zoning ordinance.
- (d) *Standards for recreational vehicles.* Recreational vehicles placed on sites within floodplain districts shall be on the site for fewer than 180 consecutive days and be fully licensed and ready for highway use. For the purposes of this chapter, a recreational vehicle shall be deemed 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.

(Ord. No. 2015-36, § 2(Exh. A), 6-9-2015)

Sec. 14.1-11. - District provisions.

- (a) *General standards.* The following provisions shall apply to all permits:
- (1) New construction, substantial improvements, and repairs for substantial damage shall be according to the VA USBC and this chapter, and anchored to prevent flotation, collapse, or lateral movement of the structure.
 - (2) New construction, substantial improvements, and repairs for substantial damage shall be constructed with materials and utility equipment resistant to flood damage below the design flood elevation (DFE) in cases when those elements are allowed below the DFE.
 - (3) New construction, substantial improvements, and repairs for substantial damage shall be constructed by methods and practices that minimize flood damage.
 - (4) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
 - (5) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
 - (6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

- (7) On-site waste disposal systems shall be designed to current City of Portsmouth standards and shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(b) *Floodplain requirements.*

- (1) The following provisions shall apply within the floodway district of an AE zone:
 - a. Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels within the community during the occurrence of the base flood discharge. Hydrologic and hydraulic analysis shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently-accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the floodplain administrator.
 - b. Development activities which increase the water surface elevation of the base flood may be allowed, provided that the applicant first applies — with the City of Portsmouth's endorsement — for a conditional letter of map revision (CLOMR), and receives the approval of the Federal Emergency Management Agency.
 - c. If subsection 14.1-11(b)(1)a. is satisfied, all new construction and substantial Improvements shall comply with all applicable flood hazard reduction provisions in sections 14.1-10 and 14.1-11 of this Code.
 - d. The placement of manufactured homes (mobile homes) is prohibited except in an existing manufactured home (mobile home) park or subdivision. A replacement manufactured home is prohibited.
- (2) The following provisions shall apply within an AE or AH zone [44 CFR 60.3(c)].
 - a. Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the areas of special flood hazard, designated as Zones A1-30 and AE or AH on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the City of Portsmouth.
 - b. Development activities in Zones A1-30 and AE or AH, on the City of Portsmouth's FIRM which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the applicant first applies — with the City of Portsmouth's endorsement — for a conditional letter of map revision, and receives the approval of the Federal Emergency Management Agency.
- (3) The following provisions shall apply within an A zone [44 CFR 60.3(b)].
 - a. The Approximated Floodplain District shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a 100-year floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the FIS. For these areas, the base flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one percent annual chance flood elevation cannot be determined for this area using other sources of data, such as the U.S. Army Corps of Engineers Floodplain Information Reports, U.S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this base flood elevation. For development proposed in the approximate floodplain the applicant must use

technical methods that correctly reflect currently accepted non-detailed technical concepts, such as point on boundary, high water marks, or detailed methodologies hydrologic and hydraulic analyses. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the floodplain administrator.

- b. The floodplain administrator reserves the right to require a hydrologic and hydraulic analysis for any development. When such base flood elevation data is utilized, the lowest floor shall be elevated to the design flood elevation (DFE).
 - c. During the permitting process, the floodplain administrator shall obtain:
 - 1) The elevation of the lowest floor (including HVAC, all duct work, and the basement) of all new and substantially improved structures; and
 - 2) If the structure is non-residential has been flood-proofed in accordance with the requirements of this article, the elevation (in relation to mean sea level) to which the structure has been flood-proofed. Residential structures shall not be flood-proofed.
 - d. Base flood elevation data shall be obtained from other sources or developed using detailed methodologies comparable to those contained in a FIS for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed 50 lots or five acres, whichever is the lesser.
- (4) The following provisions shall apply within an AO zone [44 CFR 60.3(c)].
- a. All new construction and substantial improvement of residential structures shall have the lowest floor, including basement, elevated to or above the flood depth specified on the FIRM, above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM. If no flood depth number is specified, the lowest floor, including basement, shall be elevated no less than two feet above the highest adjacent grade.
 - b. All new construction and substantial improvements of non-residential structures shall:
 - 1) Have the lowest floor, including basement, elevated to or above the flood depth specified on the FIRM, above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade; or
 - 2) Together with attendant utility and sanitary facilities be completely flood-proofed to the specified flood level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
 - c. Adequate drainage paths around structures on slopes shall be provided to guide floodwaters around and away from proposed structures.
- (5) The following provisions shall apply for the Coastal A Zone (limits of moderate wave action). Buildings and structures within this zone shall comply with V zone standards with the lowest supporting member elevated to or above the base flood elevation plus 3.0 feet of freeboard, and must comply with the provisions in paragraph b.2. in this section (14.1-11) (provisions for zones AE or AH) and paragraphs a. and d. in this section (14.1-11).
- (6) The following provisions shall apply for the VE or V Zones (Coastal High Hazard areas).
- a. All new construction and substantial improvements in Zones V and VE (V if no base flood elevation is available) shall be elevated on pilings or columns so that:

