

**AGENDA  
LEBANON CITY COUNCIL  
JUNE 19, 2019**

**9. NEW BUSINESS:**

**9.F – DISCUSSION AND SET PUBLIC HEARING FOR JULY 10, 2019:  
ORDINANCE 2019-08 TO AMEND CITY CODE CHAPTER 74,  
FLOOD DAMAGE PREVENTION**

**BACKGROUND**

Development occurring in areas of special flood hazard (i.e. the 100-year floodplain) within the City is currently regulated by City Code Chapter 74, Flood Damage Prevention, originally adopted by the City Council on June 4, 1980 in order to comply with the National Flood Insurance Program (NFIP) requirements being enacted at that time.

Section 74.21.A addresses Special Standards for residential construction within the 100-year floodplain and reads as follows:

“New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation. **New residential construction shall be limited to single-family dwelling units.**”

City staff has recently been asked about the interpretation and application of the second sentence of this section (highlighted above), limiting new residential construction to single-family dwelling units, as it relates to potential redevelopment opportunities along Spencer Street. With Ordinance 2019-08, changes are proposed to Chapter 74 to remove this restriction.

Please see the attached memo from David Brooks, Planning Director for further details regarding the requested changes. Mr. Brooks will be present to address any questions.

**ACTION**

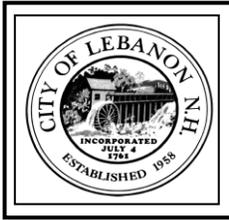
*The Council is requested to consider the following motion:*

***MOVED, that the Lebanon City Council hereby schedules a public hearing for Wednesday, July 10, 2019, beginning at 7:00 pm in Council Chambers, City Hall, for the purpose of receiving public input and taking action on proposed Ordinance #2019-08 to amend City Code Chapter 74, Flood Damage Prevention.***

Included in this Section:

1. June 7, 2019 Memo from David Brooks, Planning Director, re: Amendment to City Code Chapter 74, Flood Damage Prevention
2. Proposed Ordinance #2019-08

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## CITY OF LEBANON ~ PLANNING & DEVELOPMENT

### MEMORANDUM

**TO:** Lebanon City Council

**RE:** Shaun Mulholland, City Manager  
Paula Maville, Deputy City Manager  
Christina Hall, City Engineer / Floodplain Official

**FROM:** David Brooks, Planning Director

**RE:** Amendment to City Code Chapter 74, Flood Damage Prevention

**DATE:** June 7, 2019

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Honorable Mayor and City Councilors,

Development occurring in areas of special flood hazard (i.e. the 100-year floodplain) within the City is currently regulated by City Code Chapter 74, the Flood Damage Prevention Ordinance. This Ordinance was originally adopted by the City Council on June 4, 1980 in order to comply with National Flood Insurance Program (NFIP) requirements being enacted at that time.

Section 74-21.A of the Ordinance addresses Special Standards for residential construction within the 100-year floodplain and reads as follows:

“New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation. New residential construction shall be limited to single-family dwelling units.”

City staff has recently been asked about the interpretation and application of the second sentence of this section, limiting new residential construction to single-family dwelling units, as it relates to potential redevelopment opportunities along Spencer Street.

In researching the matter, staff found that the restriction of new residential development in floodplain areas was a significant issue when the Ordinance was first adopted. The Planning Board at the time recommended that existing residences should be allowed to expand or be reconstructed if damaged, but that no new residential construction of any kind should be allowed in floodplain areas. The City Council, after extensive public input, including a special public informational meeting, decided to limit new residential development to single-family dwellings and to prohibit two-family and multi-family dwellings and new residential subdivisions within the 100-year floodplain.

Nevertheless, staff has been unable to confirm any instance in which the restriction on new multi-family development was actually applied and enforced. On the contrary, staff has identified at least four (4) instances since 1980 in which new multi-family developments have been approved and constructed within areas mapped as part of the 100-year floodplain. (Staff has not researched the construction or substantial improvement of two-family structures within the 100-year floodplain since 1980.) The most recent developments include Emerson Place (2002) and Romano Place (2007). In these most recent multi-family development applications, the

presence of the floodplain was acknowledged, but the applicant proposed to “elevate the new residential structures above the floodplain elevation as required.” At no time did City staff or the Planning Board suggest that new multi-family development was prohibited by the terms of Chapter 74.

