

## Chapter 10

### BEACH REGULATIONS

#### Table of Contents

- § 10-1 Title and Purpose.
- § 10-2 Definitions.
- § 10-3 Beach Badges.
- § 10-4 Rules and Regulations.
- § 10-5 Surfing regulations.
- § 10-6 Enforcement.
- § 10-7 Violations and Penalties.

#### § 10-1. Title and Purpose.

##### § 10-1.1. Short Title. [Ord. No. 678-2018]

This chapter may be cited and referred to as "The Beach Ordinance of the Borough of Mantoloking.

##### § 10-1.2. Findings, Declaration and Purpose. [Ord. No. 678-2018; Ord. No. 683-2019]

Access to the Atlantic Ocean beaches within and abutting the Borough of Mantoloking has, with increased population and improved transportation, become a matter of public concern. The character and quality of the access and use of the beach under the Public Trust Doctrine, as applied in New Jersey and proclaimed in various decisions of our Courts, necessitates that each community bordering on the Atlantic Ocean continuously review its policies, facilities, and procedures, together with an evaluation of the use and demand for use of beaches within the community by members of the public. The Borough is a small, fully developed, single-family, tranquil, noncommercial resort and year-round residential community on a very narrow portion of the barrier beach. Except for certain public access routes, the beach at Mantoloking is privately owned, dedicated and restricted to residential use, up to the mean highwater line. These private property rights are subject to the rights of the public under the Public Trust Doctrine.

The Borough of Mantoloking recognizes its obligation to provide public access to the ocean under the Public Trust Doctrine. In furtherance of this obligation, the Borough will provide lifeguarding services at a limited number of locations. Persons utilizing the beach for bathing or swimming at unguarded areas or when lifeguards are not present do so at their own risk. Persons using the beach for surfing, kayaking or any other recreational use are strongly cautioned that they perform such activities at their own risk.

In order to evaluate and implement such participation by the Borough as is deemed appropriate, the Borough has acquired and will continue to acquire relevant data concerning the use of the beaches by requiring those who use the ocean beaches to apply for a seasonal beach badge. Beaches within the Borough are receiving increased use by members of the public who do not reside in the Borough and who may, therefore, not be familiar with local conditions and beach regulations. Further, the increased utilization of the beach by surfers, fishers and kayakers necessitates specific regulation of these activities. Surfing presents inherent risks to its participants and to others; surfers and bathers cannot safely co-exist in close proximity to each other. It is, therefore, deemed necessary to control and regulate surfing so that, to the extent reasonably possible, the interests of

all persons using the ocean may be reasonably accommodated.

The Borough of Mantoloking does, by the adoption of this chapter, express its continuing intention to establish and maintain a viable and balanced response to judicial determinations concerning rights, both public and private, to the utilization and enjoyment of the ocean and bay beaches. The procedures, rules and regulations, as set forth and authorized herein, are deemed necessary and appropriate to provide for the health, safety and welfare of all concerned.

This chapter is not intended to be administered, enforced or interpreted in any manner that will expand public rights upon private property within the Borough, but rather to provide for access by the public pursuant to the Public Trust Doctrine and to exercise the Borough's general Police power over areas within its jurisdiction.

## **§ 10-2. Definitions.**

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

ACCESS WAYS — Shall mean any public route, way or path providing ingress and egress to the Public Trust Lands to seaward of the Mean High-Water Line.

BATHE — Shall mean to enter a body of water and to become immersed therein.

BEACH — Shall mean that area between the Mean High-Water Line and the Seaward Edge of the Dune or upland vegetation along the bay front.

BEACH AREA — Shall mean that area between the Mean High-Water Line of the Atlantic Ocean, in reference to the North American Vertical Datum of 1988 (NAVD 88) as established by the U.S. Army Corps of Engineers (USACE) and the seaward edge of the dune.

BEACH BADGES — Shall mean any badges issued by the Borough or by a private beach association operating upon beaches within the Borough which provide lifeguard services.

BEACHES — Shall mean the areas defined above ("beach" and "beach area") and any Bay beaches.

BOAT — Shall mean a watercraft or vessel of any size, and propelled by paddles, oars, sails or an engine.

COOLER — Shall mean a device, container or apparatus which is utilized to keep things cool.

HOUSEHOLD — Shall mean all occupants of a residential unit.

LITTER — Shall mean garbage, rubbish, and all other waste material which, if thrown or deposited as herein prohibited, tends to create a danger to public health, safety and welfare, or which will degrade the aesthetics of the beach.

MEAN HIGH-WATER LINE — Shall mean the line formed by the intersection of the tidal plane of mean high tide with the shore (mean high tide being a mean of all high tides over a period of 18.6 years).

OCEAN — Shall mean the Atlantic Ocean.

OCEANFRONT — Shall mean abutting the Atlantic Ocean.

PERSON — Shall mean any individual, firm, partnership, corporation or association of persons.

PUBLIC TRUST DOCTRINE — Shall mean the common law doctrine establishing the public's right to access and use navigable waters and tidally flowed lands seaward of the mean high water line which is held in trust by the State for the use by all citizens.

PUBLIC TRUST DOCTRINE AREA — Shall be the area seaward of the mean high water line.

RIPARIAN LANDS — Shall mean lands traversed or covered by flowing navigable waters.

SURF — Shall mean being in the water accompanied by a surfboard or other rigid device capable of being ridden erect on a breaking wave. The utilization of a kayak or similar vessel to repeatedly traverse or cross through the surf line, as opposed to the mere launching and landing of same for purposes other than riding waves, shall also be deemed surfing.

SURFBOARD — Shall mean a long narrow board utilized for surfing equipped with a tethering device to fasten the board to the rider.

### **§ 10-3. Beach Badges.**

#### **§ 10-3.1. When Required. [Ord. No. 678-2018; Ord. No. 683-2019]**

Beach badges are required for persons over twelve (12) years of age, from the third Saturday of June to Labor Day of each year, inclusive, between the hours of 10:00 a.m. and 6:00 p.m.

#### **§ 10-3.2. Application and Fee. [Ord. No. 678-2018; Ord. No. 683-2019; amended 6-16-2020 by Ord. No. 706; 3-16-2021 by Ord. No. 717]**

Badges may be purchased at the municipal facilities on Downer Avenue, or such other location(s) as may be advertised, from 10:00 a.m. and 6:00 p.m. Individuals desiring to purchase a seasonal beach badge shall be required to pay a fee of \$110 if said badge is purchased between April 1st and close of business on Memorial Day. If the seasonal beach badge is purchased after Memorial Day and on or before Labor Day, the cost of such seasonal beach badge shall be \$120. The beach badge shall be valid for the entire summer season of the year it is issued. Half season badges will be available starting the first Saturday in August for \$60. Daily badges will be sold for \$13.00 dollars per badge. No replacement badges will be issued without payment of the entire, then current, badge fee. No refunds shall be issued under any circumstances. Any processing fees related to electronic purchases shall be clearly marked on any receipts, and shall be placed in the appropriate fund.