- 1) The bottom of the lowest horizontal structural member of the lowest floor (including all HVAC and duct work but excluding the pilings or columns) is elevated above the base flood level by at least three feet; and
 - 2) The pile or column foundation and 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. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year (one-percent annual chance).
- b. A registered professional engineer or architect shall develop or review the structural design, specifications, and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of Section 14.1-11(b)(6)(a)(2) of this code.
- c. The floodplain administrator shall obtain the elevation (in relation to mean sea level) of the bottom of the lowest horizontal structural member of the lowest floor (including all HVAC and duct work, but excluding pilings and columns) of all new and substantially improved structures in Zones V and VE. The floodplain management administrator shall maintain a record of all such information.
- d. All new construction shall be located at least 50 feet landward of the reach of mean high tide.
- e. All new construction and substantial improvements shall have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood-lattice work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than ten and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:
- 1) Breakaway wall collapse shall result from water load less than that which would occur during the base flood; and
 - 2) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year.
- f. The enclosed space below the lowest floor shall be used solely for parking of vehicles, building access, or storage. Such space shall not be partitioned into multiple rooms, temperature-controlled, or used for human habitation.
- g. The use of fill for structural support of buildings is prohibited. When non-structural fill is proposed in a coastal high hazard area, appropriate engineering analyses shall be conducted to evaluate the impacts of the fill prior to issuance of a development permit.
- h. The man-made alteration of sand dunes and mangrove stands, which would increase potential flood damage, is prohibited.
- i. All recreational vehicles placed in V-zones shall be on site for fewer than 180 consecutive days, be fully licensed and ready for highway use or meet the same standards as for conventional housing in V-zones.

(c) *Additional provisions for watercourse.*

- (1) Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction, a permit shall be obtained from the U.S. Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resource Commission (a joint permit application is available from any of these organizations). Furthermore, in riverine areas, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), other required agencies, and the Federal Emergency Management Agency.
- (2) The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

(d) *Elevation and construction standards.* In all identified flood hazard areas where base flood elevations have been provided in the FIS or generated by a certified professional in accordance with subsection 14.1-11(b)(3) of this code the following provisions shall apply:

- (1) *Residential construction.* New construction or substantial improvement of any residential structure (including manufactured homes) in Zones A1-30, AE, AH and A with detailed base flood elevations shall have the lowest floor including HVAC, duct work, and basement, elevated to at least the design flood elevation which is the BFE plus 3.0 feet. No floodproofing below the design flood elevation (DFE) of residential construction is allowed.
- (2) *Non-residential construction.* New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured home) shall have the lowest floor, including basement, elevated at least three feet above the base flood level.

Buildings located in all A1-30, AE, and AH zones may be floodproofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus three feet are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained by the floodplain administrator.

(3) *Space below the lowest floor.* In zones A, AE, AH, AO, and A1-A30, fully enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:

- a. Not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator).
- b. Be constructed entirely of flood resistant materials below the design flood elevation which is the BFE plus three feet.
- c. Include measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria;
 - 1) Provide a minimum of two openings on different sides of each enclosed area subject to flooding.