City staff has also reviewed this matter with staff from the Floodplain Management Program in the NH Office of Strategic Initiatives. The State Coordinator for the NFIP Program noted that the first sentence of Section 74-21.A (requiring elevation of structures to or above the base flood elevation) is mandatory for participation in the National Flood Insurance Program. However, the limitation to only single-family dwelling units is not required for NFIP participation and is seemingly a local option. The Principal Planner for the NFIP Program noted that as long as new development proposed within the 100-year floodplain is designed and built correctly, there is no specific reason that people would be more unsafe in multi-family dwellings than in single-family dwellings or non-residential structures which are allowed in the same locations.

In light of other community goals expressed in the 2012 Master Plan and the 2016 Downtown Visioning Study, including encouraging more housing at higher densities in around our downtown areas, City staff suggests that the City Council consider eliminating the local prohibition on new two-family and multi-family residential development in the 100-year floodplain. It should be reiterated, however, that **all** new residential development will still be required to be elevated to or (preferably) above the base flood elevation pursuant to NFIP requirements. It should also be reiterated that the current restrictions on new residential subdivisions found in Section 74-20.D(5) would also remain in effect.

Attached hereto for the Council’s consideration is a draft Ordinance amending Chapter 74, Section 74-21.A to remove the current language limiting new residential construction to single-family dwelling units. The Planning Department recommends that the City Council schedule a public hearing on the proposed amendment for July 10, 2019.

Encl. City Code Chapter 74

# Chapter 74

## Flood Damage Prevention

**[HISTORY: Adopted by the City Council of the City of Lebanon 3-5-2008 by Ord. No. 2008-2; effective 3-5-2008. Amendments noted where applicable.]**

### GENERAL REFERENCES

General penalty — See § 1-4.

Building construction — See Ch. 36.

Conversation land regulations — See Ch. 52.

Mobile homes — See Ch. 106.

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### Article I

#### Statutory Authorization; Finding of Fact; Purpose

##### § 74-1 Statutory authorization.

The legislature of the State of New Hampshire has in RSA 674:16 delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry. Therefore, the City Council of the City of Lebanon, New Hampshire, does ordain as follows.

##### § 74-2 Finding of fact.

- A. The flood hazard areas of Lebanon 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 hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated or otherwise protected from flood damage also contribute to the flood loss.

##### § 74-3 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 ensure that potential buyers are notified that property is in an area of special flood hazard.
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

**§ 74-4 Methods of reducing flood losses.**

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

- A. Restricting and 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 floodplains, 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.
- E. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwater or which may increase flood hazards in other areas.

**Article II  
Definitions and Word Usage**

**§ 74-5 Word usage.**

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 most reasonable application.

**§ 74-6 Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

**APPEAL**

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

**AREA OF SPECIAL FLOOD HAZARD**

The land in the floodplain within a community with a one-percent or greater chance of flooding in any given year. The area is designated as Zone(s) A and AE on the Flood Insurance Rate Map (FIRM).

**BASE FLOOD**

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

**BASEMENT**

Any area of a building having its floor subgrade on all sides.

**BUILDING**

See "structure."

## **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 the area of special flood hazard.

## **FEMA**

The Federal Emergency Management Agency.

## **FLOOD or FLOODING**

A general and temporary condition of partial or complete inundation or normally dry land areas from the overflow of inland or tidal water and/or the unusual and rapid accumulation of runoff of surface waters from any source.

## **FLOOD ELEVATION STUDY**

An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.

## **FLOOD INSURANCE RATE MAP (FIRM)**

An official map incorporated with this chapter, on which FEMA has delineated both the special flood hazard areas and the risk premium zones applicable to the City of Lebanon.

## **FLOOD INSURANCE STUDY**

See "flood elevation study."

