

Approved: November 10, 2014

**A RESOLUTION OF THE MAYOR & CITY COUNCIL OF THE CITY OF LEWES, DELAWARE, PROPOSING THAT A PUBLIC HEARING BE HELD ON THE SUBJECT OF AMENDING CHAPTER 197, ZONING, OF THE MUNICIPAL CODE OF THE CITY OF LEWES, DELAWARE, 1999, RELATING TO FLOODPLAIN REGULATIONS AND ADMINISTRATION**

**WHEREAS**, the Mayor and City Council deem it desirable to consider the question of whether it is in the public interest to adopt new provisions governing floodplain management, regulation, and administration in the City of Lewes;

**WHEREAS**, Title 22, Chapter 3, Section 301 of the Delaware Code provides that “[f]or the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of cities and incorporated towns may regulate and restrict the height, number of stories and size of buildings and other structures, percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes”; and

**WHEREAS**, Section 38 of the City’s Charter provides that “[f]or the purpose of protection against fire, promoting health, safety, morals or the general welfare of the community, the City Council is hereby empowered to adopt ordinances to regulate and restrict the height, number of stores [sic], size of buildings and other structures, the density of population and the location and use of buildings, structures and lands for trade, industry, residence or other purposes . . .”; and

**WHEREAS**, Article XV, Chapter 197, Section 197-104 of the Municipal Code of the City of Lewes provides the following procedure to be followed by the Mayor and City Council of Lewes before exercising the aforesaid authority granted by statute and the City Charter:

1. Hold a public hearing at which hearing parties in interest and citizens shall have an opportunity to be heard;
2. Provide at least fifteen (15) days’ notice of such hearing by publishing notice of the time and place of such hearing in an official newspaper of the City of Lewes or a newspaper of general circulation in the City.

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and City Council, in session met, a quorum pertaining at all times thereto, that a public hearing shall be held on **Tuesday, December 16, 2014 at 7:00pm**, at Lewes City Hall, 114 E. Third Street, Lewes, Delaware, 19958 to consider the question of whether it is in the public interest to adopt new provisions governing floodplain management, regulation, and administration in the City of Lewes as follows:

  
[SEE EXHIBIT A]  


**BE IT FURTHER RESOLVED**, that parties in interest and citizens shall have an opportunity to be heard at said public hearing.

**BE IT FURTHER RESOLVED**, that the City Manager be and is hereby directed to cause a notice which shall consist of a true copy of this Resolution, in full or by title only, to be published in an official newspaper of the City of Lewes or a newspaper of general circulation in the City at least fifteen (15) days prior to the date set forth in this Resolution for the public hearing.

**BE IT FURTHER RESOLVED**, that the City Manager be and is hereby directed to post a notice and agenda of said public hearing at City Hall more than seven (7) days prior to the date set forth in this Resolution for the public hearing.

**BE IT FURTHER RESOLVED**, that the City Manager is hereby directed to post a notice of said hearing on the City's website at least fifteen (15) days prior to the date set forth in this Resolution for the public hearing.

*I, Dennis Reardon, Secretary of the City Council of the City of Lewes, do hereby certify that the foregoing is a true and correct copy of the Resolution passed by the Mayor and City Council at its regular meeting on November 10, 2014 at which a quorum was present and voting throughout and the same is still in full force and effect.*



Secretary of the City Council  
City of Lewes

1           **AN ORDINANCE TO AMEND CHAPTER 197, ZONING, OF THE**  
2           **MUNICIPAL CODE OF THE CITY OF LEWES, DELAWARE, 1999,**  
3           **RELATING TO FLOODPLAIN REGULATIONS AND**  
4           **ADMINISTRATION**

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7           **WHEREAS**, the Mayor and City Council amended Chapter 197, Zoning, in its  
8 entirety on October 13, 2011; and

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10           **WHEREAS**, the Mayor and City Council has the authority to adopt regulations  
11 designed to promote the public health, safety, and general welfare of its citizenry; and

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13           **WHEREAS**, the Federal Emergency Management Agency has identified special  
14 flood hazard areas within the boundaries of Lewes, Delaware and such areas may be subject  
15 to periodic inundation which may result in loss of life and property, health and safety  
16 hazards, disruption of commerce and governmental services, extraordinary public  
17 expenditures for flood protection and relief, and impairment of the tax base, all of which  
18 adversely affect the public health, safety and general welfare, and

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20           **WHEREAS**, the City of Lewes was accepted for participation in the National Flood  
21 Insurance Program on March 15, 1977 and the City Council desires to continue to meet the  
22 requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such  
23 participation; and

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25           **WHEREAS**, the City of Lewes has, in Chapter 70, adopted a building code that  
26 contains provisions for the design and construction of buildings, structures, and dwellings in  
27 flood hazard areas; and

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29           **WHEREAS**, the Mayor and City Council finds and concludes that adopting new  
30 provisions governing floodplain management, regulation, and administration is in the interest  
31 of public health, safety, and general welfare; and

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33           **WHEREAS**, Title 22, Chapter 3, Section 301 of the Delaware Code provides that  
34 “[f]or the purpose of promoting health, safety, morals or the general welfare of the  
35 community, the legislative body of cities and incorporated towns may regulate and restrict  
36 the height, number of stories and size of buildings and other structures, percentage of lot that  
37 may be occupied, the size of yards, courts and other open spaces, the density of population,  
38 and the location and use of buildings, structures and land for trade, industry, residence or  
39 other purposes”; and

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41           **WHEREAS**, Section 38 of the City's Charter provides that “[f]or the purpose of  
42 protection against fire, promoting health, safety, morals or the general welfare of the  
43 community, the City Council is hereby empowered to adopt ordinances to regulate and  
44 restrict the height, number of stores [sic], size of buildings and other structures, the density of

45 population and the location and use of buildings, structures and lands for trade, industry,  
46 residence or other purposes . . .”; and,

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48 **WHEREAS**, Article XV, Chapter 197, Section 197-104, Text and map amendments,  
49 of the Municipal Code of the City of Lewes provides that any amendment to any Zoning  
50 Ordinance shall made be after a public hearing following fifteen (15) days’ notice by  
51 publication in an official paper or a paper of general circulation in the City; and,

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53 **WHEREAS**, a public hearing was conducted on December 16, 2014; and,

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55 **WHEREAS**, at least fifteen (15) days’ notice of such hearing was provided by  
56 publishing notice of the time and place of such hearing in an official paper or a paper of  
57 general circulation in the City; and

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59 **WHEREAS**, the proposed amendment will promote the health, safety, and general  
60 welfare of the Lewes community and is in line with the general purpose and intent of the  
61 Zoning Code and the Lewes Comprehensive Plan.

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63 **BE IT ORDAINED** by the Mayor and City Council, in session met, a quorum  
64 pertaining at all times thereto, in the manner following to-wit:

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66 **Section 1.** Chapter 197, Section 197-73, “Floodplains”, of the Municipal Code of  
67 the City of Lewes, Delaware, 1999, be and the same is hereby amended by deleting Section  
68 197-73 in its entirety and inserting in lieu thereof the following:

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70 **§197-73. Floodplains.**

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72 **A. GENERAL PROVISIONS**

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74 **(1) Findings.**

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76 The Federal Emergency Management Agency (FEMA) has identified special flood  
77 hazard areas within the boundaries of the City of Lewes. Special flood hazard areas are  
78 subject to periodic inundation which may result in loss of life and property, health and safety  
79 hazards, disruption of commerce and governmental services, extraordinary public  
80 expenditures for flood protection and relief, and impairment of the tax base, all of which  
81 adversely affect the public health, safety and general welfare. Development that is  
82 inadequately elevated, improperly flood proofed, or otherwise unprotected from flood  
83 damage also contribute to the flood loss.

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85 The City of Lewes, by resolution, agreed to meet the requirements of the National  
86 Flood Insurance Program and was accepted for participation in the program on March 15,  
87 1977. As of that date or the initial effective date of the City of Lewes Flood Insurance Rate  
88 Map, all development and new construction as defined herein, are to be compliant with these  
89 regulations and the flood load and flood-resistant construction provisions of the building  
90 code, including specific amendments adopted by the City of Lewes.

