

Introduced by: [Signature]

Seconded by: [Signature]

**CITY OF HOBOKEN
RESOLUTION NO. _____**

**RESOLUTION OF THE CITY OF HOBOKEN, COUNTY OF HUDSON
REFERRING AN ORDINANCE TO AMEND CHAPTER 104 OF THE
MUNICIPAL CODE TO THE PLANNING BOARD OF THE CITY OF
HOBOKEN**

WHEREAS, the City Council of the City of Hoboken ("Hoboken") proposes to adopt an ordinance to amend Chapter 104 of the Hoboken Municipal Code; and

WHEREAS, section N.J.S.A. 40:55D-26 of the Municipal Land Use Law provides, in part:

"Prior to the adoption of a development regulation, revision, or amendment thereto, the planning board shall make an transmit to the governing body, within 35 days after referral, a report including identification of any provisions in the proposed development regulation, revision or amendment which are inconsistent with the master plan and recommendations concerning these inconsistencies and any other matters as the board deems appropriate.

NOW, THEREFORE, BE IT RESOLVED, by the City of Council of the City of Hoboken as follows:

Section 1. The aforementioned recitals are incorporated herein as though fully set forth at length.

Section 2. The City Council hereby refers the proposed amendment to Chapter 104 of the Municipal Code to the Planning Board, pursuant to N.J.S.A. 40:55D-26.

Section 3. This Resolution shall take effect immediately.

Meeting Date: Sept. 17, 2013

Department of Administration

Approved as to form:

Quentin Wiest
Quentin Wiest
Business Administrator

Melissa L. Longo
Melissa Longo, Esq.,
Corporation Counsel

| Councilperson | Yea | Nay | Abstain | No Vote |
|----------------------------|-----|-----|---------|---------|
| Ravi Bhalla | / | | | |
| Theresa Castellano | / | | | |
| Jen Giattino | / | | | |
| Elizabeth Mason | / | | | |
| David Mello | / | | | |
| Tim Occhipinti | / | | | |
| Michael Russo | | | | ✓ |
| President Peter Cunningham | ✓ | | | |

A TRUE COPY OF A RESOLUTION ADOPTED BY
THE COUNCIL OF THE CITY OF HOBOKEN, N.J.
AT A MEETING HELD ON: SEP 17 2013

James J. Sarano

CITY CLERK

1st reading
9-17-13

①

Sponsored by: Peter H. King
Seconded by: [Signature]

City of Hoboken
Ordinance No.: 2-253

AN ORDINANCE AMENDING CHAPTER §104 (FLOOD DAMAGE PREVENTION) TO REFLECT UPDATES RECOMMENDED BY THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION'S LATEST REVISED MODEL ORDINANCE

WHEREAS, the State of New Jersey Department of Environmental Protection ("NJDEP") recently released an updated "Flood Damage Prevention" model ordinance; and

WHEREAS, the City of Hoboken, Mayor and Council, wish the local ordinance to remain current and consistent with the State's recommendations; and

WHEREAS, adoption of the new Advisory Base Flood Elevations ("ABFEs") and employment of stricter mitigation actions will ensure new and substantially altered structures are stronger, safer and less vulnerable to future flooding; and

WHEREAS, according to the NJDEP, it is well documented that flooding causes major social disruptions due to the need to relocate flood victims and provide emergency services to affected residents, which necessarily diverts emergency personnel from other essential tasks; and

WHEREAS, according to the National Flood Insurance Program ("NFIP"), from 1978 to June 30, 2013, New Jersey's total flood insurance claims paid equaled \$5,276,080,845 – the third highest in the nation; and

WHEREAS, according to the NFIP, Hoboken has more flood insurance policies in force than any other municipality in Hudson County, with liability to the NFIP of \$1,922,187,500; and

WHEREAS, according to the NFIP, Hoboken's property owners pay flood insurance premiums totaling \$5,984,720, which is the highest in Hudson County;

WHEREAS, the National Flood Insurance Program's most recent Flood Insurance Rate Map ("FIRM") for Hudson County, effective August 16, 2006, showed the existing piers and platforms on the Hoboken waterfront to be located within Zone AE, which zone FEMA defines as an area subject to inundation by the 1-percent-annual-chance flood event; and

WHEREAS, before Hurricane Sandy, the Federal Emergency Management Agency ("FEMA") had begun a coastal study to update FIRMs for portions of New Jersey in order to better reflect coastal flood risk; and