#### **§ 10-3.3. Display of Badge; Nontransferability. [Ord. No. 678-2018]**

Mantoloking beach badges are not transferable except within households and must be prominently displayed at all times while upon the access routes, beach or adjacent waters during such hours as access to public trust doctrine areas is managed by the Borough and/or its agents.

#### **§ 10-3.4. Surfers, Kayakers and Fishers. [Ord. No. 678-2018]**

Surfers, kayakers, paddleboarders and fishers using only the beach area or waters covered under the public trust doctrine at Mantoloking are not required to obtain Borough beach badges during such time as they are actively engaging in surfing, kayaking, paddleboarding and/or fishing. Surfers shall not pay any additional fee for a surfing permit or badge. Surfers are not required to display permits or decals on surfboards.



#### **§ 10-4. Rules and Regulations.**

##### **§ 10-4.1. Public Recreational Bathing Beaches. [Ord. No. 678-2018]**

The Borough or Mantoloking will operate one or more Public Recreational Bathing Beaches pursuant to N.J.A.C. 8:26. Persons utilizing the beach for bathing or swimming at unguarded areas or when lifeguards are not present do so at their own risk. Persons using the beach for surfing, kayaking or any other recreational use are strongly cautioned that they perform such activities at their own risk.

##### **§ 10-4.2. Trespass on Private Property. [Ord. No. 678-2018]**

Persons shall not trespass on private beach property not subject to the public trust doctrine or lands covered under Perpetual Easement Agreement with the Borough and the NJDEP.

##### **§ 10-4.3. Littering. [Ord. No. 678-2018]**

No person upon the beach and access ways or in or upon adjacent waters shall throw or deposit litter except in public receptacles and in such a manner that the litter will be prevented from being carried or deposited by the elements. No person shall throw or deposit litter into the bay or ocean or lands adjacent to same.

##### **§ 10-4.4. Food and Beverages on the Beach. [Ord. No. 678-2018]**

No person upon the beach, upon access ways or in or upon adjacent waters shall picnic on the beach or otherwise possess, carry or consume food or beverages on the beach. The possession or consumption of water or any other nonalcoholic beverage in a nondisposable, durable-reusable container is, however, permitted.

##### **§ 10-4.5. Fires. [Ord. No. 678-2018]**

No person upon the beach and access ways shall ignite, maintain or allow open fires.

##### **§ 10-4.6. Noise. [Ord. No. 678-2018]**

No person upon the beach and access ways shall play amplified music of any kind. Boom boxes, speakers, speaker systems, radios, and other amplification devices are not permitted on the beach.

##### **§ 10-4.7. Nudity; Disrobing. [Ord. No. 678-2018]**

No person upon the beach and access ways or in or upon adjacent waters shall appear in a state of nudity. No person upon the beach and access ways or in or upon adjacent waters shall disrobe in the open.

##### **§ 10-4.8. Games. [Ord. No. 678-2018]**

No person upon the beach and access ways or in or upon adjacent waters shall play any games. This includes, but is not limited to, paddleball, beach tennis, skim board or throw, bat or catch a baseball, football, tennis, basketball, softball, rubber ball, beach ball, Frisbee or any other object or to fly kites or any other object so close to nonparticipants as to constitute a hazard to them or to disturb the general tranquility of other persons upon the beach.

##### **§ 10-4.9. Animals. [Ord. No. 678-2018; Ord. No. 6810-2019]**

- a. Unless otherwise permitted by this chapter, no person who owns, keeps or harbors any dog or other animal shall suffer or permit such animal upon any premises, public or private, other than those owned or occupied by such person or upon which private premises the owner shall

have a right of presence, unless, leashed, and under the direct and immediate control of a responsible person.

- b. No dogs or other animals shall be permitted upon Borough-owned beaches or upon beaches under Borough jurisdiction, except however:
  - 1. Leashed dogs and other animals when accompanied by a responsible person shall be permitted on beaches between May 15th and October 1st, only between sunrise and 10:00 a.m. and from 6:00 p.m. to sunset, however no dog or other animal shall be suffered or permitted to be in or upon the area known as North Lagoon (adjacent to Bergen Avenue) between May 15th and October 1st. This ban and prohibition shall and does extend to and include the entire area from the northerly edge of the street pavement to the water's edge and on the east and west by the lines formed by the extension of the bulkheads, southerly, to the points of intersection with the northern edge of pavement.
  - 2. From October 2nd to May 14th dogs and other animals shall be permitted upon beaches and access ways unleashed, but only when under the direct and immediate control of a responsible person.
- c. Notwithstanding the foregoing, no person owning, harboring, keeping or in charge of any dog or other animal upon any oceanfront lot owned or occupied by such person shall fail to remove from the beach and to dispose of in a sanitary manner, any feces deposited by any such animal.

**§ 10-4.10. Fishing. [Ord. No. 678-2018]**

No person upon the beach and access ways or in or upon adjacent waters shall fish within two hundred (200) feet of any swimmer or person in the water.

**§ 10-4.11. Boats. [Ord. No. 678-2018]**

No person upon the beach and access ways or in or upon adjacent waters shall launch, operate or retrieve any boat within two hundred (200) feet of any swimmer or person in the water.

**§ 10-4.12. Vehicles. [Ord. No. 678-2018]**

No person upon the beach and access ways or in or upon adjacent waters shall operate vehicles of any nature whatsoever with the exception of Borough-owned or sponsored vehicles and life-saving emergency vehicles operated by beach associations.

**§ 10-4.13. Dangerous Conditions. [Ord. No. 678-2018]**

No person upon the beach and access ways or in or upon adjacent waters shall enter the water, swim or attempt to swim or surf under conditions which are beyond the apparent capacity of the person and which may endanger others. All individuals that swim or attempt to swim or surf in the water do so at their own risk.

**§ 10-4.14. Response to Borough Personnel. [Ord. No. 678-2018]**

No person upon the beach and access ways or in or upon adjacent waters shall fail to respond to directions of Borough personnel or agents consistent with the enforcement of this chapter.