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(2) **Statement of Purpose.**

It is the purpose of these regulations to promote the public health, safety and general welfare, and to:

- a) Protect human life, health and welfare;
- b) Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future;
- c) Minimize flooding of water supply and sanitary sewage disposal systems;
- d) Maintain natural drainage;
- e) Reduce financial burdens imposed on the community, its governmental units and its residents, by discouraging unwise design and construction of development in areas subject to flooding;
- f) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- g) Minimize prolonged business interruptions;
- h) Minimize damage to public facilities and other utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges;
- i) Reinforce that those who build in and occupy special flood hazard areas should assume responsibility for their actions;
- j) Minimize the impact of development on adjacent properties within and near flood prone areas;
- k) Provide that the flood storage and conveyance functions of the floodplain are maintained;
- l) Minimize the impact of development on the natural and beneficial functions of the floodplain;
- m) Prevent floodplain uses that are either hazardous or environmentally incompatible; and
- n) Meet community participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

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**(3) Areas to which these regulations apply.**

These regulations shall apply to all special flood hazard areas within the jurisdiction of the City of Lewes, as identified herein.

**(4) Basis for establishing special flood hazard areas.**

For the purposes of these regulations, and for the purpose of establishing flood hazard areas in the building code (Section 1612.3 and Table R301.2(1)), the following are adopted by reference as a part of these regulations and serve as the basis for establishing special flood hazard areas:

- a) The FEMA Flood Insurance Study for Sussex County, Delaware and Incorporated Areas dated March 16, 2015 and all subsequent amendments and/or the most recent revision thereof.
- b) The FEMA Flood Insurance Rate Map for Sussex County, Delaware and Incorporated Areas dated March 16, 2015, and all subsequent amendments and/or the most recent revision thereof.
- c) Other hydrologic and hydraulic engineering studies and/or maps prepared pursuant to these regulations or for other purposes, and which establish base flood elevations, delineate 100-year floodplains, floodways or other areas of special flood hazard.
- d) The City of Lewes may identify and regulate new local flood hazard or ponding areas. These areas should be delineated and adopted on a “Local Flood Hazard Map” using best available topographic data and locally derived information such as flood of record, historic high water marks or approximate study methodologies.
- e) Where field surveyed topography indicates that ground elevations are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a flood hazard map, the area shall be considered as special flood hazard area.

Maps and studies that establish special flood hazard areas are on file at **City Hall**.

**(5) Abrogation and greater restrictions.**

These regulations are not intended to repeal or abrogate any existing ordinances including subdivision regulations, zoning ordinances or building codes. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern. These regulations shall not impair any deed restriction, covenant or easement, but the land subject to such interests shall also be governed by these regulations.

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(6) **Interpretation.**

In the interpretation and application of these regulations, all provisions shall be:

- a) Considered as minimum requirements;
  - b) Liberally construed in favor of the governing body;
  - c) Deemed neither to limit nor repeal any other powers granted under state statutes; and
  - d) Where a provision of these regulations may be in conflict with a State or Federal law, such State or Federal law shall take precedence, where more restrictive.
- (7) **Warning and disclaimer of liability.**

The degree of flood protection required by these regulations 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. These regulations do not imply that land outside of the special flood hazard areas or uses that are permitted within such areas will be free from flooding or flood damage. These regulations shall not create liability on the part of the City of Lewes, any officer or employee thereof, or the Federal Emergency Management Agency, for any flood damage that results from reliance on these regulations or any administrative decision lawfully made thereunder.

(8) **Severability.**

Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

**B. DEFINITIONS**

Unless specifically defined below, words or phrases used in these regulations shall be interpreted so as to give them the meaning they have in common usage and to give these regulations the most reasonable application. Where terms are not defined in these regulations and are defined in the building code, such terms shall have the meanings ascribed to them in that code.

**Accessory Structure:** For the purposes of these regulations, a structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal structure.

**Area of Shallow Flooding:** A designated Zone AO on a community's Flood

229 Insurance Rate Map with a one percent annual chance or greater of flooding to an average  
230 depth of one to three feet where a clearly defined channel does not exist, where the path of  
231 flooding is unpredictable, and where velocity flow may be evident. Such flooding is  
232 characterized by ponding or sheet flow.

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234 **Base Flood:** The flood having a one percent chance of being equaled or exceeded in  
235 any given year; the base flood also is referred to as the 100-year flood (or the 1%-annual-  
236 chance flood).

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238 **Base Flood Discharge:** The volume of water resulting from a Base Flood as it passes  
239 a given location within a given time, usually expressed in cubic feet per second (cfs).

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241 **Base Flood Elevation:** The elevation of the base flood, including wave height,  
242 relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum  
243 (NAVD) or other datum specified on the community's Flood Insurance Rate Map.

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245 **Basement:** Any area of the building having its floor subgrade (below ground level)  
246 on all sides.

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248 **Breakaway Wall:** A wall that is designed and certified by a registered design  
249 professional that is not part of the structural support of the building and is intended through  
250 its design and construction to collapse under specific lateral loading forces, without causing  
251 damage to the elevated portion of the building or supporting foundation system.

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253 **Building Code:** The family of building codes specifically adopted by the City of  
254 Lewes in Chapter 70, Building Construction. The code that applies to one- and two-family  
255 dwellings is referred to as the "residential code."

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257 **Coastal A Zone.** Flood hazard areas that have been delineated as subject to wave  
258 heights between 1 ½ feet (457 mm) and 3 feet (914 mm). Such areas are seaward of the  
259 Limit of Moderate Wave Action shown on the Flood Insurance Rate Map.

260

261 **Coastal High Hazard Area:** Area within the flood hazard area that is subject to  
262 high-velocity wave action, and shown on a Flood Insurance Rate Map (FIRM) or other flood  
263 hazard map as Zone V, VO, VE or V1-30.

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265 **Critical Facility.** Hospitals, nursing homes, police stations, fire stations, and  
266 emergency operation centers that are needed for flood response activities before, during, or  
267 after a flood; public and private utility facilities that are vital to maintaining or restoring  
268 normal services to flooded areas before, during, and after a flood; and structures or facilities  
269 that produce, use, or store highly volatile, flammable, explosive, toxic and/or water-reactive  
270 materials. The term includes facilities that are assigned Risk Category III and Risk Category  
271 IV assigned pursuant to the building code or Flood Design Class 3 and Flood Design Class 4  
272 assigned pursuant to ASCE 24, if applicable.

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274 **Development:** Any manmade change to improved or unimproved real estate,



275 including but not limited to buildings or other structures, placement of manufactured homes,  
276 mining, dredging, filling, grading, paving, excavation or drilling operations or storage of  
277 equipment or materials.

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279 **Dry Floodproofing:** A combination of measures which results in a structure,  
280 including attendant utilities and equipment, being watertight with all elements substantially  
281 impermeable and with structural components having the capacity to resist flood loads.

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283 **Elevation Certificate:** The *National Flood Insurance Program, Elevation*  
284 *Certificate* (FEMA Form 086-0-33), used to document building elevations and other  
285 information about buildings. When required to be certified, the form shall be completed by a  
286 licensed professional land surveyor.

287

288 **Federal Emergency Management Agency (FEMA):** The federal agency with the  
289 overall responsibility for administering the National Flood Insurance Program.

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291 **FEMA Technical Bulletin:** A series of guidance documents published by FEMA to  
292 provide guidance concerning building performance standards of the National Flood Insurance  
293 Program. See sections where specific TBs are identified.

294

295 **Flood or Flooding:** A general and temporary condition of partial or complete  
296 inundation of normally dry land areas from:

297

(1) The overflow of inland or tidal waters, and/or

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(2) The unusual and rapid accumulation or runoff of surface waters from any source.

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300 **Flood Damage-Resistant Materials:** Any construction material capable of  
301 withstanding direct and prolonged contact with floodwaters without sustaining any damage  
302 that requires more than cosmetic repair. See FEMA Technical Bulletin #2 – *Flood Damage-*  
303 *Resistant Materials Requirements* and FEMA Technical Bulletin #8 – *Corrosion Protection*  
304 *for Metal Connectors in Coastal Areas.*

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306 **Flood Insurance Rate Map (FIRM):** An official map on which the Federal  
307 Emergency Management Agency (FEMA) has delineated both the special flood hazard areas  
308 and the risk premium zones applicable to the community.