WHEREAS, after Hurricane Sandy, FEMA released ABFE maps based on FEMA's partially completed flood study in order to help in rebuilding and recovery efforts; and

WHEREAS, the most recent ABFE maps for Hudson County, effective February 22, 2013, show the existing piers and platforms on the Hoboken waterfront to be located within Advisory Flood Hazard Zone V, which zone is defined by FEMA as an area subject to high velocity wave action (a 3-foot breaking wave) from the 1% annual chance coastal flood; and

WHEREAS, the most recent Preliminary Work Maps released by FEMA show the existing piers and platforms on the Hoboken waterfront to be located within Zone V; and

WHEREAS, the NJDEP issued an Emergency Rule on January 24, 2013 to adopt emergency amendments to the Flood Hazard Area Control Act Rules (N.J.A.C. 7:13); and

WHEREAS, pursuant to 44 C.F.R. § 60.3 (e):

“When the Federal Insurance Administrator has provided a notice of final base flood elevations within Zones A1–30 and/or AE on the community's FIRM and, if appropriate, has designated AH zones, AO zones, A99 zones, and A zones on the community's FIRM, and has identified on the community's FIRM coastal high hazard areas by designating Zones V1–30, VE, and/or V, the community shall...(3) [p]rovide that all new construction within Zones V1–30, VE, and V on the community's FIRM is located landward of the reach of mean high tide.”

WHEREAS, adoption of the following methods of reducing flood losses will result in lower flood insurance rates for the residents and property owners of the City of Hoboken; and

WHEREAS, implementation of such mitigation actions are important to insure the health, safety and the general welfare of the community as a whole.

NOW THEREFORE, be it ordained by the City Council of the City of Hoboken, County of Hudson, State of New Jersey, as follows:

SECTION ONE: AMENDMENT

Chapter 104, FLOOD DAMAGE PREVENTION, of the Code of the City of Hoboken is hereby amended as follows; deletions to the current ordinance are noted in ~~strike through~~, additions to the current ordinance are noted in underline.

Chapter 104. FLOOD DAMAGE PREVENTION

Article I. Statutory Authorization, Findings of Fact, Purpose and Objectives

§ 104-1. Statutory authorization.

The Legislature of the State of New Jersey has in N.J.S.A. 40:48-1, et seq., delegated the responsibility to local governmental units to adopt regulations designed to promote public health, safety, and general welfare of its citizenry. Therefore, the City Council of the City of Hoboken, of Hudson County, New Jersey does ordain as follows.

§ 104-2. Findings of fact.

A. The flood hazard areas of the City of Hoboken 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 of which adversely affect the public health, safety, and general welfare.

B. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and when inadequately anchored, causes damage in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

§ 104-3. Statement of purpose.

It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- A. To protect human life and health;
- B. To minimize expenditure of public money for costly flood control projects;
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. To minimize prolonged business interruptions;

- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
- F. To help maintain a stable tax base by providing for the second use and development of areas of special flood hazard so as to minimize future flood blight areas;
- G. To insure that potential buyers are notified that property is in an area of special flood hazard; and
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

§ 104-4. Methods of reducing flood losses.

In order to accomplish its purposes, this chapter includes methods and provisions for:

- A. Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- B. Requiring that uses vulnerable to floods including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;
- D. Controlling filling, grading, dredging, and other development which may increase flood damage; and
- E. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas.

Article II. Definitions

§ 104-5. Word usage; definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter ~~its~~ its most reasonable application.

ADVISORY BASE FLOOD ELEVATION (ABFE)

The elevation shown on a community's Advisory Flood Hazard Map that indicates the advisory Stillwater elevation plus wave effect (ABFE = SWEL + wave effect) resulting from a flood that has a 1% or greater chance of being equaled or exceeded in any given year.

ADVISORY FLOOD HAZARD AREA (AFHA)

The land in the floodplain within a community subject to flooding from the 1% annual chance event depicted on the Advisory Flood Hazard Map.

ADVISORY FLOOD HAZARD MAP

The official map on which the Federal Emergency Management Administration has delineated the areas of advisory flood hazards applicable to the community.

APPEAL

A request for a review of the ~~Construction Official~~ Floodplain Administrator's interpretation of any provision of this chapter or a request for a variance.