**§ 10-4.15. Restrictions on the Use of Umbrellas and Other Fixtures on the Beach. [Ord. No. 678-2018]**

- a. Umbrellas with a collapsible circular shade no greater than eight (8) feet in diameter stretched over hinged ribs radiating from a center pole no greater than 7 feet 6 inches in height, and without grounding lines, ropes, or sides are permitted on the beach.
- b. Devices designed or used to shade infants and small children, also known as "baby tents," no larger than 36 inches high by 36 inches wide by 36 inches deep, are permitted on the beach.
- c. Umbrellas and baby tents shall be secured such that uncontrolled movement of the device is restricted. Baby tents and canopies when secured with fasteners, stakes, weights, or the like shall not endanger beach patrons. Anchoring lines, tethers, or the like shall not extend beyond the perimeter of the baby tent or canopy.
- d. Umbrellas and baby tents shall be removed from the beach daily.
- e. Excluding umbrellas and, baby tents described above in this subsection, other shading devices including, without limitation, tents, tarps, canopies, cabanas, pavilions, temporary restroom facilities, and similar devices, or any materials mounted on supports are prohibited except in connection with an approved special event or ceremony.

**§ 10-4.16. Other Prohibited Acts; Sleeping; Smoking. [Amended 6-15-2021 by Ord. No. 725]**

- a. No person shall sleep upon the beach between the hours of 6 p.m. and 10 a.m.
- b. Smoking in public places prohibited. "Smoking" under this section is defined as the burning of, inhaling from, exhaling the smoke from, or the possession of a lighted cigar, cigarette, pipe, including any handheld electronic device which vaporizes a liquid (e.g., e- cigarettes, e-cigs, electronic nicotine delivery systems, electronic non-nicotine delivery systems, personal vaporizers, PVs), or any other matter or substance which contains tobacco, marijuana, cannabis, cannabis item or any other matter that can be smoked. Smoking is also prohibited within 15 feet of any beach ramp and accessway that is open and available to the public.

## **§ 10-5. Surfing rules and regulations.**

### **§ 10-5.1. Date and Time Limitations. [Ord. No. 678-2018; Ord. No. 6810-2019]**

Surfing regulations shall be enforced during the same dates and times that the Borough enforces beach regulations regarding bathers and swimmers, i.e., from the third Saturday in June to Labor Day of each year, inclusive, between the hours of 10:00 a.m. and 6:00 p.m.

### **§ 10-5.2. Distance from Swimmers and Bathers. [Ord. No. 678-2018]**

Surfing within two hundred (200) feet of a bather or swimmer is prohibited.

### **§ 10-5.3. Display of Badge. [Ord. No. 678-2018]**

Surfers shall at all times, possess and display, upon request, a current Borough beach badge or a current badge issued by the South Beach Association if they are not actively engaging in surfing.

### **§ 10-5.4. Tether Devices. [Ord. No. 678-2018]**

Surfers shall at all times, utilize a tether device while surfing.

### **§ 10-5.5. Compliance with Regulations. [Ord. No. 678-2018]**

Surfers shall at all times comply with all other provisions of this chapter, as amended, and all other regulations not inconsistent with this chapter.

## **§ 10-6. Enforcement.**

### **§ 10-6.1. Enforcement by Borough Police. [Ord. No. 678-2018]**

This chapter and the rules and regulations set forth herein or as may hereafter be adopted by resolution of the Borough Council shall be enforced by the Chief of Police utilizing law enforcement officers and/or such other Borough personnel as may be made available for this purpose. The complaint of any person who may allege a violation of this chapter shall be accepted and prosecuted in the same manner, as though initiated by the within described enforcement personnel.

## **§ 10-7. Violations and Penalties.**

Notwithstanding any other section of this Chapter or any other ordinance, the maximum penalty for violating any provision of this Chapter shall be, in the discretion of the Court, a fine of up to two thousand dollars (\$2,000.00) but not less than one hundred (\$100.00) dollars; and/or detention for not more than five (5) days; and/or a period of community service not exceeding ninety (90) days.

## Chapter 11

### PROTECTION OF BEACHES AND DUNES

#### Table of Contents

- § 11-1      **Preservation and Protection of Dunes.**
- § 11-2      **Definitions.**
- § 11-3      **Regulation of Beach and Dune Areas.**
- § 11-4      **Enforcement and Penalties.**

#### **§ 11-1. Preservation and Protection of Dunes.**

##### **§ 11-1.1. Findings, Declaration and Purpose. [Ord. No. 676-2018]**

Although there may be no long- term defense for fixed oceanfront structures against a constantly rising ocean level, effective protection of the oceanfront and adjacent coastal areas in the intermediate term against high tides and flooding and against damage by the ocean under storm conditions requires sufficient elevation and breadth in the beach and dune areas, hereinafter defined, to dissipate the force of the waves. The dunes should provide an uninterrupted barrier and a source of sand to mitigate the effect of storm waves for the benefit of the entire Borough - interior lands as well as oceanfront premises

- and a beach for the recreational purposes of all. Accordingly, the Borough has a vital interest in the continued maintenance and protection of the ocean Beach and Dune Areas and in the right to cause their restoration in the event of damage or destruction

Maintenance and protection of the ocean beach and dune areas are also a requirement of the Borough under a State Aid Agreement (SAA) between the Borough and the New Jersey Department of Environmental Protection (NJDEP) and consistent with the conditions of the United States Army Corps of Engineers (USACE) 50-year duration Beach and Dune System Federal Shore Protection Program initiated in December 2016 and extending to December 2066.

Dune Areas are vulnerable to erosion by wind, water, the absence of good husbandry by those responsible for their maintenance and preservation, and by indiscriminate trespass, construction or other acts which might destroy or damage them. A proven and available means of protecting Dune Areas against erosion is by preventing indiscriminate trespassing, construction or other acts which might destroy or damage them, and through the aggressive use of native plantings supplemented, when necessary, by sand fencing and other protective devices, or combinations thereof, designed to prevent the erosion of Dune Areas and to promote the root accumulations, normal contours and other features found in natural dune systems and to aid in long term stabilization of engineered dune systems.

The Beach Area and Dune Area are dynamic and are not capable of rigid definition or delineation, or of completely firm stabilization. They can and do migrate, so that particular sites, at one time free of dunes may, as the result of natural forces, become a part of the Dune Area declared to be in the interest of the Borough and State of New Jersey to protect. Persons owning, using or purchasing such property do so subject to the public interest therein and also bound by the limitations and conditions of easements exercised by the previous owners with the Borough and NJDEP or obtained by the NJDEP under eminent domain.