## **FLOODPLAIN or FLOOD-PRONE AREA**

Any land area susceptible to being inundated by water from any source. See definition of "flooding."

## **FLOODPROOFING**

Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.

## **FLOODWAY**

See "regulatory floodway."

## **FUNCTIONALLY DEPENDENT USE**

A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking and port facilities that are necessary for the loading/unloading of cargo or passengers, and shipbuilding/repair facilities but does not include long-term storage or related manufacturing facilities.

## **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, historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places 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.

### **LOWEST FLOOR**

The floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, used solely for parking of vehicles, building access or storage in an area other than a basement area is not considered the building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this chapter. A "basement" means any area of the building having its floor subgrade (below ground level) on all sides.

### **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 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. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers and other similar vehicles.

### **MANUFACTURED HOME PARK OR SUBDIVISION**

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

### **MEAN SEA LEVEL**

The National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

### **NEW CONSTRUCTION**

Includes substantial improvement, and means the date the building permit was issued, provided that actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The "actual start" means either the first placement of permanent construction of the structure on a site, such as the pouring of slabs 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.

### **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 floodplain management regulations adopted by a community.

### **ONE-HUNDRED-YEAR FLOOD**

See "base flood."

### **RECREATIONAL VEHICLE**

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

### **REGULATORY 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 increasing the water surface elevation. These areas are designated on the FIRM map.

### **SPECIAL FLOOD HAZARD**

An area having flood, mudslide and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A or AE (see "area of special flood hazard.")

### **START OF CONSTRUCTION**

Includes substantial improvements, and means the date the building permit was issued, provided that the actual start of construction, repair, reconstruction, 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 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 part of the main structure.

### **STRUCTURE**

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**

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

## **SUBSTANTIAL IMPROVEMENT**

Any combination of repairs, reconstruction, alteration or improvements to a structure in which the cumulative cost equals or exceeds 50% of the market value of the structure. The market value of the structure should equal the appraised value prior to the start of the initial repair or improvement or, in the case of damage, the value of the structure prior to the damage occurring. 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 that alteration affects the external dimensions of the structure. This term includes structures which have incurred substantial damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a structure required to comply with existing health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure.

## **VARIANCES**

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

## **VIOLATION**

Means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44CFR § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

## **WATER SURFACE ELEVATION**

The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 (or other datum, where specified), of floods of various magnitudes and frequencies in the floodplains.

### **Article III General Provisions**

#### **§ 74-7 Lands to which this chapter applies.**

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the City of Lebanon.

#### **§ 74-8 Basis for establishing areas of special flood hazard.**

Pursuant to RSA 674:56, by resolution of the City Council, all lands designated as special flood hazard areas by the Federal Emergency Management Agency (FEMA) in its "Flood Insurance Study for the County of Grafton, NH" dated February 20, 2008, together with the associated Flood Insurance Rate Maps dated February 20, 2008, are declared to be part of the City of Lebanon Code, Chapter 74 and are hereby incorporated by reference. The Flood Insurance Study is on file at the office of the City Clerk, 51 North Park Street, Lebanon, New Hampshire.

#### **§ 74-9 Compliance.**

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.

#### **§ 74-10 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 another ordinance, easement, covenant or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**§ 74-11 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.

**§ 74-12 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 areas 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 Lebanon, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on the ordinance or any administrative decision lawfully made thereunder.

**§ 74-13 Penalties for offenses.**

Violation of any provision of this chapter shall be punishable as provided in Chapter 1, General Provisions.

**Article IV  
Administration**

**§ 74-14 Establishment of development permit.**

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in § 74-8. Application for a development permit shall be made on forms furnished by the Floodplain Official 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 § 74-21B; and
- D. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

**§ 74-15 Designation of the Floodplain Official.**

The Floodplain Official is responsible for administering and implementing this chapter by granting or denying development permit applications in accordance with its provisions. The Floodplain Official will normally be the City Engineer.