AREA OF SHALLOW FLOODING

A designated AO or AH, or VO zone on a community's Flood Insurance Rate Map with a 1% or greater chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

AREA OF SPECIAL FLOOD HAZARD

The land in the flood plain within a community subject to a 1% or greater chance of flooding in any given year.

BASE FLOOD

The flood having a 1% chance of being equaled or exceeded in any given year.

BASEMENT

Any area of the building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALL

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 A

The portion of the special flood hazard area (SFHA) starting from a Velocity (V) Zone and extending up to the landward limit of the moderate wave action delineation. Where no V Zone is mapped the Coastal A Zone is the portion between the shore and the landward limit of the moderate wave action delineation. Coastal A Zones may be subject to wave effects, velocity flows, erosion, scour, or a combinations of these forces.

COASTAL HIGH HAZARD AREAS

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 also known as V-Zones.

DEVELOPMENT

Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials located within an area of special flood hazard.

DIGITAL FLOOD INSURANCE RATE MAP (DFIRM)

The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

ELEVATED BUILDING

A non-basement building (i) built in the case of a building in an Area of Special Flood Hazard, to have the top of the elevated floor or, in the case of a building in a Coastal High-Hazard Area, to have the bottom of the lowest horizontal structural member of the elevated floor, elevated above the ground level by means of piling, columns (posts and piers), or shear walls parallel to the flow of the water, and (ii) adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. In an Area of Special Flood Hazard "elevated building" also includes a building elevated by means of fill-or-solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of flood waters. In Areas of Coast High-Hazard "elevated buildings" also includes a building otherwise meeting the definition of "elevated building" even though the lower area is enclosed by means of breakaway walls.

EROSION

The process of the gradual wearing away of land masses.

FLOOD INSURANCE RATE MAP (FIRM)

The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY (FIS)

The official report provided in which the Federal Insurance Administration has provided flood profiles, as well as the Flood Insurance Rate Map and the water surface elevation of the base flood.

FLOOD or FLOODING

A general and temporary condition of partial or complete inundation of normally dry land areas from:

- A. The overflow of inland or tidal waters; and/or
- B. The unusual and rapid accumulation or runoff of surface waters from any source.

FLOODPLAIN MANAGEMENT REGULATIONS

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

FLOODWAY

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 0.2 foot.

FREEBOARD

An open area, measured in feet as set forth in § 104-16.F, between the bottom of the lowest horizontal member and the base flood elevation (or ABFE). Freeboard is a margin of safety added to account for sea level rise, waves, debris, miscalculations, lack of data, or other environmental changes.

HIGHEST ADJACENT GRADE

The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE

Any structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior; or
 - (2) Directly by the Secretary of the Interior in states without approved programs.

LIMIT OF MODERATE WAVE ACTION (LIMWA)

Inland limit of the area affected by waves greater than 1.5 feet during the base flood. Base flood conditions between the V Zone and the LIMWA will be similar to, but less severe than those in the V Zone.

LOWEST FLOOR

The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for the parking of vehicles, building access or storage in an area other than a basement is not considered a building's lowest floor provided that such enclosure is not built so to render the structure in violation of other applicable non-elevation design requirements.

MANUFACTURED HOME

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 attached to the required utilities. The term "manufactured home" does not include a "recreation vehicle."

MANUFACTURED HOME PARK or MANUFACTURED HOME SUBDIVISION

A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION

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

NEW MANUFACTURED HOME PARK OR SUBDIVISION

A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the flood plain management regulations adopted by the municipality.

RECREATIONAL VEHICLE

A vehicle which is [i] built on a single chassis; [ii] 400 square feet or less when measured at the longest horizontal projections; [iii] designed to be self-propelled or permanently towable by a light duty truck; and [iv] designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

START OF CONSTRUCTION

For other than new construction or substantial improvements under the Coastal Barrier Resources Act (P.L. No. 97-348) includes substantial improvements and means the date the building permit was issued, 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 the first placement of permanent construction of a structure on a site such as the pouring of a 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 or piers, or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE

A walled and roofed building, a manufactured home, or a gas or liquid storage tank, that is principally above ground.

SUBSTANTIAL DAMAGE

Damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT

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

- A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement officer and which are the minimum necessary to assure safe living conditions; or

B. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

VARIANCE

A grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter.