It is a purpose of this chapter to define the areas so affected and to continue regulations to assure

their effectiveness. This chapter does not attempt to define and regulate all parameters of dune delineation, function or management and the Borough Council declares its intent to review and update this chapter periodically to reflect appropriately new and beneficial knowledge; and to be consistent with State and Federal agreements and regulations. This chapter is declared to be an exercise of the police power in the interest of safety and welfare for the protection of persons and property. Further, this chapter is adopted in recognition of the knowledge and benefits realized by the implementation of prior enactments which have been operative since 1980 and which have been favorably endorsed by scientific and governmental authorities. By this enactment, it is the intention of the Borough to reflect and utilize the knowledge and experience gained in the administration of prior Beach and Dune Ordinances in the Borough of Mantoloking to ensure a viable beach and dune system exists in the Borough for coastal protection to the benefit of all Mantoloking residents and the environment.

In view of the fact that the Bar-Beach-Dune System provides the primary protection to property, public and private, and persons within the Borough, from the clearly present hazards of erosion and flooding caused by the Atlantic Ocean during periods of storm, and otherwise, all of the provisions of this chapter are deemed necessary, material, and substantial; therefore, they shall not be subject to waiver or variance.

## **§ 11-2. Definitions.**

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

APPENDIX — Shall mean that portion of this chapter entitled "Appendix", and is incorporated herein.

BACKSLOPE OF THE DUNE — Shall mean the area of the dune between the landward toe of the dune and the landward dune crest.

BEACH AREA — Shall mean that area between the Mean High-Water Line of the Atlantic Ocean, and the Seaward Edge of the Dune as hereinafter defined.

CAFRA — Shall mean the Coastal Area Facilities Review Act, N.J.S.A. 13:19-1 et seq., and regulations issued thereunder at N.J.A.C. 7:7 et seq., as may be amended from time to time.

CZM REGULATIONS — Shall mean the present NJDEP Coastal Zone Management Rules adopted by the NJDEP under N.J.A.C. 7:7 or as may be amended.

### **DEED OF DEDICATION AND PERPETUAL STORM DAMAGE REDUCTION**

EASEMENT — Shall mean that agreement exercised by the owners of each oceanfront property (past or present) or obtained for the oceanfront property by NJDEP eminent domain proceedings which sets forth the conditions of use and access to implement the USACE Beachfill and Dune Project.

DUNE AREA — Shall mean that area between the seaward edge of the dune as exists or as established by the USACE Beachfill and Dune Project or as may advance easterly through natural accretion from that initial point and the landward edge of the dune as exists; is constructed as part of the USACE Beachfill and Dune Project or as may be created by natural migration of the dune to the west.

DUNE CONSULTANT — Shall mean an expert on dunes and their care retained by the Borough.

DUNE INSPECTOR(S) — Shall mean that person or those persons appointed by the Mayor with the consent of the Borough Council to observe and regulate activities on the dune consistent with the Borough Dune Ordinance.

DUNE PLATFORM (DECK) — Shall mean a wooden construction platform (deck) placed in the dune area, in accordance with requirements set forth herein and consistent with NJDEP exemption status under the prevailing NJDEP Coastal Zone Management Regulations; or as previously approved by the Borough; or as constructed prior to the Borough's initial Dune Ordinance adoption.

DUNE VEGETATION — Shall include all plant species found on beaches and dunes of northeastern United States, either native or introduced, which can build and stabilize sand dunes. Specifically, it shall include, but not be limited to, such species as American beachgrass (*Ammophila breviligulata*), sea rocket (*Cakile edentula*), seaside spurge (*Euphorbia polygonifolia*), dune cordgrass (*Spartina patens*), seaside goldenrod (*Solidago semipervirens*), dusty miller (*Artemisia stelleriana*), bayberry (*Myricea Pennsylvanica*), beach pea (*Lathyrus japonicus*), salt spray rose (*Rosa rugosa*), beach plum (*Prunus maritima*), panicum grass, etc., which normally grow or may be planted on the slopes of the dunes or behind them, with no distinction being made as to how such plants are introduced into their location.

EARTH ANCHOR — Shall mean an auger type anchor utilized to protect against wind uplift of dune platforms typically constructed of galvanized or stainless steel with a minimum penetration below the dune surface of 30".

ELEVATED WALKWAY — Shall mean an improved walkway connecting to the dune crest

which is supported on timber posts, piles, etc. and which must meet NJDCA foundation requirements consisting of a NJPE designed foundation to address wave forces and wave scour. Elevated walkways may only be installed westerly of the prevailing dune crest or as may have existed and approved prior to the USACE Beachfill and Dune Project requirements.

**FORESLOPE OF THE DUNE** — Shall mean the section of the dune face between the seaward crest of the dune and the seaward edge of the dune where it intersects the beach.

**GP-2** — Shall mean the Borough's NJDEP General Permit 2 for dune repair and beach maintenance.

**LANDWARD DUNE CREST** — Shall mean the intersection line of the backslope of the dune and the top of dune, with a typical elevation 22.00 NAVD88 if constructed as part of the USACE Beachfill and Dune Project or higher if naturally developed.

**LANDWARD EDGE OF THE DUNE** — Shall mean the intersection line of the backslope of the dune and the natural or site plan approved grade of the land extending from the east boundary of New Jersey Route 35 or East Avenue, eastwardly, or the line joining the average landward edge of the dune of the adjoining oceanfront properties, or the dune easement line as shown on the official Dune Easement Line Map adopted by the Borough to meet USACE future dune limit needs, whichever is the more westerly.

**MEAN HIGH-WATER LINE** — Shall mean the line found by the intersection of a plane at the elevation of mean high-water with the existing foreslope of the beach.

**PATHWAY/WALKWAY**—Shall mean an unimproved or improved, protective access way, at grade across the dune in accordance with the specifications set forth within this Chapter.

**SAND FENCE** — Shall include the term "snow fence" or "dune fence" of a barricade type established in a line or a pattern to accumulate sand and aid in the formation of a dune, such as picket construction consisting of wooden lath held together by wire and affixed to wooden posts. Alternate types of "sand fence" may be utilized if approved by the Dune Consultant.

**SEAWARD DUNE CREST** — Shall mean the intersection line of the foreslope of the dune and the top of the dune, typically elevation 22.00 NAVD88 as constructed as part of the USACE Beachfill and Dune Project.