**§ 74-16 Duties and responsibilities of Floodplain Official.**

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

- A. Permit review. The Floodplain Official shall:
  - (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, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1334.
  - (3) Review all development permits to determine if the proposed development adversely affects the flood-carrying capacity of the area of special flood hazard. For purposes of this chapter, "adversely affects" means the cumulative effects of proposed development when combined with all other existing and anticipated developments increases the water surface elevation of the base flood more than one foot at any point.
- B. Use of other base flood data. When base flood elevation data has not been provided in accordance with § 74-8, Basis for establishing the areas of special flood hazard, the Floodplain Official shall obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, in order to administer § 74-21, Specific Standards, Subsection A, Residential construction, and Subsection B, Nonresidential construction.
  - C. In special flood hazard areas, the Floodplain Official shall determine the one-hundred-year-flood elevation in the following order of precedence according to the data available:
    - (1) In Zones AE, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.
  - D. Information to be obtained and maintained. The Floodplain Official shall:
    - (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 located in Zones A or AE. The applicant shall furnish the following information to the Building Inspector.
    - (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 § 74-14C.
    - (3) Maintain for public inspection all records pertaining to the provisions of this chapter.

**§ 74-17 Alteration of watercourses.**

- A. In riverine situations, prior to the alternation or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Environmental Services Department and submit copies of such notification to the Building Inspector, in addition to the copies required by RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Floodplain Official, including notice to all scheduled hearings before the Wetlands Board and any hearings before the Zoning Board of Adjustment for a special exception or conditional use permit under Section 401 of the Lebanon Zoning Ordinance.
- B. Along watercourses with a designated regulatory floodway, no encroachments, including fill, new construction, substantial improvements and other development, are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge. In Zone A, the Building Inspector shall obtain, review and reasonably utilize any floodway data available from federal, state or other sources as criteria for requiring that development meets the floodway requirements of this section.
- C. Along watercourses that have not had a regulatory floodway designated, no new construction, substantial improvements or other development (including fill) shall be permitted within Zones AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed

development, when combined with all existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

**§ 74-18 Variance procedure; Floodplain Appeal Board.**

- A. The Floodplain Appeal Board shall be the Lebanon Zoning Board of Adjustment. The Zoning Board of Adjustment shall hear and decide appeals and requests for variances from the requirements of this chapter.
- B. The Floodplain Appeal Board shall hear and decide appeals when it is alleged there is an error in any requirement, decision or determination made by the Floodplain Official in the enforcement or administration of this chapter.
- C. Those aggrieved by the decision of the Floodplain Appeal Board, or any taxpayer, may appeal such decision to the Grafton County Superior Court as provided in RSA 676:5.
- D. In passing upon such applications, the Floodplain Appeal Board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter and:
  - (1) The danger that materials may be swept onto other lands to the injury of others;
  - (2) The danger to life and property due to flooding or erosion damage;
  - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - (4) The importance of the services provided by the proposed facility to the community;
  - (5) The necessity to the facility of a waterfront location, where applicable;
  - (6) The availability of alternative locations, for the proposed use which are not subject to flooding or erosion damage;
  - (7) The compatibility of the proposed use with existing and anticipated development;
  - (8) The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;
  - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
  - (10) 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
  - (11) 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.
- E. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of 1/2 acre or less in size contiguous to and surrounded by lots within existing structures constructed below the base flood level, provided that Subsections (1) through (11) in § **74-18D** have been fully considered. As the lot size increases beyond the 1/2 acre, the technical justification required for issuing the variance increases.
- F. Upon consideration of the factors of § **74-18D** and the purposes of this chapter, the Floodplain Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

- G. The Floodplain Official shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

§ 74-19 **Conditions for variances.**

- A. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.
- B. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- C. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- D. Variances shall only be issued upon:
  - (1) A showing of good and sufficient cause;
  - (2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
  - (3) 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 § 74-18D, or conflict with existing local laws or ordinances.
- E. 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**

§ 74-20 **General standards.**

In all areas of special flood hazards 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 that are placed or substantially improved within special flood hazard areas on the community's FIRM on sites:
    - (a) Outside of a manufactured home park or subdivision;
    - (b) In a new manufactured home park or subdivision;
    - (c) In an expansion to an existing manufactured home park or subdivision; or
    - (d) In an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as a result of a flood, be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