ZONES

Flood zones are geographic areas that FEMA has defined according to varying levels of flood risk. These zones are depicted on a community's Flood Insurance Rate Map (FIRM) and Advisory Maps. These zones are defined as follows:

A – Areas subject to inundation by the 1-percent-annual-chance flood event. Because detailed analyses are not performed for such areas; no depths of base flood elevations are shown within these zones.

AE – The base floodplain where base flood elevations are provided.

D – Areas with possible but undetermined flood hazards usually outside of the boundary of the .02-percent-annual-chance flood area.

V – Coastal high hazard areas subject to inundation by the 1-percent-annual-chance flood event with additional hazards associated with high-velocity wave action.

VE – Coastal high hazard areas where base flood elevations are provided.

X – Area of moderate flood hazard, usually the area between the limits of the 100-year (1%) and 500-year (.02%) flood.

Where used in this ordinance, "A" shall include AE, "V" shall include VE, and vice versa.

Article III. General Provisions

§ 104-6. Lands to which this chapter applies.

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the City of Hoboken, Hudson County, New Jersey.

§ 104-7. Basis for establishing the areas of special flood hazard.

The areas of special flood hazard for the City of Hoboken, Community No. 340222, are identified and defined on the following documents prepared by the Federal Emergency Management Agency:

A. A scientific and engineering report "Flood Insurance Study, Hudson County, New Jersey (All Jurisdictions)" dated August 16, 2006.

B. Flood Insurance Rate Map for Hudson County, New Jersey (All Jurisdictions) as shown on Index and panel numbers 0043, 0044, 0106, 0107; whose effective date is August 16, 2006.

C. Advisory Base Flood Elevations and Advisory Flood Hazard Maps whose effective date is February 22, 2013. These documents shall take precedence over previous panels and FIS in construction and development regulations only. Where the Special Flood Hazard Area (SFHA) and the Advisory Flood Hazard Area (AFHA) maps conflict or overlap, whichever imposes the more stringent requirement shall prevail.

The above documents are hereby adopted and declared to be a part of this chapter. The Flood Insurance Study and maps are on file at the office of the Construction Official/Floodplain Administrator at City Hall, 94 Washington Street, Hoboken, NJ 07030.

§ 104-8. Penalties for noncompliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who

violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than ~~\$500~~^{\$2,000} or imprisoned for not more than 30 days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the City of Hoboken from taking such other lawful action as is necessary to prevent or remedy any violation.

§ 104-9. Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and other ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

§ 104-10. Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

§ 104-11. Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages.

This chapter shall not create liability on the part of the City of Hoboken, any officer or employee thereof or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

Article IV. Administration

§ 104-12. Establishment of development permit.

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in § 104-7. Application for a development permit shall be made on forms furnished by the ~~Construction Official~~Floodplain Administrator and may include, but not be limited to; plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities; and the location of the foregoing. Specifically, the following information is required:

- A. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;
- B. Elevation in relation to mean sea level to which any structure has been floodproofed.
- C. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in § 104-17B; and
- D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

§ 104-13. Designation of the local administrator.

The ~~Construction Official~~Floodplain Administrator is hereby appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

§ 104-14. Duties and responsibilities of the administrator.

Duties of the ~~Construction Official~~Floodplain Administrator shall include, but not be limited to:

- A. Permit review.
 - (1) Review all development permits to determine that the permit requirements of this chapter have been satisfied.

(2) Review all development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

(3) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of section § 104-18 are met.

(4) Review all development permits in the coastal high hazard area of the area of special flood hazard to determine if the proposed development alters the natural coastline so as to increase potential flood damage.

(5) Review plans for walls to be used to enclose space below the base flood level in accordance with sections § 104-17 and 104-19.

B. Use of other base flood and floodway data. When base flood elevation and floodway data has not been provided in accordance with § 104-7, Basis for establishing the areas of special flood hazard, the ~~Construction Official~~ Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer § 104-17A, Specific standards, residential, construction, and § 104-17B, Specific standards, nonresidential construction.

C. Information to be obtained and maintained.

(1) Obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.

(2) For all new or substantially improved floodproofed structures:

(a) Verify and record the actual elevation (in relation to mean sea level); and

(b) Maintain the floodproofing certifications required in § 104-12C.

(3) Maintain for public inspection all records pertaining to the provisions of this chapter.