- 2) The total net area of all openings must be at least one square inch for each square foot of enclosed area subject to flooding.
- 3) If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit.
- 4) The bottom of all required openings shall be no higher than one foot above the adjacent grade.
- 5) Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions.
- 6) Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

(e) *Prohibited uses.*

- (1) The following uses shall be specifically prohibited within all "A", "AE", "V" and "VE" floodplain districts:
 - a. Sanitary landfills, junkyards, outdoor storage of inoperative vehicles.
 - b. Manufactured homes (except as a temporary use in accordance with subsection 14.1-10(c)).
 - c. Surface mines and borrow pits.
 - d. Manufacture, bulk storage, transformation or distribution of petroleum (except for retail sales), chemical or asphalt products or any hazardous materials as defined in either or both of the following:
 - 1) Superfund Amendment and Reauthorization Act of 1986.
 - 2) Identification and Listing of Hazardous Wastes, 40 CFR section 261 (1987).
 - a. Oil and oil products including petrochemicals.
 - b. Radioactive materials.
 - c. Any material transported or stored in large commercial quantities (such as 55-gallon drums) which is a very soluble acid or base, causes abnormal growth of an organ or organism, or is highly biodegradable, exerting a strong oxygen demand.
 - d. Biologically accumulative poisons.
 - e. Substances containing the active ingredients of poisons that are or were ever registered in accordance with the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 USC 135 et seq.).
 - f. Substances highly lethal to mammalian or aquatic life.
 - g. Storage or land application of industrial wastes.
 - h. Outdoor storage of equipment, materials or supplies which are buoyant, flammable or explosive.
- (2) Nonconforming uses of this chapter notwithstanding, no expansion of any of the above uses located within the floodplain district shall be permitted.

(f) *Standards for subdivision proposals.*

- (1) All subdivision proposals shall be consistent with the need to minimize flood damage;

- (2) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- (3) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards; and
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed 50 lots or five acres, whichever is the lesser.

(Ord. No. 2015-36, § 2(Exh. A), 6-9-2015)

Sec. 14.1-12. - Design criteria for public improvements.

- (a) *Sanitary sewer facilities.* All new or replacement sanitary sewer facilities and private package sewage treatment plants, including all pumping stations and collector systems, shall be designed to minimize or eliminate infiltration of floodwaters into the systems and of discharges from the systems into the floodwaters. The facilities and plants shall be located and constructed to minimize or eliminate flood damage and impairment.
- (b) *Water facilities.* All new or replacement water facilities shall be designed to minimize or eliminate infiltration of floodwaters into the system and shall be located and constructed to minimize or eliminate flood damage.
- (c) *Drainage facilities.* All storm drainage facilities shall be designed to convey the flow of surface waters without causing injury to persons or damage to property. The facilities shall ensure drainage away from buildings and on-site waste disposal sites. The city engineer may require a primary underground system to accommodate frequent floods and a secondary surface system to accommodate larger, less frequent floods. Drainage plans shall be consistent with local and regional drainage plans. The facilities shall be designed to prevent the discharge of excess runoff onto adjacent properties.
- (d) *Utilities.* All utilities, such as gas lines, electrical and telephone systems, being placed in floodprone areas should be located, elevated (where possible) and constructed to minimize the chance of impairment during a flooding occurrence.
- (e) *Streets and sidewalks.* Streets and sidewalks should be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be designed to reduce exposure to flood hazards.

(Ord. No. 2015-36, § 2(Exh. A), 6-9-2015)

Sec. 14.1-13. - Variances; factors to be considered.

- (a) Variances shall be issued only upon (i) a showing of good and sufficient cause, (ii) after the board of zoning appeals has determined that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) after the board of zoning appeals has determined that the granting of such variance will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances. While the granting of variances generally is limited to a lot size less than one-half acre, deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases. Variances may be issued by the board of zoning appeals for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the provisions of this

section. Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of this section are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety. In passing upon applications for variances, the board of zoning appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

- (1) The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any floodway district that will cause any increase in the 100-year flood elevation.
 - (2) The danger that materials may be swept on to other lands or downstream to the injury of others.
 - (3) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
 - (4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
 - (5) The importance of the services provided by the proposed facility to the community.
 - (6) The requirements of the facility for a waterfront location.
 - (7) The availability of alternative locations not subject to flooding for the proposed use.
 - (8) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 - (9) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
 - (10) The safety of access by ordinary and emergency vehicles to the property in time of flood.
 - (11) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
 - (12) The historic nature of a structure. Variances for repair or rehabilitation of historic structures may be granted upon a determination that the proposed repair or rehabilitation 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.
 - (13) Such other factors which are relevant to the purposes of this chapter.
- (b) The board of zoning appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.
 - (c) Variances shall be issued only after the board of zoning appeals has determined that the granting of such will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.
 - (d) Variances shall be issued only after the board of zoning appeals has determined that the variance will be the minimum required to provide relief.
 - (e) The board of zoning appeals shall notify the applicant for a variance in writing that the issuance of a variance to construct a structure below the base flood elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance.