**SEAWARD EDGE OF THE DUNE** — Shall mean the intersection line of the foreslope of the dune and the gradient of the Beach Area, or the contour line at an elevation of eight point five (8.5) NAVD88, or the vegetation line, or whichever is the more easterly, except when the Borough Engineer, Borough Dune Inspector, NJDEP or USACE may have caused stakes to be driven to mark the seaward edge of the dune, in which case it is the line between such stakes.

**SETBACK LINE** — Shall mean that line determined by the setback distances as may be specified in the Land Use Ordinance of the Borough to define the limits of development on a buildable lot.

**TOP OF DUNE** — Shall mean the intersecting line of the seaward and landward dune crest; typically elevation 22.00 NAVD88 if constructed as part of the USACE Beachfill and Dune Project, or potentially higher if naturally accreted westerly of the USACE project dune construction limits.

**UPPER DRIFTLINE (RACKLINE)** — Shall mean that line produced by the spring tides (highest tides of the year) which contains ocean debris (flotsam such as seaweed, etc.) and the seeds, rhizomes, or detached plants which can germinate and/or grow to produce a zone of new dune vegetation.

**USACE** — Shall mean the United States Army Corps of Engineers.



USACE BEACHFILL AND DUNE PROJECT — Shall mean the USACE Manasquan Inlet to Barnegat Inlet Storm Reduction Project authorized by the US Federal Government.

VEGETATION LINE — Shall mean that line connecting the most westerly or seaward naturally occurring perennial plants with other such plants or plants placed by the USACE as part of the USACE Beachfill and Dune Project or as placed under a Borough implemented project or Borough approved private property owner planting program.

WALKWAY ON GRADE OR ELEVATED — Shall mean a constructed means of crossing the dune area in accordance with specifications set forth herein.

Final Version

### **§ 11-3. Regulation of Beach and Dune Areas.**

#### **§ 11-3.1. Construction Prohibited. [Ord. No. 676-2018]**

Construction east of the landward edge of the dune and the placement there, except temporarily, of any object that would impede the flow of sand is prohibited, except as provided in this chapter and in accordance with any NJDEP Coastal Zone Management Rules, CAFRA regulations, the Land Use Ordinance of the Borough (setback), and subject to permits as may be issued pursuant to these enactments.

#### **§ 11-3.2. Access to Dune Areas. [Ord. No. 676-2018]**

No person shall be in the dune area unless:

- a. Upon a natural or improved pathway, walkway or dune platform; or
- b. In the performance of such activities as may be reasonable and necessarily required to construct or maintain the dune, dune vegetation or allowed structures with the permission of the owner; or
- c. For the purposes of inspection, topographical survey, or enforcement of this chapter; entry for these purposes shall not be deemed an actionable trespass; or
- d. As authorized by the USACE and/or the NJDEP and the Borough for the construction and maintenance of the initial or subsequent beach and dune construction projects as part of the USACE 50-Year Program and consistent with the terms of the perpetual Beachfill and Dune Maintenance Easement executed with each oceanfront property owner (past or present) to meet the terms of the Federal USACE Beachfill and Dune Project; or any subsequently Borough or NJDEP approved Beachfill and Dune project as may be implemented by the Borough pending unavailability of federal funds..

#### **§ 11-3.3. Dune Walkways, Pathways, Platforms and Foreslope Steps. [Ord. No. 676-2018]**

- a. Only one (1) pathway or walkway, and associated dune backslope and foreslope singular set of steps, across the dune area is permitted for each residence in accordance with the prevailing NJDEP Coastal Zone Management Regulations, N.J.A.C. Section 7:7 — 10.41e. It shall run, generally, the shortest practical course between the residence and the seaward edge of the dune, and shall not exceed four (4) feet in width. See Appendix I. At street ends or public access ways, wider pathways may be delineated and constructed by the Borough, and/or USACE as part of the approved USACE Beachfill and Dune Project. In the event that any private pathway or walkway shall be or become, in the opinion of the Dune Consultant, a substantial detriment to the development and maintenance of the continuous protective dune sought to be achieved by this chapter of the Borough Ordinances and the USACE Beachfill and Dune Project the owner of the premises shall be subject to the provisions of Section 11-4 which is not to be construed as not allowing the installation and maintenance of structures permitted under this Ordinance, but to be employed during needed dune repair or maintenance projects needed in response to major storm damage.
- b. In addition to the pathway or walkway, each oceanfront lot shall be allowed one (1) "Dune Platform" not to exceed two hundred (200) square feet for a single developable lot in a designated building zone situated within the dune crest or dune landward slope area. If a

dune walkway is constructed adjacent to a dune platform, a clear separation of a minimum of one-half inch (1/2 inch), shall be provided between the dune platform and the walkway for the walkway not to be included in the platform area calculation. In the instance of a single consolidated lot which exists in the designated zone and is comprised of multiple conforming building lots, the size of the platform shall be allowed to be increased by twenty-five (25%) percent for each full conforming contiguous lot in the zone that comprises the total consolidated lot. Area increases of a dune platform shall not be considered for partial non-conforming lots in a zone which may be part of a singular ocean front lot. See Appendix I.

- c. Dune Walkways, Pathways, Platforms and Foreslope Steps shall comply with the conditions included within each oceanfront properties Deed of Dedication and Perpetual Storm Damage Reduction Easement (with NJDEP State approval required for non-exempt structures) and the specifications as to construction details and location within the dune area as are set forth in the Appendices or as further defined under New Jersey State Law within VE-Zone areas.

#### **§ 11-3.4. Removal of Dune Protection Devices Prohibited. [Ord. No. 676-2018]**

The removal, cutting, burning or destruction of dune vegetation, sand fence or such other types of dune protection devices approved by the Borough in the dune area is prohibited except as necessary for construction or maintenance of the Dune or USACE Beachfill and Dune Project or subsequent independent Borough beachfill and dune projects as may be implemented and as authorized pursuant to this chapter or Borough approved structures under this chapter.

#### **§ 11-3.5. Natural Deposits of Sand. [Ord. No. 676-2018]**

Sand that has been transported onto lands of oceanfront lots by action of wind, tides, storms or any combination thereof shall not be removed from the lot upon which it has been deposited. To the extent practicable considering the utilization of the premises, this sand may be relocated by the owner of the lot and may be moved eastwardly on the same lot to become part of the beach and dune system. Any damage to existing dune vegetation as caused by the owner's sand transferring activities shall immediately be restored to comply with Subsections 11-3.7, 11-3.8 and Appendix II which may be found at the end of this chapter.