D. Alteration of watercourses.

(1) Notify adjacent communities and the New Jersey Department of Environmental Protection, Dam Safety and Flood Control section and the Land Use Regulation Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

(2) Require that maintenance is provided within the altered or relocated portion of said watercourse so the flood carrying capacity is not diminished.

E. Interpretation of ~~firm~~ FIRM boundaries. Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in § 104-15.

§ 104-15. Variance procedure.

A. Appeal board.

(1) The ~~Construction Board of Appeals~~ Planning Board as established by the City of Hoboken shall hear and decide appeals and requests for variances from the requirements of this chapter.

(2) The ~~Construction Board of Appeals~~ Planning Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the ~~Construction Official~~ Floodplain Administrator in the enforcement or administration of this chapter.

(3) Those aggrieved by the decision of the ~~Construction Board of Appeals~~ Planning Board, or any taxpayer, may appeal such decision to Superior Court of New Jersey, N.J.S.A. 52:22D-127, et seq.

(4) In passing upon such applications, the ~~Construction Board of Appeals~~ Planning Board, shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

- (a) The danger that materials may be swept onto other lands to the injury of others;
- (b) The danger to life and property due to flooding or erosion damage;
- (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (d) The importance of the services provided by the proposed facility to the community;
- (e) The necessity to the facility of a waterfront location, where applicable;
- (f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (g) The compatibility of the proposed use with existing and anticipated development;
- (h) The relationship of the proposed use to the comprehensive plan and flood plain management program of that area;
- (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (j) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (k) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(5) Upon consideration of the factors of § 104-15A(4) and the purposes of this chapter, the ~~Construction Board of Appeals~~ Planning Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(6) The ~~Construction Official~~ Floodplain Administrator shall maintain the records of all appeal actions, including technical information, and report any variances to the Federal Insurance Administration upon request.

B. Conditions for variances.

(1) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot ~~or lots of 1/2 acre~~ 10,000 square feet or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items in § 104-15A(4)(a) through (k) have been fully considered. As the lot size increases beyond the ~~1/2-acre~~ 10,000 square feet, the technical justification required for issuing the variance increases.

(2) Variances may be issued for the repair or rehabilitation of historic structures 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.

(3) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

(4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(5) Variances shall only be issued upon:

- (a) A showing of good and sufficient cause;
- (b) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

(c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in § 104-4A(4), or conflict with existing local laws or ordinances.

(6) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

Article V. Provisions for Flood Hazard Reduction

§ 104-16. General standards.

In all areas of special flood hazards, including X-Zones, the following standards are required:

A. Anchoring.

(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

(2) All manufactured homes, temporary and accessory structures, decks and patios shall be anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are not to be limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

B. Construction materials and methods.

(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

C. Utilities.

(1) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

(2) New and replacement sanitary sewage systems and waste lines shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into floodwaters either by elevation or by installation of check valves and backflow preventers;

(3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding; and

(4) For all new construction and substantial improvements, ~~E~~lectrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

D. Subdivision and new development proposals.

(1) All subdivision proposals and other proposed new development shall be consistent with the need to minimize flood damage;

(2) All subdivision proposals and other proposed new development 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 and other proposed new development shall have adequate drainage provided to reduce exposure to flood damage; and

(4) Base flood elevation data shall be provided for subdivision proposals and any other proposed new development which contain at least 50 lots or five acres (whichever is less).

E. Enclosure openings.

All new construction and substantial improvements having fully enclosed areas below the lowest floor that are usable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other covering or devices provided that they permit the automatic entry and exit of floodwaters.

E. Freeboard.

All new construction and substantially improved residential and non-residential structures located in an area of special flood hazard shall have the lowest floor elevated to the base flood elevation or advisory base flood elevation, whichever is applicable, plus freeboard as specified in Table I below. Enclosed areas that are used solely for parking, building access, or storage are not the lowest floor and shall be allowed below the BFE / ABFE provided the enclosed areas meet the requirement set forth in § 104-16.E above. For all zones within the City of Hoboken, freeboard shall be measured from the bottom of the lowest horizontal structural member.