309

310 **Zone A:** Special flood hazard areas inundated by the 1% annual chance flood;  
311 base flood elevations are not determined.

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313 **Zone AE:** Special flood hazard areas subject to inundation by the 1% annual  
314 chance flood; base flood elevations are determined; floodways may or may not be  
315 determined.

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317 **Zone AO:** Areas of shallow flooding, with or without a designated average flood  
318 depth.

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320 **Zone X (shaded):** Areas subject to inundation by the 500-year flood (0.2% annual

321 chance); areas subject to the 1% annual chance flood with average depths of less than 1  
322 foot or with contributing drainage area less than 1 square mile; and areas protected by  
323 levees from the base flood.

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325 Zone X (unshaded): Areas determined to be outside the 1% annual chance flood  
326 and outside the 500-year floodplain.

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328 Zone VE: Special flood hazard areas subject to inundation by the 1% annual  
329 chance flood and subject to high velocity wave action (also referred to as coastal high  
330 hazard areas).

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332 Limit of Moderate Wave Action (LiMWA): The inland limit of the area affected  
333 by waves greater than 1.5 feet during the base flood. Base flood conditions between the  
334 Zone VE and the LiMWA will be similar to, but less severe than, those in the Zone VE.

335

336 Flood Insurance Study: The official report provided by the Federal Emergency  
337 Management Agency (FEMA) containing the Flood Insurance Rate Map (FIRM), the Flood  
338 Boundary and Floodway Map (FBFM), the water surface elevations of the base flood and  
339 supporting technical data.

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341 Floodplain: Any land area susceptible to being inundated by water from any source  
342 (see "Flood" or "Flooding").

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344 Floodproofing Certificate: The *National Flood Insurance Program, Floodproofing*  
345 *Certificate for Non-Residential Structures* (FEMA Form 86-0-34), used by registered  
346 professional engineers and architects to certify dry floodproofing designs.

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348 Floodway: The channel of a river or other watercourse and the adjacent land areas  
349 that must be reserved in order to pass the base flood discharge such that the cumulative  
350 increase in the water surface elevation of the base flood discharge is no more than a  
351 designated height.

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353 Freeboard: A margin of safety added to the base flood elevation to account for  
354 waves, debris, miscalculations, or lack of data.

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356 Functionally Dependent Use: A use which cannot perform its intended purpose  
357 unless it is located or carried out in close proximity to water; the term includes only docking  
358 facilities, port facilities that are necessary for the loading and unloading of cargo or  
359 passengers, and ship building and ship repair facilities, but does not include long-term  
360 storage or related manufacturing facilities.

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362 Highest Adjacent Grade: The highest natural elevation of the ground surface prior  
363 to construction next to the proposed walls of a structure.

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365 Historic Structure: Any structure that is:

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- 367 (1) Individually listed in the National Register of Historic Places (a listing maintained by  
368 the U.S. Department of Interior) or preliminarily determined by the Secretary of the  
369 Interior as meeting the requirements for individual listing on the National Register;  
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371 (2) Certified or preliminarily determined by the Secretary of the Interior as contributing  
372 to the historical significance of a registered historic district or a district preliminarily  
373 determined by the Secretary to qualify as a registered historic district;  
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375 (3) Determined eligible for listing on the National Register of Historic Places by the  
376 Delaware State Historic Preservation Officer; or  
377  
378 (4) Determined to contribute to the historic significance of a district that has been  
379 determined by the Delaware State Historic Preservation Officer, to be eligible for  
380 listing on the National Register of Historic Places.

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382 **Hydrologic and Hydraulic Engineering Analysis:** An analysis performed by a  
383 professional engineer, licensed in the State of Delaware, in accordance with standard  
384 engineering practices as accepted by FEMA, used to determine the base flood, other  
385 frequency floods, flood elevations, floodway information and boundaries, and flood profiles.  
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387 **Letter of Map Change:** A Letter of Map Change is an official FEMA determination,  
388 by letter, to amend or revise an effective Flood Insurance Rate Map, Flood Boundary and  
389 Floodway Map, and Flood Insurance Study. Letters of Map Change include:  
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391 **Letter of Map Amendment (LOMA):** An amendment based on  
392 technical data showing that a property was inadvertently included in a  
393 designated special flood hazard area. A LOMA amends the current effective  
394 Flood Insurance Rate Map and establishes that a specific property is not  
395 located in a special flood hazard area.  
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397 **Letter of Map Revision (LOMR):** A revision based on technical data  
398 that may show changes to flood zones, flood elevations, floodplain and  
399 floodway delineations, and planimetric features. One common type of LOMR,  
400 a Letter of Map Revision Based on Fill (LOMR-F), is a determination that a  
401 structure or parcel of land has been elevated by fill above the base flood  
402 elevation and is, therefore, no longer exposed to flooding associated with the  
403 base flood; in order to qualify for this determination, the fill must have been  
404 permitted and placed in accordance with these regulations.  
405

406 **Conditional Letter of Map Revision (CLOMR):** A formal review and  
407 comment as to whether a proposed flood protection project complies with the  
408 minimum National Flood Insurance Program requirements for such projects  
409 with respect to delineation of special flood hazard areas. A CLOMR does not  
410 amend or revise effective Flood Insurance Rate Maps, Flood Boundary and  
411 Floodway Maps, or Flood Insurance Studies; upon submission to and approval  
412 of certified as-built documentation, a Letter of Map Revision may be issued.

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414           **Lowest Floor:** The lowest floor of the lowest enclosed area, including basement, but  
415 excluding any unfinished or flood-resistant enclosure, usable solely for vehicle parking,  
416 building access or limited storage provided that such enclosure is not built so as to render the  
417 structure in violation of the non-elevation requirements specified in the building code for  
418 enclosures below the lowest floor.

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420           **Manufactured Home:** A structure, transportable in one or more sections, which is  
421 built on a permanent chassis and is designed for use with or without a permanent foundation  
422 when connected to the required utilities. The term "manufactured home" does not include a  
423 "recreational vehicle".

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425           **New Construction:** Buildings and structures for which the "start of construction"  
426 commenced on or after March 15, 1977, including any subsequent improvements to such  
427 structures

428           **Person:** An individual or group of individuals, corporation, partnership, association,  
429 or any other entity, including state and local governments and agencies.

430

431           **Recreational Vehicle:** A vehicle which is built on a single chassis, 400 square feet  
432 or less when measured at the largest horizontal projection, designed to be self- propelled or  
433 permanently towable by a light duty truck, and designed primarily not for use as a permanent  
434 dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

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436           **Special Flood Hazard Area:** The land in the floodplain subject to flood hazards and  
437 shown on a Flood Insurance Rate Map as Zones A, AE, AO, and Zone VE. The term  
438 includes areas shown on other flood hazard maps that are specifically listed or otherwise  
439 described in Section 197-73(A)(4).

440

441           **Start of Construction:** The date of issuance of permits for new construction and  
442 substantial improvements to existing structures, provided the actual start of construction,  
443 repair, reconstruction, rehabilitation, addition, placement, or other improvement was within  
444 180 days after the date of issuance. The actual start means the first placement of permanent  
445 construction of a building (including a manufactured home) on a site, such as the pouring of  
446 a slab or footings, installation of pilings, or construction of columns. Permanent construction  
447 does not include land preparation (such as clearing, grading and filling), the installation of  
448 streets or walkways, excavation for a basement, footings, piers, or foundations, the erection  
449 of temporary forms or the installation of accessory buildings such as garages or sheds not  
450 occupied as dwelling units or not part of the main building. For a substantial improvement,  
451 the actual "start of construction" means the first alteration of any wall, ceiling, floor, or other  
452 structural part of a building, whether or not that alteration affects the external dimensions of  
453 the building.

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455           **Structure (or Building):** That which is built or constructed.