#### **§ 11-3.6. Maintenance of Dune Elevation. [Ord. No. 676-2018]**

One of the purposes of this chapter is to achieve the maintenance of sand dunes at the highest practical height and with a minimum dune crest elevation of 22.0 NAVD88 to match the USACE project dune crest design elevation or subsequent Borough adopted dune crest elevation as may be established by the Borough's due diligence in the future to address changing environmental conditions. Borough actions may be taken in conjunction with the NJDEP and/or the USACE or independently as necessary to protect the Borough's residences, infrastructure and the health, safety and welfare of the Borough residences. The Borough's maintenance of the beach and dune system conducted in this regard shall be limited to the area east of the Borough and NJDEP adopted dune easement limit line. Maintenance in response to major storms shall include all required dune vegetation, public crossovers and dune foreslope toe fencing where previously installed by public funds. However, no dune shall be directly or indirectly lowered or reduced in height by the action or inaction of any owner or his agent. However, if by actions or use of the private property owner any dune shall be or become lower than the elevation deemed materially

significant by the Dune Inspector or duly appointed Borough representative who is applying recognized criteria with due regard to the intent of this chapter and reasonable use of the premises, the owner thereof shall be obliged to provide and install additional sand to correct the damage and install such sand fence and plantings as are prescribed by this chapter. See Appendix II. The owner shall have an obligation to maintain and replace, if necessary, such fences and plantings. If the dune is lowered or caused to be lowered by the direct or indirect action of any owner, then the dune shall, upon due notice to the owner, be restored to its prescribed elevation by the owner or at his expense and subject to the provisions of this chapter. The restored dune shall be planted and sand fenced in accordance with the specifications set forth in the Appendices. However, in consideration of maintenance of views from existing structures which may be obstructed by accreting sand on top of the USACE constructed dune crest above Elevation 22.0 NAVD88 an oceanfront owner has the potential right to apply to the Borough and the NJDEP for a permit to groom the top of the dune back to Elevation 22.0 NAVD88. If such activity is approved, the owner shall immediately plant Cape American Dune Grass in the groomed area on a spacing of 18" on center. Final determination on the permissibility of this activity shall be made by the NJDEP during review of the Applicant's permit application.

Crest grooming shall not be approved by the Borough unless the elevation of the dune is shown to be a minimum of one (1) foot above the Elevation 22.0 NAVD88 for a minimum of fifty (50%) percent of the dune crest area constructed as part of the USACE project. Dune elevation grooming shall not be permitted in natural dune areas unless specifically approved by the Borough and NJDEP under the NJDEP Dune Regulations established under N.J.A.C. 7:7-9.16" c".

#### **§ 11-3.7. Vegetation and Sand Fencing. [Ord. No. 676-2018]**

- a. In order to provide for effective protection and/or restoration of the dune area, each owner shall plant or cause to be planted in the dune area suitable vegetation and erect, or cause to be erected, suitable sand fencing all in accordance with such standards as are provided in the Appendix II to address natural incidental damage or vegetation die-off; which is not to be construed as to include needed vegetation replacement which may be required due to implementation or construction of a new or major dune repair implemented in response to a major coastal storm meeting the definitions to allow dune repair under the Borough's NJDEP approved GP-2 permit or other Borough, State or Federal beach and dune repair programs.
- b. However, the owner shall be responsible for the maintenance of vegetation and fencing on any natural dune sections existing on their property and in all cases west of the adopted dune easement line.

#### **§ 11-3.8. Bulldozing and Mechanical Replenishment of Sand. [Ord. No. 676-2018]**

- a. No person or entity shall engage in the mechanical replenishment of the oceanfront beach dunes within the Borough without first obtaining a permit for such activity and proceeding in strict adherence with the terms and conditions of the permit. Mechanical replenishment shall be broadly defined to include the transport of sand from the berm by any mechanical means (bulldozing or like activity) to or into the dune area as well as the placement of clean natural sand obtained from off-site locations.
- b. No permits shall be issued at such times when, in the opinion of the Dune Consultant or the Borough's duly appointed representative, the beach area is not suitable for bulldozing due to physical or regulatory restrictions.

- c. The dune replenishment permit shall be issued by the Borough Dune Inspector and shall be conditioned in accordance with NJDEP CZM regulations and as follows:
1. No mechanical dune replenishment activity shall be allowed from April 1st to September 1st, inclusive, or as may be allowed by NJDEP CZM regulations, except in case of emergency circumstances which constitute an immediate threat to residential structures, Borough infrastructure or to public health, safety and welfare as declared by the Mayor or Borough Council;
  2. No scraping or bulldozing of sand from the berm at a depth greater than one (1) foot from the grade existing prior to activity under the permit shall be allowed;
  3. Transport of sand from below the low-water line shall not be allowed;
  4. No person shall operate any motorized vehicle across or upon any dune area except as may be necessary for permitted construction, for dune maintenance and/or emergency or law enforcement responders in compliance with this chapter;
  5. No person shall operate mechanical sand transfer equipment on the beach unless in possession of a valid permit and in compliance with the terms and conditions of the permit and consistent with the Borough's GP-2 permit issued by the NJDEP;
  6. Permits shall be effective for six (6) months, but are based on a one (1) time use only;
  7. When possible, all replenished dunes shall be immediately protected by the erection of sand fence and vegetation in accordance with specifications set forth in the Appendices noting seasonal considerations for vegetation survival;
  8. All replenished dunes shall be graded to be as a minimum consistent with the USACE Beachfill and Dune Project dune template and/or as approved by the Borough Dune Inspector at the required slope and minimum adopted protective project dimensions and shall be protected by planting of appropriate vegetative cover all in accordance with specifications set forth in the Appendices to this chapter;
  9. The failure of any owner or contractor, or any agent of an owner or contractor, to obtain a permit for dune replenishment activities or to abide by the terms and conditions of the permit shall be deemed a violation of this chapter;
  10. In the event that a dune maintenance or replenishment project involves the placement of sand upon the dune under circumstances where the additional sand or a portion thereof is obtained from any off-site location, the added sand shall be of such grain size, shape, color and other characteristics as will, in the judgment of the Dune Consultant or Dune Inspector, be compatible with the existing on-site sand. The placement of sand from off-site locations shall be by such methods as will avoid damage to existing dunes and shall, whenever reasonably practicable, as determined by the Dune Inspector, be placed upon the dune from the landward side of the dune;
  11. The removal of sand from the beach or dune area to an off-site location is prohibited. The movement of sand from the dune area to the beach area is

prohibited, unless if conducted in accordance with an approved NJDEP/Borough dune grooming permit.