- (f) A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances that are issued shall be noted in the annual or biennial report submitted to the federal insurance administrator.

(Ord. No. 2015-36, § 2(Exh. A), 6-9-2015)

Sec. 14.1-14. - Conditions for use of existing structures.

- (a) A structure or use of a structure or premises which lawfully existed in the floodplain district before the enactment of these provisions, but which is not in conformity with these provisions, may be continued subject to the following conditions:
- (1) Any modification, alteration, repair, reconstruction or improvement of any kind to a structure and/or use located in any floodplain area to an extent or amount of less than 50 percent of its current market value during a consecutive ten-year period shall conform to the VA USBC and be elevated and/or flood-proofed to the greatest extent possible, as determined by the floodplain administrator.
 - (2) Any modification, alteration, repair, reconstruction or improvement of any kind to a structure or use, regardless of its location in a floodplain area, to an extent or amount of 50 percent or more of its current market value during a consecutive ten-year period shall be undertaken only in full compliance with the provisions of this chapter and shall require the entire structure to conform to the VA use.
 - (3) Additions must comply with subsection 14.1014(a)(1) and (2) above, as applicable, and meet the following requirements:
 - a. For additions that are less than 50 percent of the current market value of the existing building during a consecutive ten-year period, all parts of the addition to include duct work, HVAC equipment and electrical must be above the design flood elevation which is the BFE plus 3.0 feet.
 - b. For additions that are 50 percent or more of the current market value of the existing building during a consecutive ten-year period, the addition and the existing building must be in full compliance with the provisions of this chapter and both the addition and the existing building shall be required to conform to the VA USBC.
 - (4) Existing structures in the floodway area shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed expansion would not result in any increase in the base flood elevation.

(Ord. No. 2015-36, § 2(Exh. A), 6-9-2015)

Sec. 14.1-15. - Administration.

- (a) *Designation of a floodplain administrator.* The City of Portsmouth Director of Neighborhood Advancement is hereby appointed to administer and implement these regulations and is referred to herein as the floodplain administrator. The floodplain administrator may:
- (1) Do the work themselves. In the absence of a designated floodplain administrator, the duties are conducted by the city manager or his designee.
 - (2) Delegate duties and responsibilities set forth in these regulations in whole or in part to qualified technical personnel, plan examiners, inspectors, and other employees.

- (3) Enter into a written agreement or written contract with another community or private sector entity to administer specific provisions of these regulations.
 - (4) Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.
- (b) *Duties and responsibilities of the floodplain administrator.* Duties and responsibilities of the floodplain administrator shall include but are not limited to:
- (1) Interpreting floodplain boundaries and providing available base flood elevation and flood hazard information.
 - (2) Review applications for permits to determine whether proposed activities will be located in the special flood hazard area (SFHA).
 - (3) Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations.
 - (4) Review applications to determine whether all necessary permits have been obtained from the federal, state, or local agencies from which prior or concurrent approval is required; in particular, permits from state agencies for any construction, repair, or any alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency floodplain of free-flowing non-tidal waters of the state.
 - (5) Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and other appropriate agencies (VADEQ, VIMS, VMRC, USACE) and have submitted copies of such notifications to FEMA.
 - (6) Advise applicants for new construction or substantial improvement of structures that are located within an area of the coastal barrier resources system established by the Coastal Barrier Resources Act that Federal flood insurance is not available on such structures; areas subject to this limitation are shown on FIRMs as coastal barrier resource system areas (CBRS) or otherwise protected areas (OPA).
 - (7) Approve applications and issue permits to develop in flood hazard areas if the provisions of this chapter have been met, or disapprove applications if the provisions of this chapter have not been met.
 - (8) Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or violations have been committed.
 - (9) Review elevation certificates and require incomplete or deficient certificates to be corrected.
 - (10) Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for the city, within six months after such data and information becomes available if the analyses indicate changes in base flood elevations.
 - (11) Maintain and permanently keep records that are necessary for the administration of these regulations, including:
 - a. Flood insurance studies, flood insurance rate maps (including historic studies and maps and current effective studies and maps) and letters of map change; and