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457           **Substantial Damage:** Damage of any origin sustained by a structure whereby the  
458 cost of restoring the structure to it's before damaged condition would equal or exceed 50

459 percent of the market value of the structure before the damage occurred. The term also  
460 includes flood-related damage sustained by a structure on two separate occasions during a  
461 10-year period for which the cost of repairs at the time of each such flood event, on average,  
462 equals or exceeds 25 percent of the market value of the structure before the damage occurred.

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464 **Substantial Improvement:** Any combination of repair, alteration, reconstruction,  
465 rehabilitation, addition, or other improvement of a structure taking place during a 10 year-  
466 period, the cumulative cost of which equals or exceeds 50 percent of the market value of the  
467 structure before improvement or repair is started. If the structure has sustained substantial  
468 damage, any repairs are considered substantial improvement regardless of the actual repair  
469 work performed. For each building or structure, the 10 year-period begins the date a permit  
470 is issued for the first improvement or repair of that building subsequent to [date CSI first  
471 adopted]. The term does not, however, include any project for improvement of a building  
472 required to correct existing health, sanitary, or safety code violations identified by the  
473 building official and that are the minimum necessary to assure safe living conditions.

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475 **Violation:** The failure of a structure or other development to be fully compliant with  
476 the community's flood plain management regulations. A structure or other development  
477 without the Elevation Certificate, other certifications, or other evidence of compliance  
478 required in these regulations is presumed to be in violation until such time that  
479 documentation is provided.

## 480 C. ADMINISTRATION

### 481 (1) Designation of the Floodplain Administrator.

482  
483 The Building Official is hereby appointed to administer and implement these  
484 regulations and is referred to herein as the Floodplain Administrator. The Floodplain  
485 Administrator shall obtain and maintain Certified Floodplain Manager (CFM) certification  
486 from the Association of State Floodplain Managers, Inc.

487  
488 The Floodplain Administrator is authorized to: (A) Fulfill the duties and  
489 responsibilities set forth in these regulations, (B) Delegate duties and responsibilities set forth  
490 in these regulations to qualified technical personnel, plan examiners, inspectors, and other  
491 employees, and (C) Enter into a written agreement or written contract with another  
492 jurisdiction or agency, or private sector entity to administer specific provisions of these  
493 regulations. Administration of any part of these regulations by another entity shall not relieve  
494 the community of its responsibilities pursuant to the participation requirements of the  
495 National Flood Insurance Program as set forth in the Code of Federal Regulations at 44  
496 C.F.R. Section 59.22.

### 497 (2) Duties and responsibilities of the Floodplain Administrator.

498  
499 The duties and responsibilities of the Floodplain Administrator shall include but are  
500 not limited to:  
501  
502  
503  
504

- 505 a) Coordinate with the City officials to support administration,  
506 interpretation, and enforcement of the flood load and flood-resistant  
507 construction provisions of the building code.  
508
- 509 b) Review applications for permits to determine whether proposed  
510 activities will be located in special flood hazard areas.  
511
- 512 c) Interpret floodplain boundaries and provide flood elevation and flood  
513 hazard information.  
514
- 515 d) Advise applicants for new construction or substantial improvement of  
516 structures that are located on any coastal barrier within the Coastal  
517 Barrier Resources System established by the Coastal Barrier Resources  
518 Act that federal flood insurance is not available on such structures;  
519 areas subject to this limitation are shown on Flood Insurance Rate Maps  
520 as identified undeveloped coastal barriers or Otherwise Protected  
521 Areas.  
522
- 523 e) Review applications to determine whether proposed activities will be  
524 reasonably safe from flooding.  
525
- 526 f) Review applications to determine whether all necessary permits have  
527 been obtained from those Federal, State or local agencies from which  
528 prior or concurrent approval is required.  
529
- 530 g) Verify that applicants proposing to alter or relocate a watercourse have  
531 notified adjacent communities and the Delaware Department of Natural  
532 Resources and Environmental Control (Division of Watershed  
533 Stewardship), and have submitted copies of such notifications to the  
534 Federal Emergency Management Agency.  
535
- 536 h) Issue permits to develop in special flood hazard areas when the  
537 provisions of these regulations have been met, or disapprove the same  
538 in the event of noncompliance.  
539
- 540 i) Inspect special flood hazard areas to determine compliance with these  
541 regulations or to determine if noncompliance has occurred or violations  
542 have been committed.  
543
- 544 j) Review submitted Elevation Certificates for completeness.  
545
- 546 k) Submit to FEMA data and information necessary to maintain flood  
547 hazard maps, including hydrologic and hydraulic engineering analyses  
548 prepared by or for the City of Lewes, corrections to labeling or  
549 planimetric details, etc.  
550

- 551 l) Maintain and permanently keep all records for public inspection that  
552 are necessary for the administration of these regulations including  
553 Flood Insurance Rate Maps, Letters of Map Amendment and Revision,  
554 records of issuance and denial of permits, determinations of whether  
555 development is in or out of special flood hazard areas for the purpose of  
556 issuing permits, elevation certificates, other required certifications,  
557 variances, and records of enforcement actions taken for violations of  
558 these regulations.  
559
- 560 m) Enforce the provisions of these regulations.  
561
- 562 n) Assist with and coordinate flood hazard map maintenance activities.  
563
- 564 o) Conduct determinations as to whether existing buildings and structures  
565 damaged by any cause and located in special flood hazard areas, have  
566 been substantially damaged.  
567
- 568 p) Make reasonable efforts to notify owners of substantially damaged  
569 buildings and structures of the need to obtain a permit prior to repair,  
570 rehabilitation, or reconstruction, and to prohibit the non-compliant  
571 repair of substantially-damaged buildings except for temporary  
572 emergency protective measures necessary to secure a property or  
573 stabilize a structure to prevent additional damage.  
574
- 575 q) Undertake, as determined appropriate due to the circumstances, other  
576 actions which may include but are not limited to: issuing press  
577 releases, public service announcements, and other public information  
578 materials related to permit requests and repair of damaged structures;  
579 coordinating with other Federal, state, and local agencies to assist with  
580 substantial damage determinations; providing owners of damaged  
581 structures materials and other information related to the proper repair of  
582 damaged structures in special flood hazard areas; and assisting owners  
583 with National Flood Insurance Program claims for Increased Cost of  
584 Compliance payments.  
585
- 586 r) Notify the Federal Emergency Management Agency when the  
587 corporate boundaries of the City of Lewes have been modified.  
588
- 589 (3) Permits required.  
590

591 It shall be unlawful for any person or entity to begin construction or other  
592 development which is wholly or partially within any identified special flood hazard area, as  
593 established in Section 197-73(A)(4), including but not limited to: subdivision of land, filling,  
594 grading, or other site improvements and utility installations; placement or replacement of a  
595 manufactured home; recreational vehicles; installation or replacement of storage tanks; or  
596 alteration of any watercourse, until a permit is obtained from the City of Lewes. These

597 regulations are intended to be administered and enforced in conjunction with the building  
598 code. No permit shall be issued until the requirements of these regulations and, as  
599 applicable, the flood load and flood-resistant construction provisions of the building code  
600 have been met.

601

602 (4) **Application required.**

603

604 Application for a permit shall be made by the owner of the property or his/her  
605 authorized agent, herein referred to as the applicant, prior to the actual start of construction.  
606 The application shall be on a form furnished for that purpose. For applications for buildings  
607 and structures, these required minimum contents of the application are in addition to the  
608 requirements of the building code.

609

610 a) **Application Contents.**

611

612 At a minimum, applications shall include:

613

614 1. Site plans drawn to scale showing the nature, location, dimensions,  
615 existing and proposed topography of the area in question, the limits of  
616 any portion of the site that was previously filled, and the location of  
617 existing and proposed structures, excavation, filling, storage of  
618 materials, drainage facilities, and other proposed activities.

619

620 2. Elevation of the existing natural ground where structures are proposed,  
621 referenced to the datum on the Flood Insurance Rate Map, and an  
622 Elevation Certificate that shows the ground elevation and proposed  
623 building elevations (identified in Section C of the Elevation Certificate  
624 as "Construction Drawings").