12. The Dune Inspector may, in the public interest, revoke or suspend any permit. Appeal from any revocation or suspension may be made to a court of competent jurisdiction.
- d. When dune replenishment activities are initiated, by either the homeowner, by the Borough or by the USACE, or USACE agents, any existing structures or improvements within the dune system are to be removed by the homeowner if necessary to eliminate direct conflict with completing the needed work so that the replenishment services can be completed with limited disruptions. When replenishment activities are conducted by the Borough or as part of the USACE Beachfill and Dune Project, residents will be notified and all improvements which directly conflict with the work and are found necessary to be removed to complete the work are to be removed by the homeowner and may be replaced by the homeowner at their discretion pending obtaining a new dune permit to allow the Borough to assess potentially needed modification to address changed conditions. In the event, that these improvements are not or cannot be removed by the homeowner, coordination for the removal shall be undertaken between the owner and by the Borough, USACE or USACE agents so initial construction or beach and dune replenishment activities can be completed. The Borough and USACE will try to work with the homeowner to work around and maintain all approved existing structures where possible, however should it be found necessary that they must be removed to complete the project work, the Borough, USACE or USACE Agents will not be required to return removed improvements and are not subject to any damages to the improvements during their removal. Whether a private improvement or structure within the dune system is designated to be removed, as a last resort to resolve a direct physical conflict with the project it, shall be at the sole discretion of the Borough or USACE's approved agent consistent with any terms of the project Storm Damage Reduction Easement and legal limitations. A minimum of ten (10) days notice will be provided to homeowners if it is deemed that a private structure or improvement will directly interfere with Borough or USACE program initial construction or maintenance needs and requires relocation.
- e. A Borough approved on-grade walkway or on-grade dune platform may be raised vertically in the same footprint location without the burden of acquiring a new dune permit.

#### **§ 11-3.9. Permits. [Ord. No. 676-2018]**

- a. A permit shall not be required for the planting of dune grass or other appropriate vegetation, or for the erection of sand fencing or the placement of temporary walkway protection in the dune area in compliance with approved standards set forth in the Appendices.
- b. All other construction, modification, alterations or like activity in the dune area, unless specifically exempted in this chapter, shall require that the owner or his agent obtain a Dune Area Permit.
- c. Activities requiring a permit include, but are not limited to, elevated walkways, dune platforms, bulldozing, sand replenishment from off-site sources and the placement of sand fencing more than three (3) feet seaward of the seaward edge of the dune.

- d. All permits are subject to revocation, suspension or modification in the event of changed site conditions, as determined by the Dune Inspector.
- e. The Dune Area Permit shall be issued at no charge.
- f. The permit application is to be accompanied by a sketch, to scale, of the proposed improvements. The sketch may be prepared by the owner with reference to a pre- existing survey in form satisfactory to the Dune Inspector.
- g. Other Borough, NJDEP, NJDCA or USACE Permits may be required depending on the activity.
- h. Structures shall only be elevated as necessary to meet existing grade conditions to aid access for the property owner, however, the owner is advised that when a structure is proposed to be elevated above grade, it is considered to have a foundation by the NJDCA and is required to meet all DCA construction requirements in the subject flood zone.
- i. The permittee or any agent shall promptly, upon request, allow any Borough official to examine the permit or a certified true copy thereof at any time.

**§ 11-3.10. Dune Inspection. [Ord. No. 676-2018]**

The Dune Inspector shall make periodic dune inspections and shall provide written advice to owners. These writings shall not be deemed as notice of violations of this chapter, but shall be maintained as part of the record for the subject property and may be considered by the Court in the imposition of penalties, upon conviction, under any subsequent complaint for violation of this chapter. Further, the Dune Inspector shall coordinate his efforts with those of the Dune Inspector(s) to the end that the purposes of this chapter may be achieved.

## **§ 11-4. ENFORCEMENT AND PENALTIES.**

### **§ 11-4.1. Enforcement. [Ord. No. 676-2018]**

- a. The Borough Dune Inspector or, in his absence, the Chief of Police, and in all events, the Borough Council shall enforce the affirmative duty of each oceanfront owner, as set forth in this chapter.
- b. The initial enforcement effort shall be by service of a written notice, certified mail return receipt requested, upon the record owner at his last known address as set forth in the Borough tax rolls, requesting specific compliance with these obligations concerning dune protection and/or restoration, at the expense of the owner.
- c. The notice shall also advise that unless the owner shall take appropriate corrective action and complete the same within thirty (30) days from the day of mailing of the notice, the Borough may perform such acts of protection and/or restoration.
- d. Such expenditures by the Borough, if any, shall be due and payable by the owner upon demand. In the event that any such owner shall fail to pay, then the sum, together with interest at the highest legal rate thereon, shall become a lien upon the property and be collected in the same manner as delinquent real property taxes in accordance with N.J.S.A. 40:411-2.12f. The Borough may, in any event, seek injunctive relief from any violation of this chapter.
- e. In addition to the action described above, or alternatively, the owner may, at the election of any enforcement official or the Borough Council, be prosecuted in the Municipal Court for violation of this chapter.

### **§ 11-4.2. Copies of Regulations Furnished. [Ord. No. 676-2018]**

A copy of this chapter shall be furnished to all oceanfront property owners and to each applicant for a building permit for any construction east of Ocean Avenue south of Lyman Street and east of East Avenue, north of Lyman Street. Compliance with this subsection shall not be a jurisdictional prerequisite in any enforcement.

### **§ 11-4.3. Penalties. [Ord. No. 676-2018]**

For each and every violation of this chapter or violation of the regulations or standards set forth in the Appendices, or the terms and conditions of any permit issued hereunder, the owner of lands abutting the beach or dune area where such violation has been committed, and any contractor or agent of the owner, or the trespasser shall for each and every violation be subject to, in the discretion of the Court, a fine of up to two thousand dollars (\$2,000.00) and/or imprisonment for a period of up to ninety (90) days and/or a period of community service not exceeding ninety (90) days. Each and every day that such violation continues shall be considered a separate violation of this chapter.