| FREEBOARD REQUIREMENTS FOR AREAS OF SPECIAL FLOOD HAZARD | | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|------------|------------------|------------|
| <u>Building Type</u> | <u>Zones</u> | | | |
| | <u>X</u> | <u>A</u> | <u>Coastal A</u> | <u>V</u> |
| <u>Residential structures</u> | <u>+1'</u> | <u>+1'</u> | <u>+1'</u> | <u>+2'</u> |
| <u>Building and other structures with school or day-care facilities; and other non-residential structures not itemized below</u> | <u>+1'</u> | <u>+1'</u> | <u>+2'</u> | <u>+2'</u> |
| <u>Essential facilities including, but not limited to: fire, rescue, ambulance, and police stations and emergency vehicle garages; buildings designated as emergency shelters; other facilities required for emergency response; hospitals and other health care facilities having surgery or emergency treatment facilities; power generating stations and other public utility facilities</u> | <u>+1'</u> | <u>+2'</u> | <u>+2'</u> | <u>+3'</u> |
| <u>Buildings and other facilities that manufacture, process, handle, store, use, or dispose of hazardous materials</u> | <u>+1'</u> | <u>+2'</u> | <u>+2'</u> | <u>+3'</u> |
| <u>Temporary structures</u> | <u>n/a</u> | <u>+1'</u> | <u>+2'</u> | <u>n/a</u> |

F. Fill.

Fill shall not be used to elevate structures or for structural support.

§ 104-17. Specific standards.

In all areas of special flood hazards, including all A-Zones and areas subject to moderate wave action, where base flood elevation data have been provided as set forth in § 104-7, Basis for establishing the areas of special flood hazard or in § 104-14B, Use of other base flood data, the following standards are required:

A. Residential construction.

(1) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, together with the attendant utilities and sanitary facilities, elevated to or above the base flood elevation or advisory base flood elevation, whichever is more restrictive, plus Freeboard; or

(2) Require within any AO zone on the municipality's FIRM that all new construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet (at least two feet if no depth number is specified) or at or above the advisory base flood elevation, whichever is more restrictive, plus Freeboard. And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

(3) Fully enclosed areas, above grade but below the lowest floor are usable only for parking of vehicles (where permitted), building access and/or storage and not for human habitation. Fully enclosed areas subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect and must meet or exceed the following minimum criteria: (i) a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided; (ii) the bottom of all openings shall be no higher than one foot above grade; and (iii) openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

B. Non-residential and Mixed Use construction.

(1) In an Area of Special Flood Hazard, all new construction and substantial improvement of any commercial, industrial or other nonresidential structure, or any mixed-use structure where residential uses exist above commercial uses on lower floors, shall either have the lowest floor, including basement, together with the attendant utilities and sanitary facilities; either:

(1) Be elevated to or above the level of the base flood elevation or advisory base flood elevation, whichever is more restrictive, plus Freeboard; or together with the attendant utilities and sanitary facilities, shall;

(2) Be required within any AO zone on the municipality's FIRM that all new construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet (at least two feet if no depth number is specified) or at or above the advisory base flood elevation, whichever is more restrictive, plus Freeboard. And, require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures; or

(3) Be floodproofed so that below the base flood level elevation or advisory base flood elevation (whichever is more restrictive), plus Freeboard the structure is watertight with walls substantially impermeable to the passage of water;

(4) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

(5) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the applicable provisions of this subsection. Such certification shall be provided to the official Administrator as set forth in §104-14C(2).

(6) In areas of moderate wave action where floodproofing is not feasible or desirable fully enclosed areas below the lowest floor used for non-residential uses, parking, building access or storage shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect and must meet or exceed the following minimum criteria: (i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. (ii) The bottom of all openings shall be no higher than one foot above grade. (iii) Openings may be equipped with screens, louvers, or other covering or devices provided that they permit the automatic entry and exit of floodwaters; and

(7) Only Flood Damage-Resistant Materials, so classified by the National Flood Insurance Program (NFIP) shall be used. Areas shall be constructed to withstand direct and prolonged contact with floodwaters without sustaining significant damage.

C. Manufactured homes.

(1) Manufactured homes shall be anchored in accordance with § 104-16A(2).

(2) All manufactured homes to be placed or substantially improved within an area of special flood hazard shall be elevated on a permanent foundation such that the top of the lowest floor is at or above the base flood elevation.

§ 104-18. Floodways.

Located within areas of special flood hazard established in section § 104-7 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

A. Prohibited encroachments, including fill, new construction, substantial improvements, and other development unless a technical evaluation demonstrates that encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.

B. If section § 104-18.A is satisfied, all new construction and substantial improvements must comply with Article V Provisions for Flood Hazard Reduction.