625

626 3. Delineation of special flood hazard areas, floodway boundaries, flood  
627 zones, and base flood elevations. Where surveyed natural ground  
628 elevations are lower than the base flood elevations, base flood  
629 elevations shall be used to delineate the boundary of special flood  
630 hazard areas. If proposed, changes in the delineation of special flood  
631 hazard areas shall be submitted to and approved by FEMA in  
632 accordance with Section 197-73(C)(4)(b). Where special flood hazard  
633 areas are not delineated or base flood elevations are not shown on the  
634 flood hazard maps, the Floodplain Administrator has the authority to  
635 require the applicant to use information provided by the Floodplain  
636 Administrator, information that is available from other sources, or to  
637 determine such information using accepted engineering practices.

638

639 4. For subdivision proposals and development proposals containing at  
640 least 50 lots or at least 5 acres, whichever is the lesser, and where base  
641 flood elevations are not shown on Flood Insurance Rate Maps,  
642 hydrologic and hydraulic engineering analyses and studies as required



- 643 by Section 4.2(D).  
644  
645 5. Elevation of the lowest floor, including basement, or elevation of the  
646 bottom of the lowest horizontal structural member, as applicable to the  
647 flood zone, of all proposed structures, referenced to the datum on the  
648 Flood Insurance Rate Maps.  
649  
650 6. Such other material and information as may be requested by the  
651 Floodplain Administrator necessary to determine conformance with  
652 these regulations.  
653  
654 7. For work on an existing structure, including any improvement,  
655 addition, repairs, alterations, rehabilitation, or reconstruction,  
656 sufficient information to determine if the work constitutes substantial  
657 improvement, including:  
658  
659 8. Documentation of the market value of the structure before the  
660 improvement is started or before the damage occurred.  
661  
662 9. Documentation of the actual cash value of all proposed improvement  
663 work, or the actual cash value of all work necessary to repair and  
664 restore damage to the before damaged condition, regardless of the  
665 amount of work that will be performed; the determination requires  
666 evaluation of previous permits issued for improvements and repairs as  
667 specified in the definitions for “substantial damage” and “substantial  
668 improvement”.  
669  
670 10. Certifications and/or technical analyses prepared or conducted by an  
671 appropriate design professional licensed in the State of Delaware, as  
672 appropriate to the type of development activity proposed and required  
673 by these regulations and the building code:  
674  
675 11. Floodproofing Certificate for dry floodproofed non-residential  
676 structures, as required by the building code.  
677  
678 12. Certification that flood openings that do not meet the minimum  
679 requirements for non-engineered openings but designed to  
680 automatically equalize hydrostatic flood forces, as required by the  
681 building code.  
682  
683 13. Certification that the structural design, specifications and plans, and  
684 the methods of construction to be used for buildings and structures in  
685 Coastal High Hazard Areas are in accordance with accepted standards  
686 of practice and meet the requirements of the building code.  
687  
688 14. Technical analyses to document that the flood carrying capacity of any

689 watercourse alteration or relocation will not be diminished and  
690 documentation of maintenance assurances as required in Section 197-  
691 73(E)(3)(c).  
692

693 15. Hydrologic and hydraulic engineering analyses demonstrating that the  
694 cumulative effect of proposed development, when combined with all  
695 other existing and anticipated development will not increase the water  
696 surface elevation of the base flood by more than one foot in special  
697 flood hazard areas where the Federal Emergency Management Agency  
698 has provided base flood elevations but has not delineated a floodway,  
699 as required by Section 197-73(E)(3)(b).  
700

701 16. Hydrologic and hydraulic engineering analyses of any development  
702 proposed to be located in an identified floodway, as required by  
703 Section 197-73(E)(3)(a).  
704

705 17. Hydrologic and hydraulic engineering analyses to develop base flood  
706 elevations for subdivisions and large-lot developments, as required by  
707 Section 197-73(D)(2)(d) or otherwise required by the Floodplain  
708 Administrator.  
709

710 b) Right to Submit New Technical Data  
711

712 The applicant has the right to seek a Letter of Map Change and to submit new  
713 technical data to FEMA regarding base maps, topography, special flood hazard area  
714 boundaries, floodway boundaries, and base flood elevations. Such submissions shall be  
715 prepared in a format acceptable by FEMA and the Floodplain Administrator shall be notified  
716 of such submittal. Submittal requirements and processing fees shall be the responsibility of  
717 the applicant.  
718

719 c) Requirement to Submit New Technical Data  
720

721 The Floodplain Administrator shall notify FEMA of physical changes affecting flood  
722 hazard areas and flooding conditions by submitting technical or scientific data as soon as  
723 practicable, but not later than six (6) months after the date such information becomes  
724 available. The Floodplain Administrator has the authority to require applicants to submit  
725 technical data to FEMA for Letters of Map Change.  
726

727 (5) **Review, approval, or disapproval.**  
728

729 a) Review  
730

731 The Floodplain Administrator shall:  
732

733 1. Review applications for development in special flood hazard areas to  
734 determine the completeness of information submitted. The applicant

735 shall be notified of incompleteness or additional information required  
736 to support the application.

737

738 2. Review applications for compliance with these regulations after all  
739 information required in Section 197-73(C)(4) or identified and  
740 required by the Floodplain Administrator has been received.

741

742 3. Review all permit applications to assure that all necessary permits  
743 have been received from those Federal, State or local governmental  
744 agencies from which prior approval is required. The applicant shall be  
745 responsible for obtaining such permits, including but not limited to:

746

747 a. Permits issued by the U.S. Army Corps of Engineers under  
748 Section 10 of the Rivers and Harbors Act and Section 404 of  
749 the Clean Water Act, and the Delaware Environmental  
750 Protection Agency under Section 401 of the Clean Water Act.

751

752 b. Permits required by the State of Delaware.

753

754 b) Approval or Disapproval

755

756 The Floodplain Manager shall approve applications that comply with the applicable  
757 requirements of these regulations. The Floodplain Manager shall disapprove applications for  
758 proposed development that does not comply with the applicable provisions of these  
759 regulations and shall notify the application of such disapproval, in writing, stating the reasons  
760 for disapproval.

761

762 c) Expiration of Permit

763

764 A permit is valid provided the actual start of construction occurs within 180 days of  
765 the date of permit issuance. If the actual start of construction is not within 180 days of the  
766 date of permit issuance, requests for extensions shall be submitted in writing. Upon  
767 reviewing the request and the permit for continued compliance with these regulations, the  
768 Floodplain Administrator may grant, in writing, one or more extensions of time, for periods  
769 not more than 180 days each.

770

771 (6) **Inspections.**

772

773 The Floodplain Administrator shall make periodic inspections of development  
774 permitted in special flood hazard areas, at appropriate times throughout the period of  
775 construction in order to monitor compliance. In addition to the inspections required by the  
776 building code, such inspections may include:

777

778 a) Stake-out inspection, to determine location on the site relative to the  
779 special flood hazard area and floodway.

780

- 781           b)     Foundation inspection, upon placement of the lowest floor and prior to  
782           further vertical construction, to collect information or certification of  
783           the elevation of the lowest floor.  
784  
785           c)     Enclosure inspection, including crawlspaces, to determine compliance  
786           with applicable provisions.  
787  
788           d)     Utility inspection, upon installation of specified equipment and  
789           appliances, to determine appropriate location with respect to the base  
790           flood elevation.  
791  
792           e)     Storage of materials.  
793  
794           (7)    **Submissions required prior to foundation inspection and prior to**  
795           **issuance of a certificate of occupancy.**  
796

797           The following certifications are required to be submitted by the permittee for  
798           development that is permitted in special flood hazard areas prior to the foundation inspection  
799           and prior to issuance of a Certificate of Occupancy:  
800