- (3) All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within special flood hazard areas on the community's FIRM that are not subject to the provisions of § 74-20A(2) be elevated so that either:
  - (a) The lowest floor of the manufactured home is at or above the base flood elevation; or
  - (b) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
- (4) Recreational vehicles.
  - (a) All recreational vehicles placed on sites within Zone AE shall either:
    - [1] Be on the site for fewer than 180 consecutive days;
    - [2] Be fully licensed and ready for highway use; or
    - [3] Meet all standards of Section 60.3(b)(1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for manufactured homes in Paragraph (c)(6) of Section 60.3.
  - (b) A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices and has no permanently attached additions.
- 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.
  - (3) All new construction or substantial improvements shall have electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- 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 shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.
  - (3) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- D. 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 damage.
- (4) Base flood elevation data shall be provided for subdivision proposals and other proposed development which contain at least 50 lots or five acres (whichever is less).
- (5) Residential subdivisions shall not be approved unless the applicant can demonstrate that lands sufficient to meet the lot area, frontage and yard requirements of the Zoning Ordinance exist on each proposed lot in areas outside the special flood hazard area.

**§ 74-21 Special standards.**

In all areas of special flood hazards where base flood elevation data has been provided as set forth in § 74-8, Basis for establishing the areas of special flood hazard, or § 74-16B, Use of other base flood data, the following provisions are required.

- A. Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation. New residential construction shall be limited to single-family dwelling units.
- B. Nonresidential construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation or, together with attendant utility and sanitary facilities, shall:
  - (1) Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water.
  - (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
  - (3) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the official set forth in § 74-16D.
- C. Residential and nonresidential construction. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted, provided that the enclosed areas meet the following requirements:
  - (1) The enclosed area is unfinished or flood resistant, used solely for parking of vehicles, building access or storage.
  - (2) The area is not a basement.
  - (3) Shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. 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 coverings or devices, provided that they permit the automatic entry and exit of floodwater.

**§ 74-22 Floodways.**

Located within areas of special flood hazard established in § 74-8 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions apply:

- A. Prohibit encroachments, including fill, new construction, substantial improvements and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- B. If Subsection A is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article V, Provisions for Flood Hazard Reduction.
- C. Prohibit the placement of manufactured homes.

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THE CITY OF LEBANON ORDAINS AS FOLLOWS:

ORDINANCE NO. **2019-08**

An Ordinance to Amend the Code of the City of Lebanon, Chapter 74, Flood Damage Prevention, to remove the current prohibition on new two-family and multi-family residential development in the 100-year floodplain.

Section 1. Chapter 74 of the Code of the City of Lebanon is hereby amended to modify Article V, Section 74-21 as follows:

**ARTICLE V, PROVISIONS FOR FLOOD HAZARD REDUCTION**

**§74-21. SPECIAL STANDARDS.**

In all areas of special flood hazards where base flood elevation data has been provided as set forth in §74-8, Basis for establishing the areas of special flood hazard, or §74-16B, Use of other based flood data, the following provisions are required.

- A. Residential construction. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation. ~~New residential construction shall be limited to single-family dwelling units.~~
- B. Nonresidential construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation or, together with attendant utility and sanitary facilities, shall:
  - (1) Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water.
  - (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
  - (3) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certifications shall be provided to the official set forth in §74-16D.
- C. Residential and nonresidential construction. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted, provided that the enclosed areas meet the following requirements:
  - (1) The enclosed area is unfurnished or flood resistant, used solely for parking of vehicles, building access, or storage.
  - (2) The area is not a basement.
  - (3) Shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. 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 coverings or devices, provided that they permit the automatic entry and exit of floodwater.

Section 2. Severability

The provisions of this ordinance are delated to be severable, and if any section, subsection, sentence, clause or part thereof, for any reason, is held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses or part of this ordinance.

Effective Date: This Ordinance shall become effective upon passage.