C. In all areas of special flood hazard in which base flood elevation data has been provided and no floodway has been designated, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than two-tenths of a foot at any point.

§ 104-19. Coastal high hazard area.

Coastal high hazard areas (V Zones) are located within the areas of special flood hazard established in § 104-7. These areas have special flood hazards associated with high velocity waters from tidal surges and hurricane wave wash; therefore, the following provisions shall apply:

A. Location of Structures

(1) All buildings or structures shall be located landward of the reach of the mean high tide.

(2) No structures shall be located on piers or platforms projecting into or over the Hudson River or Weehawken Cove.

B. Construction methods

(1) Elevation. All new construction and substantial improvements shall be elevated on piling or columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the piling or columns) is elevated to or above the base flood elevation or advisory base flood elevation, whichever is more restrictive, plus Freeboard.

(2) Structural support

(a) All new construction and substantial improvements shall be securely anchored on piling or columns.

(b) The pile or column foundation and structure attached thereto shall be anchored to resist flotation, collapse or lateral movement due to the effects of wind and water loading values each of which shall have a 1% chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

(3) Certification. 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 compliance with the provisions of sections § 104-19.B (1) and (2) (a) and (b).

C. Space below the lowest floor

(1) Floodproofing methods shall not be used in the V-Zone for space below the lowest floor.

(2) Only Flood Damage-Resistant Materials, so classified by the National Flood Insurance Program (NFIP) shall be used in construction of areas below the lowest floor. Areas shall be constructed to withstand direct and prolonged contact with floodwaters without sustaining significant damage.

(3) Any alteration, repair, reconstruction or improvement to a structure started after the enactment of this ordinance shall not enclose the space below the lowest floor unless breakaway walls, or other 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. Breakaway walls shall be designed for a safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading of 20 points per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

(a) Breakaway wall collapse shall result from a water load less than that which would occur during the base floor; and

(b) 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 load acting simultaneously on all building components (structural and non-structural). Water loading values shall be those associated with the base flood. Wind loading values shall be those required by applicable State and local building standards.

(c) Where breakaway walls are utilized, such enclosed space shall be used solely for parking of vehicles, building access, or storage and not for human habitation.

(d) Prior to construction, plans for any breakaway wall must be submitted to the Floodplain Administrator for approval.

SECTION TWO: REPEAL OF INCONSISTENT PROVISIONS

All ordinances or parts thereof in conflict or inconsistent with this Ordinance are hereby repealed, but only to the extent of such conflict or inconsistency, it being the legislative intent that all such ordinances or part of ordinances now existing or in effect unless the same are in conflict or inconsistent with any provision of this Ordinance shall remain in effect.

SECTION THREE: SEVERABILITY

The provisions of this Ordinance are declared to be severable and if any section, subsection, sentence, clause or phrase thereof for any reason be held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not effect the validity of the remaining sections, subsections, sentences, clauses and phrases of this Ordinance, but shall remaining in effect; it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

SECTION FOUR: EFFECTIVE DATE

This Ordinance shall take effect upon passage and publication as provided by law.

SECTION FIVE: CODIFICATION

This ordinance shall be a part of the Code of the City of Hoboken as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Code.

The City Clerk and the Corporation Counsel are authorized and directed to change any Chapter, Article and/or Section number of the Code of the City of Hoboken in the event that the codification of this

Ordinance reveals that there is a conflict between the numbers and the existing Code, and in order to avoid confusion and possible accidental repealers of existing provisions not intended to be repealed.

Date of Introduction: September 17, 2013

Approved:

Approved as to Legal Form:

 Quentin Wiest, Business Administrator

 Mellissa Longo, Corporation Counsel

| RECORD OF COUNCIL VOTE ON 1 ST READING | | | | |
|---------------------------------------------------|-----|-----|---------|---------|
| Councilperson | Yea | Nay | Abstain | No Vote |
| Councilman Bhalla | ✓ | | | |
| Councilwoman Castellano | ✓ | | | |
| Councilwoman Giattino | ✓ | | | |
| Councilwoman Mason | ✓ | | | |
| Councilman Mello | ✓ | | | |
| Councilman Occhipinti | ✓ | | | |
| Councilman Russo | | | | ✓ |
| President Cunningham | ✓ | | | |

| RECORD OF COUNCIL VOTE ON 2 ND READING | | | | |
|---------------------------------------------------|-----|-----|---------|---------|
| Councilperson | Yea | Nay | Abstain | No Vote |
| Councilman Bhalla | | | | |
| Councilwoman Castellano | | | | |
| Councilwoman Giattino | | | | |
| Councilwoman Mason | | | | |
| Councilman Mello | | | | |
| Councilman Occhipinti | | | | |
| Councilman Russo | | | | |
| President Cunningham | | | | |