- 801           a)     For new or substantially improved residential structures or  
802           nonresidential structures that have been elevated, the applicant shall:  
803  
804           1.     As part of the foundation inspection and placement of the  
805           lowest floor, and prior to further vertical construction, submit an  
806           Elevation Certificate that shows the ground elevation and floor  
807           elevation (identified in Section C of the Elevation Certificate as  
808           “Building Under Construction”).  
809  
810           2.     Prior to Issuance of the Certificate of Occupancy, submit an  
811           Elevation Certificated (identified in Section C of the Elevation  
812           Certificate as “Finished Construction”).  
813  
814           b)     For nonresidential structures that have been dry floodproofed, a  
815           Floodproofing Certificate based on “Finished Construction” (identified  
816           in Section II).  
817  
818           c)     For all development activities subject to the requirements of Section  
819           197-73(C)(4)(b), a Letter of Map Revision shall be provided.  
820  
821           (8)    Flood insurance rate map use and interpretation.  
822

823           The Floodplain Administrator shall make interpretations, where needed, as to the  
824           exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries.  
825           The following shall apply to the use and interpretation of special flood hazard maps and data:  
826

- 827 a) In FEMA-identified special flood hazard areas where base flood  
828 elevation and floodway data have not been identified and in areas  
829 where FEMA has not identified special flood hazard areas, any other  
830 flood hazard data available from a Federal, State, or other source shall  
831 be reviewed and reasonably used. When a Preliminary Flood Insurance  
832 Rate Map has been provided by FEMA to identify base flood elevation  
833 where such elevations were not previously shown, the base flood  
834 elevations on the Preliminary Flood Insurance Rate Map shall be used.  
835
- 836 b) Special flood hazard area delineations, base flood elevations, and  
837 floodway boundaries on FEMA maps and in FEMA studies shall take  
838 precedence over delineations, base flood elevations, and floodway  
839 boundaries by any other source that reflect a reduced special flood  
840 hazard area, reduced floodway width and/or lower base flood  
841 elevations.  
842
- 843 c) Other sources of data shall be reasonably used if they show increased  
844 base flood elevations and/or larger floodway areas than are shown on  
845 FEMA flood maps and studies.  
846
- 847 d) Where field surveyed topography indicates that ground elevations are  
848 below the base flood elevation, even in areas not delineated as a special  
849 flood hazard on a flood hazard map, the area shall be considered as  
850 special flood hazard area.  
851

#### 852 **D. REQUIREMENTS IN ALL SPECIAL FLOOD HAZARD AREAS**

##### 853 (1) **Application of requirements.**

854 The general requirements of this section apply to all development proposed within  
855 special flood hazard areas identified in 197-73(A)(4).  
856  
857  
858

##### 859 (2) **Subdivisions and developments.**

860 a) All subdivision and development proposals shall be consistent with the  
861 need to minimize flood damage and are subject to all applicable  
862 standards in these regulations.  
863

864 b) All subdivision and development proposals shall have utilities and  
865 facilities such as sewer, gas, electrical, and water systems located and  
866 constructed to minimize flood damage.  
867

868 c) All subdivision and developments proposals shall have adequate  
869 drainage provided to reduce exposure to flood damage.  
870

871 d) All subdivision proposals and development proposals containing at  
872

873 least 50 lots or at least 5 acres, whichever is the lesser, in FEMA-  
874 delineated special flood hazard areas where base flood elevation data  
875 are not available, shall be supported by hydrologic and hydraulic  
876 engineering analyses that determine base flood elevations and floodway  
877 delineations. The analyses shall be prepared by a licensed professional  
878 engineer in a format required by FEMA for a Conditional Letter of Map  
879 Revision or Letter of Map Revision. Submittal requirements and  
880 processing fees shall be the responsibility of the applicant.

881

882 (3) Protection of water supply and sanitary sewage systems.

883

884 a) New and replacement water supply systems shall be designed to  
885 minimize or eliminate infiltration of flood waters into the systems.

886

887 b) New and replacement sanitary sewage systems shall be designed to  
888 minimize or eliminate infiltration of floodwaters into systems and  
889 discharges from systems into floodwaters.

890

891 c) On-site waste disposal systems shall be located to avoid impairment to  
892 or contamination from them during conditions of flooding.

893

894 (4) Buildings and structures.

895

896 All new construction of buildings and structures, including placement of  
897 manufactured homes and substantial improvements to existing buildings and structures, that  
898 are to be located, in whole or in part, in special flood hazard areas shall comply with flood  
899 load and flood-resistant construction requirements of the building code, including specific  
900 amendments adopted by the City of Lewes.

901

902 (5) **Fill.**

903

904 a) Disposal of fill, including but not limited to rubble, construction debris,  
905 woody debris, and trash, shall not be permitted in special flood hazard  
906 areas.

907

908 b) Fill shall not be permitted to be placed for the purpose of supporting a  
909 building or structure.

910

911 c) Fill placed for a purpose other than to support a building or structure  
912 shall be compacted for stability under conditions of rising and falling  
913 floodwaters and resistance to erosion, scour, and settling and shall be  
914 designed with adequate drainage and no adverse effect on adjacent  
915 properties.

916

917 (6) **Historic structures.**

918

919 Repair, alteration, or rehabilitation of historic structures shall be subject to the  
920 requirements of this Section unless a determination is made that compliance will preclude a  
921 structure's continued designation as a historic structure and a variance is granted in  
922 accordance with Section 197-73(G) and such variance is the minimum necessary to preserve  
923 the historic character and design of the structure.

924

925 (7) **Recreational vehicles.**

926

927 a) Recreational vehicles in special flood hazard areas shall be fully  
928 licensed and ready for highway use, and shall be placed on a site for  
929 less than 180 consecutive days.

930

931 b) Recreational vehicles that are not fully licensed and ready for highway  
932 use, or that are to be placed on a site for more than 180 consecutive  
933 days, shall meet the requirements of Section 197-73(D)(9) for  
934 manufactured homes.

935

936 (8) **Gas or liquid storage tanks.**

937

938 a) Underground tanks in special flood hazard areas shall be anchored to  
939 prevent flotation, collapse or lateral movement resulting from  
940 hydrostatic loads, including the effects of buoyancy, during conditions  
941 of the base flood.

942

943 b) Above-ground tanks in special flood hazard areas shall be elevated and  
944 anchored to or above the base flood elevation plus eighteen inches or  
945 shall be anchored at-grade and designed and constructed to prevent  
946 flotation, collapse, or lateral movement resulting from hydrodynamic  
947 and hydrostatic loads, including the effects of buoyancy, during  
948 conditions of the base flood.

949

950 c) In special flood hazard areas, tank inlets, fill openings, outlets and vents  
951 shall be:

952

953 1. At or above the base flood elevation or fitted with covers  
954 designed to prevent the inflow of floodwater or outflow of the  
955 contents of the tanks during conditions of the base flood.

956

957 2. Anchored to prevent lateral movement resulting from  
958 hydrodynamic and hydrostatic loads, including the effects of  
959 buoyancy, during conditions of the base flood.

960

961 (9) **Manufactured homes.**

962

963 a) **Elevation.** All new and replacement manufactured homes to be placed  
964 or substantially improved in a flood hazard area shall be elevated such

965 that the bottom of the lowest horizontal structural supporting member  
966 of lowest floor of the manufactured home is elevated to or above the  
967 base flood elevation plus eighteen inches.

968  
969 b) **Foundations.** All new and replacement manufactured homes,  
970 including substantial improvement of existing manufactured homes,  
971 shall be placed on permanent, reinforced foundations that are designed  
972 in accordance with Section R322 of the residential code based on the  
973 applicable flood zone identified on the FIRM. Designs for foundations  
974 shall be certified as meeting the requirements of these regulations and  
975 the residential code.

976  
977 c) **Anchoring.** All new and replacement manufactured homes to be  
978 placed or substantially improved in a special flood hazard area shall be  
979 installed using methods and practices which minimize flood damage.  
980 Manufactured homes shall be securely anchored to an adequately  
981 anchored foundation system to resist flotation, collapse and lateral  
982 movement. The anchor and tie-down specifications of the  
983 manufacturer are permitted, provided such specifications are specific to  
984 installation in special flood hazard areas. This requirement is in  
985 addition to applicable state and local anchoring requirements for  
986 resisting wind forces.

987  
988 d) **Enclosures.** Fully enclosed areas below elevated manufactured homes  
989 shall comply with the requirements of Section R322 of the residential  
990 code based on the applicable flood zone identified on the FIRM.