- b. Documentation supporting issuance and denial of permits, elevation certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been flood-proofed, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.
- (12) Enforce the provisions of these regulations, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.
 - (13) Advise the board of zoning appeals regarding the intent of these regulations, and for each application for a variance, prepare a staff report and recommendation.
 - (14) Administer the requirements related to proposed work on existing buildings.
 - (15) Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged.
 - (16) Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct, and prohibit the non-compliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.
 - (17) Undertake, as determined appropriate by the floodplain administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for increased cost of compliance coverage under NFIP flood insurance policies.
 - (18) Notify the Federal Emergency Management Agency when the corporate boundaries of the City of Portsmouth have been modified.
 - (19) Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation.
 - (20) If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the city council for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.
 - (21) Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of variances issued for development in the SFHA.
 - (22) It is the duty of the floodplain administrator to take into account flood, mudslide and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire jurisdictional area of the community, whether or not those hazards have been specifically delineated geographically (e.g. via mapping or surveying).

(c) *Use and interpretation of FIRMs.* The floodplain administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:

- (1) Where field survey topography indicates that adjacent ground elevations:
 - a. Are below the base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as special flood hazard area and subject to the requirements of these regulations;
 - b. Are above the base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a letter of map change that removes the area from the SFHA.
- (2) In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified SFHAs, any other flood hazard data available from a federal, state, or other source shall be reviewed and reasonably used.
- (3) Base flood elevations and designated floodway boundaries on FIRMs and in FISs shall take precedence over base flood elevations and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations.
- (4) Other sources of data shall be reasonably used if such sources show increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in FISs.
- (5) If a preliminary flood insurance rate map and/or a preliminary flood insurance study has been provided by FEMA:
 - a. Upon the issuance of a letter of final determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.
 - b. Prior to the issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to subsection 14.1-11(b)(3)(a) and used where no base flood elevations and/or floodway areas are provided on the effective FIRM.
 - c. Prior to issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

(d) *Jurisdictional boundary changes.*

- (1) The city floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the city for all annexed areas until the city adopts and enforces an ordinance which meets the requirements for participation in the National Flood Insurance Program. The city shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards. If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in this ordinance, the city shall prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the city council for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.

- (2) In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22(9)(v) all NFIP participating communities must notify the Federal Insurance Administration and optionally the Virginia Department of Conservation and Recreation in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area.
- (3) In order that all flood insurance rate maps accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority must be included with the notification.
- (e) Submitting technical data. Base flood elevations in the City of Portsmouth may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the city shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.
- (f) *Letters of map revision.* When development in the floodplain causes a change in the base flood elevation, the applicant, including state agencies, must notify FEMA by applying for a conditional letter of map revision or a letter of map revision. Examples include but are not limited to:
 - (1) Any development that causes a rise in the base flood elevations within the floodway.
 - (2) Any development occurring in Zones A1-30 and AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation.
 - (3) Alteration or relocation of a stream (including but not limited to installing culverts and bridges).

(Ord. No. 2015-36, § 2(Exh. A), 6-9-2015)

Sec. 14.1-16. - Records.

Records of actions associated with administering this chapter shall be kept on file and maintained by the floodplain administrator.

(Ord. No. 2015-36, § 2(Exh. A), 6-9-2015)

Sec. 14.1-17. - Abrogation and greater restrictions.

This chapter supersedes any ordinance currently in effect in the floodplain. Any ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive.

(Ord. No. 2015-36, § 2(Exh. A), 6-9-2015)

Sec. 14.1-18. - Severability.

If any section, subsection, paragraph, sentence, clause, or phrase of this chapter shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this chapter. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this chapter are hereby declared to be severable.

(Ord. No. 2015-36, § 2(Exh. A), 6-9-2015)