I do hereby certify that the foregoing is a true and correct copy of an ordinance duly adopted by the City Council of the City of Hoboken, in the County of Hudson on this ____ day of _____, 2013

 James Farina, City Clerk

Approved by the Mayor of the City of Hoboken on the ____ day of _____, 2013.

 Dawn Zimmer, Mayor

-or-

Vetoed by the Mayor for the following reasons:

CITY OF HOBOKEN
Department of Community Development

DAWN ZIMMER
Mayor



BRANDY FORBES
Director

MEMORANDUM

Date: September 12, 2013

To: Hoboken City Council

Cc: Dawn Zimmer, Mayor
Quentin Wiest, Business Administrator
Mellissa Longo, Corporation Counsel

From: Brandy Forbes, Community Development Director 

Subject: Ordinance Amending Chapter §104 Flood Damage Prevention

On the agenda for the September 17, 2013 Hoboken City Council Meeting is an ordinance on introduction to amend Chapter §104 Flood Damage Prevention. This proposed ordinance amends an existing chapter and is reflective of the new model ordinance released earlier this year by the New Jersey Department of Environmental Protection (NJDEP). Deletions to the City's current ordinance are noted in ~~strike through~~, additions to the ordinance are noted in underline and generally reflect the recommended revisions by the NJDEP in their model ordinance.

As you can see in the whereas clauses in the ordinance, the existence of the ordinance is to promote public health, safety, and general welfare of the citizenry of Hoboken, as well as to reduce flood losses, resulting in lower flood insurance rates for residents and property owners in Hoboken. Updating this ordinance is critical for the City to remain in good standing with the National Flood Insurance Program (NFIP) and to benefit from the best rates available through NFIP. This chapter adopts construction standards for property within the Special Flood Hazard Area (SFHA) that reduce the hazards to health and safety, loss of life and property; minimize disruption of commerce and services; and reduce public expenditures for flood protection and relief.

The City is actively pursuing qualifications in the NFIP's Community Rating System (CRS). If qualified in the CRS program, flood insurance rates for all residents city-wide will be reduced by 5-10%, possibly more. As noted above, adoption and maintenance of this chapter is a prerequisite. By taking a proactive position and adopting the Advisory Base Flood Elevation maps and the higher standards

proposed in this ordinance, as recommended in the NJDEP's model ordinance, the City will be awarded significant points toward a higher CRS rating. The higher our municipality's CRS rating is, the greater the discount/reduction of flood insurance rates will be to Hoboken's residents.

The regulations in this chapter are applicable only to **new construction** and **substantial improvements** where the cost of alterations exceeds 50% of the market value of the structure prior to the start of construction. This does not affect existing structures or minor renovations to existing structures.

Part of the periodic update of this chapter, as this is, includes adoption of the most recent Flood Insurance Rate Maps (FIRMs). The last issued and adopted FIRMs for the City of Hoboken were issued in 2006. In this ordinance amendment, we recommend that in addition to the 2006 FIRMs, the City adopt the Advisory Base Flood Elevations (ABFE) and the Advisory Flood Hazard Maps dated December 7, 2012. These advisory maps establish a more accurate SFHA consistent with the flooding experienced during Hurricane Sandy.

As with all model ordinances, the municipality is permitted by statute to modify the ordinance for greater relevance to the municipality, provided that the local regulations are greater or equal to the State's minimum regulation. There are portions of this ordinance where this has been done.

As an example: In section §104-15.B the State model ordinance makes provision for variances to be issued on development lots of ½ acre, equal to close to half of a City block. The Hoboken proposed ordinance reduces the lot size for possible variance relief to 10,000 square feet or less to better reflect a typical in-fill lot size in Hoboken.

Recognizing that this is a very detailed ordinance, please feel free to forward any questions you may have in advance of the meeting to Business Administrator Quentin Wiest so that we will be sure to address those inquiries at or before the meeting.

Thank you.