991  
992 e) **Protection of mechanical equipment and outside appliances.**  
993 Mechanical equipment and outside appliances shall comply with the  
994 requirements of Section R322 for protection of mechanical and  
995 electrical systems.

996  
997 (10) **Critical facilities.**

998  
999 New critical facilities shall, to the extent feasible, be located outside of the special flood  
1000 hazard area and outside of the 0.2% annual chance flood hazard area (500-year floodplain).  
1001 If documentation is provided that feasible sites outside of the special flood hazard area are  
1002 not available that satisfy the objectives of a proposed critical facility, then the critical facility  
1003 shall:

1004  
1005 a) Have the lowest floor elevated to or above the 0.2% annual chance flood hazard  
1006 area (500-year floodplain) elevation plus 1 foot (305 mm), or to the design flood  
1007 elevation, whichever is higher, and

1008  
1009 b) Meet the applicable flood resistant requirements of the building code and ASCE 24,  
1010 and where elevation requirements are specified, the minimum elevation shall be the



1011 0.2% annual chance flood hazard area (500-year floodplain) elevation plus 1 foot  
1012 (305 mm), or to the design flood elevation, whichever is higher.

1013

1014 **E. REQUIREMENTS IN SPECIAL FLOOD HAZARD AREAS OTHER THAN**  
1015 **COASTAL HIGH HAZARD AREAS AND COASTAL A ZONES**

1016

1017 (1) **General requirements.**

1018

1019 In addition to the general requirements of Section 197-73(D), the requirements of this  
1020 section apply to all development proposed in special flood hazard areas other than coastal  
1021 high hazard areas and other than Coastal A Zones. These areas include Zones A, AE, and  
1022 AO, except in areas seaward of the Limit of Moderate Wave Action. See Section 197-  
1023 73(D)(4) for the requirement that buildings and structures comply with the flood load and  
1024 flood-resistant construction requirements of the building code, including specific  
1025 amendments adopted by the City of Lewes.

1026

1027 (2) **Accessory structures.**

1028

1029 Accessory structures shall meet the requirements of these regulations. Accessory  
1030 structures that have a footprint of no more than 200 square feet may be allowed without  
1031 requiring elevation or floodproofing provided such structures meet all of the following  
1032 requirements:

1033

1034 a) Useable only for parking or limited storage;

1035

1036 b) Constructed with flood damage-resistant materials below the base flood  
1037 elevation;

1038

1039 c) Constructed and placed to offer the minimum resistance to the flow of  
1040 flood waters;

1041

1042 d) Firmly anchored to prevent flotation, collapse, and lateral movement;

1043

1044 e) Electrical service and mechanical equipment elevated to or above the  
1045 level of the base flood elevation plus eighteen inches; and

1046

1047 f) Equipped with flood openings that meet the requirements of Section  
1048 R322.2.2 of the residential code.

1049

1050 g) For guidance, see FEMA Technical Bulletin #7 – *Wet Floodproofing*  
1051 *Requirements*.

1052

1053 (3) **Protection of flood-carrying capacity.**

1054

1055 a) Development in Floodways

1056

1057           Within any floodway area designated on the Flood Insurance Rate Map, no  
1058 encroachments, including fill, new construction, substantial improvements, or other  
1059 development shall be permitted unless it has been demonstrated through hydrologic and  
1060 hydraulic engineering analysis that the proposed encroachment would not result in any  
1061 increase in flood levels within the community during the occurrence of the base flood  
1062 discharge. Such technical data shall be submitted to the Floodplain Administrator and to  
1063 FEMA. The analyses shall be prepared by a licensed professional engineer in a format  
1064 required by FEMA for a Conditional Letter of Map Revision or Letter of Map Revision.  
1065 Submittal requirements and processing fees shall be the responsibility of the applicant.  
1066

1067           The proposed development activity may be permitted if the analyses demonstrate that  
1068 the activity:

- 1069
- 1070           1. Will not result in any increase in the base flood elevation; or
  - 1071
  - 1072           2. Will result in an increase in the base flood elevation, provided a  
1073 Conditional Letter of Map Revision has been issued by FEMA and the  
1074 applicant completes all of the following:  
1075
    - 1076           a. Submits technical data required in Section 197-  
1077 73(C)(4)(a)(15);
    - 1078
    - 1079           b. Evaluates alternatives which would not result in increased base  
1080 flood elevations and an explanation why these alternatives are  
1081 not feasible;
    - 1082
    - 1083           c. Certifies that no structures are located in areas which would be  
1084 impacted by the increased base flood elevation;
    - 1085
    - 1086           d. Documents that individual legal notices have been delivered to  
1087 all impacted property owners to explain the impact of the  
1088 proposed action on their properties;
    - 1089
    - 1090           e. Requests and receives concurrence of the City Manager of City  
1091 of Lewes and the Chief Executive Officer of any other  
1092 community impacted by the proposed actions; and
    - 1093
    - 1094           f. Notifies the Delaware Department of Natural Resources and  
1095 Environmental Control (Division of Watershed Stewardship).  
1096

1097           b) Development in Areas with Base Flood Elevations but No Floodways  
1098

1099           For development activities in a special flood hazard area with base flood elevations  
1100 but no designated floodways, the applicant shall develop hydrologic and hydraulic  
1101 engineering analyses and technical data reflecting the proposed activity and shall submit such  
1102 analyses and data to the Floodplain Administrator and to FEMA. The analyses shall be

1103 prepared by a licensed professional engineer in a format required by FEMA for a Conditional  
1104 Letter of Map Revision or Letter of Map Revision. Submittal requirements and processing  
1105 fees shall be the responsibility of the applicant.

1106

1107 The proposed development activity may be permitted if the analyses demonstrate that  
1108 the cumulative effect of the proposed development activity, when combined with all other  
1109 existing and potential special flood hazard area encroachments will not increase the base  
1110 flood elevation more than 1.0 (one) foot at any point.

1111

1112 c) Deliberate Alterations of a Watercourse

1113

1114 For the purpose of these regulations, a watercourse is deliberately altered when a  
1115 person causes a change to occur within its banks. Deliberate changes to a watercourse  
1116 include, but are not limited to: widening, deepening or relocating of the channel; installation  
1117 of culverts; construction of bridges, and excavation or filling of the channel or watercourse  
1118 banks.

1119

1120 For any proposed deliberate alteration of a watercourse, the applicant shall develop  
1121 hydrologic and hydraulic engineering analyses and technical data reflecting such changes and  
1122 submit such technical data to the Floodplain Administrator and to FEMA. The analyses shall  
1123 be prepared by a licensed professional engineer in a format required by FEMA for a  
1124 Conditional Letter of Map Revision or Letter of Map Revision. Submittal requirements and  
1125 processing fees shall be the responsibility of the applicant.

1126

1127 The proposed alteration of a watercourse may be permitted upon submission, by the  
1128 applicant, of the following:

1129

- 1130 1. Documentation of compliance with Section 197-73(E)(5)(a) if the  
1131 alteration is in a floodway or Section 197-73(E)(5)(b) if the alteration  
1132 is in a watercourse with base flood elevations but no floodway.  
1133
- 1134 2. A description of the extent to which the watercourse will be altered or  
1135 relocated as a result of the proposed development.  
1136
- 1137 3. A certification by a licensed professional engineer that the bankful  
1138 flood-carrying capacity of the watercourse will not be diminished.  
1139
- 1140 4. Evidence that adjacent communities, the U.S. Army Corps of  
1141 Engineers, and the Delaware Department of Natural Resources and  
1142 Environmental Control (Division of Watershed Stewardship) have  
1143 been notified of the proposal and evidence that such notifications have  
1144 been submitted to the Federal Emergency Management Agency.  
1145
- 1146 5. Evidence that the applicant shall be responsible for providing the  
1147 necessary maintenance for the altered or relocated portion of the  
1148 watercourse so that the flood carrying capacity will not be diminished.

1149 The Floodplain Administrator may require the permit holder to enter  
1150 into an agreement with City of Lewes specifying the maintenance  
1151 responsibilities; if an agreement is required, the permit shall be  
1152 conditioned to require that the agreement be recorded on the deed of  
1153 the property which shall be binding on future owners.  
1154

1155 **F. REQUIREMENTS IN COASTAL HIGH HAZARD AREAS (ZONE VE) AND**  
1156 **COASTAL A ZONES**

1157  
1158 (1) **General requirements**  
1159

1160 Section 197-73(D)(4) requires buildings and structures, including buildings and  
1161 structures in coastal high hazard areas (Zone V) and Coastal A Zones, to comply with the  
1162 flood load and flood-resistant construction requirements of the building code, including  
1163 specific amendments adopted by the City of Lewes.  
1164

1165 **G. VARIANCES**  
1166

1167 (1) **Variances.**  
1168

1169 The City of Lewes's Board of Adjustment shall have the power to authorize, in  
1170 specific cases, such variances from the requirements of these regulations and the flood load  
1171 and flood load and flood-resistant construction of the building code, not inconsistent with  
1172 Federal regulations, as will not be contrary to the public interest where, owing to special  
1173 conditions of the lot or parcel, a literal enforcement of the provisions of these regulations  
1174 would result in unnecessary hardship.  
1175

1176 a) **Application for a Variance**  
1177

1178 1. Any owner, or agent thereof, of property for which a variance is  
1179 sought shall submit an application for a variance to the Board of  
1180 Adjustment per Section 197-90.  
1181

1182 2. Notwithstanding the requirements of Section 197-90, at a minimum,  
1183 such application shall contain the following information: Name,  
1184 address, and telephone number of the applicant; legal description of  
1185 the property; parcel map; description of the existing use; description of  
1186 the proposed use; location of the floodplain; description of the  
1187 variance sought; and reason for the variance request. Each variance  
1188 application shall specifically address each of the considerations in  
1189 Section 197-73(G)(1)(b) and the limitations and conditions of Section  
1190 197-73(G)(1)(c).  
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1192 b) **Considerations for Variances**

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In considering variance applications under this Section, the Board of Adjustment shall consider and make findings of fact on all evaluations, all relevant factors, requirements specified in other sections of these regulations, and the following factors:

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 development and its contents (if applicable) to flood damage and the effect of such damage on the individual owner.
4. The importance of the services provided by the proposed development to the community.
5. The availability of alternative locations for the proposed use which are not subject to, or are subject to less, flooding or erosion damage.
6. The necessity to the facility of a waterfront location, where applicable, or if the facility is a functionally dependent use.
7. The compatibility of the proposed use with existing and anticipated development.
8. The relationship of the proposed use to the comprehensive plan 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 flood waters and the effects of wave action, if applicable, expected at the site.
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.
12. Variances may be issued for the repair and 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

1239 preserve the historic character and design of the structure.

1240

1241

c) Limitations for Variances

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1243

1. An affirmative decision on a variance request shall only be issued upon:

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2. Upon consideration of the individual circumstances, the limitations and conditions, and the purposes of these regulations, the Board of Adjustment may attach such conditions to variances as it deems necessary to further the purposes of these regulations.

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3. The Board of Adjustment shall notify, in writing, any applicant to

1285 whom a variance is granted for a building or structure with a lowest  
1286 floor elevation below the base flood elevation that the variance is to  
1287 the floodplain management requirements only, and that the cost of  
1288 federal flood insurance will be commensurate with the increased risk.  
1289

## 1290 H. ENFORCEMENT

### 1291 (1) Compliance required.

1292 a) No structure or land development shall hereafter be located, erected,  
1293 constructed, reconstructed, repaired, extended, converted, enlarged or  
1294 altered without full compliance with these regulations and all other  
1295 applicable regulations which apply to uses within the jurisdiction of  
1296 these regulations.  
1297

1298 b) Failure to obtain a permit shall be a violation of these regulations and  
1299 shall be punishable in accordance with Section 197-73(H)(3).  
1300

1301 c) Permits issued on the basis of plans and applications approved by the  
1302 Floodplain Administrator authorize only the specific activities set forth  
1303 in such approved plans and applications or amendments thereto. Use,  
1304 arrangement, or construction of such specific activities that is contrary  
1305 to that authorized shall be deemed a violation of these regulations.  
1306

### 1307 (2) Notice of violation.

1308 The Building Official is authorized to serve a notice of violation or order on any  
1309 person or entity in violation of the provisions of this Section. Such order shall direct the  
1310 discontinuance of the illegal action or condition and the abatement of the violation. If the  
1311 notice of violation is not complied with promptly, the Building Official is authorized to  
1312 request that the City Solicitor institute the appropriate proceeding at law or in equity to  
1313 enforce this Section.  
1314

### 1315 (3) Violations and penalties.

1316 a) Who shall be liable. Any person or entity who knowingly commits, takes part or  
1317 assists in, any violation or who maintains any buildings or premises in which a  
1318 violation exists, including, but not limited to, the following:  
1319

1320 1. The owner, general agent or contractor of a building or premises  
1321 where such violation has been committed or shall exist; and  
1322

1323 2. The lessee or tenant of an entire building or entire premises  
1324 where such violation has been committed or shall exist; and  
1325

1326 3. The owner, general agent, contractor, lessee or tenant of any  
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1331 part of a building or premises in which such violation has been  
1332 committed or shall exist; and

1333  
1334 4. The general agent, architect, builder, contractor or any other  
1335 person.

1336  
1337 b) Penalties if convicted. If convicted, a person or entity, as enumerated in this  
1338 section, shall be subject to the following:

1339  
1340 1. A fine, not less than \$50 nor more than \$1,000; and/or Imprisonment  
1341 for not more than 30 days for each and every offense.

1342  
1343 2. Payment of costs of prosecution, including the City's reasonable  
1344 attorney's fees.

1345  
1346 c) Each day a separate offense. Whenever the Building Official shall have  
1347 notified a person by service of a warrant in a prosecution or in any other way  
1348 that he/she is committing such violation of this Section, each day that such  
1349 violation continues shall be deemed a separate offense punishable by like fine  
1350 or penalty.

1351  
1352 d) Unlawful construction declared nuisance. Any building or portion thereof or  
1353 part of foundation wall hereafter erected or placed upon any lot or premises  
1354 within the City in violation of the provisions of this Section is hereby declared  
1355 to be a common and public nuisance and may be abated as authorized in the  
1356 Charter of the City of Lewes for the abatement of any other nuisance in  
1357 addition to the provisions of this Section.

1358  
1359 e) Violation abatement. In addition to any other remedy provided by law, an  
1360 appropriate action or proceeding, whether by legal process or otherwise, may  
1361 be instituted to:

1362  
1363 1. Prevent such unlawful erection, construction, reconstruction,  
1364 alteration, repair, conversion, maintenance or use;

1365  
1366 2. Restrain, correct, abate such violation;

1367  
1368 3. Prevent the occupancy of such building, structure or land; or

1369  
1370 4. Prevent any illegal act, conduct, business or use in and about such  
1371 premises.

1372  
1373 **Section 2.** For the purposes of jurisdictional applicability, this Ordinance shall  
1374 apply in the City of Lewes, Delaware. This Ordinance shall apply to all applications for  
1375 development, including building permit applications and subdivision proposals, submitted on  
1376 or after the effective date of this ordinance.



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**Section 3.** Any and all Ordinances and regulations in conflict herewith are hereby repealed to the extent of any conflict. This Ordinance specifically repeals and replaces Chapter 197, Section 197-73, "Floodplains".

**Section 4.** It is the intent of the City Council of the City of Lewes that the provisions of this Ordinance shall become and be made a part of the City of Lewes Code of Ordinances, and that the sections of this Ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish such intentions.

**Section 5.** Nothing in this ordinance shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

**Section 6.** This Ordinance and the rules, regulations, provisions, orders and matters established and adopted hereby shall take effect and be in full force and effect on [DATE].

Adopted by the Mayor and City Council  
of the City of Lewes  
\_\_\_\_\_, 2014

\_\_\_\_\_  
Secretary of the Mayor and City Council  
of the City of Lewes

**SYNOPSIS:** This Ordinance repeals existing Section 197-73, pertaining to floodplain regulations in the City of Lewes, and replaces the same with new provisions governing floodplain administration, management, and regulation in the City of Lewes.