# PROTECTION OF BEACHES AND DUNES

## *11 Attachment 1*

### **Borough of Mantoloking**

#### **CHAPTER 11, APPENDICES**

**[Ord. No. 676-2018]**

##### **Appendix I**

##### **(Appendix to Subsection 11-3.3, Dune Walkways, Pathways, Platforms Backslope and Foreslope Steps.)**

###### **a. Pathways.**

1. A singular natural path or improved walkway for each residence may be used to access the ocean, beach or any dune platform. Natural sand pathways are permissible unless they demonstrate that significant use is causing a chronically occurring crest line gap as defined under paragraph 2. below; which will subsequently require that the owner correct the issue and install an improved walkway. If an improved walkway is required by the Borough or desired by the owner to be used to access the ocean or any dune platform, the pathway shall be protected by placing suitable wear resistant material on the sand surface with a maximum width of four (4) feet as limited under NJDEP CZM Regulations. This surface may be constructed on grade of natural I-5 soil aggregate gravel or temporary removable walkways, geotextile access surface mats, or other modular components. Temporary walkways may be placed directly on the dune surface and may remain in place as long as they are not found to be a detriment to maintaining the minimum dune crest elevation consistent with the USACE Beach and Dune project elevation of Elevation 22.0 NAVD88 as measured by the Dune Inspector.
2. A crestline gap is a first point of entry for the ocean in a storm. The depth of a crestline gap is the vertical distance between the bottom of the pathway through the crest of the dune and a line connecting the highest points of the dune with twenty (20) feet on either side of the pathway. If the crestline gap depth is one (1) foot or more at any time, the area shall be restored with material of such grain size, shape, color and other characteristics as will, in the judgment of the Dune Consultant or Dune Inspector, be compatible with the existing on-site sand to its prescribed elevation by the owner at their own expense. Crestline gaps do not need to be addressed or remedied if the lowest elevation of the gap is above the USACE prescribed Dune Crest Elevation of 22.0 NAVD88. Pathways are to be routinely maintained by the owner to avoid repetitive developments of crestline gaps. If it is observed by the Dune Inspector that the individual property has a chronic problem with the development of repetitive crestline gap violations, he will be required to install an improved walkway at the direction of the Dune Inspector. Chronic problems will be categorized by the observance of more than three (3) crestline gaps which were repaired in the past at the direction of the Dune Inspector.

###### **b. Foreslope Steps.**

1. An unprotected dune foreslope is particularly vulnerable to damage by foot traffic. Accordingly, where foot traffic is very light, the pathway may remain as sand or owners may use protective means such I-5 soil aggregate gravel, cleated ramps, on

## MANTOLOKING CODE

grade stairs or similar devices which may be removed by the owner when the premises are not occupied or during seasonal storms where damage to same is likely.

2. When, in the judgment of the Dune Inspector, foot traffic is causing more than minimal damage to the foreslope and, in all circumstances, whenever foot traffic has caused the pathway over the foreslope to be at least one (1) foot lower than the adjacent sand surface in any location, the area shall be restored with material of such grain size, shape, color and other characteristics as will, in the judgment of the Dune Consultant or Dune Inspector, be compatible with the existing on-site sand to its prescribed elevation by the owner at their own expense; and more positive protective measures shall be installed as discussed in Section 1 above. In addition, if the owners are having difficulty in ascending the dune foreslope at the prescribed USACE slope of 1V to 5H on-grade, steps may to be erected by placing stringers directly onto the dune foreslope with steps consisting of up to 2" x 12" planks. Stringer dimensions shall not exceed 2" x 12" with the steps secured to notches in the stringers or cleats installed within the overall vertical dimensions of the stringers. The steps cannot exceed 4' in width and should be constructed in a manner which will facilitate optional removal during the winter or the anticipation approach of strong seasonal storms or when the premises are not occupied; upon temporary removal, the pathway should be protected by sand fence. Steps may be secured in place to prevent wind uplift, incidental movement near the toe of dune from wave forces and sliding with earth anchors or timber 4" x 4" posts sunk into the foreslope surface near the toe of the dune. However any posts shall not be utilized to vertically support the stairs unless approved under permit from the Construction Code Official to meet DCA foundation requirements for wave scour and wave forces. Posts shall only be used for lateral stabilization of the on-grade stringers.

### c. Walkways.

#### 1. On – Grade

- (a) Shall be constructed with the use of stringers of no greater than six (6) inches in vertical section placed directly on grade, the use of a singular handrail may be installed on one (1) side of a walkway or steps to facilitate stability when negotiating the steps or walkways. Handrails shall be no more than two (2) inches in vertical section, all to limit debris if swept away in any storm surge and also to limit visual interference of the dune and ocean to the views of adjoining properties. Planking no more than six (6) inches in width and with a maximum gap area between planks of 1/2 inch may be secured to the top of the stringers. Walkway components shall be constructed, as possible, to facilitate optional removal for periods of non-use, anticipated storm impacts or future dune development or maintenance.
- (b) Posts shall not be utilized to vertically support walkways, but only for lateral stabilization. Walkways may be secured with earth anchors strapped to the frame to resist wind uplift at the owner's discretion.
- (c) When, in the judgment of the Dune Inspector, the walkway is deemed to be jeopardizing the integrity of the dune system, by allowing the desired dune crest grade or dune slope surfaces to be lowered by more than one (1) foot below the improved USACE dune template surface, the area shall be restored with material of such grain size, shape, color and other characteristics as will, in the judgment of the

## PROTECTION OF BEACHES AND DUNES

Dune Consultant or Dune Inspector, be compatible with the existing on-site sand to its prescribed elevation by the owner at their own expense.

### 2. Elevated

- (a) Shall be constructed with the use of stringers and bridging of no greater than six (6) inches in vertical section, stringers may be sistered together horizontally for added strength. Handrails may be constructed as required by building code, but shall be no more than two (2) inches in vertical section. Planking shall be no more than six (6) inches in width with a maximum gap area between planks of 1/2 inch. Top of planking shall not exceed elevation 22.7 NAVD88 for the entire walkway in USACE constructed dune crest areas but may exceed this height when crossing naturally higher dune elevations or connecting to decks, stairways or stairway landings attached to existing or approved primary residential structures. Elevated walkway structures shall be designed to facilitate removal for extended periods of non-use, and accommodate future dune development and maintenance where possible. The vertical maximum 6" vertical section and maximum walkway height shall be maintained to minimize visual adverse impact to the views of the dune and ocean from adjoining properties.
- (b) Walkways may only be elevated upon approval under a Borough dune permit and in accordance with the Borough's Chapter 23 Flood Damage Prevention Ordinance, Section 23-5.3 through additional approval of the Borough's Construction Office by associated permitting procedures and if built within a "VE" Zone designed for wave forces and scour. Supports for elevated walkways shall be designed to address the impacts of, and to, the stone revetment installed within the dune system for properties North of Lyman Street or the steel sheet pile sea wall's geotextile scour apron within the dune system for properties South of Lyman Street.
- (c) When, in the judgment of the Dune Inspector, that the walkway or walkway supports are deemed to be jeopardizing the integrity of the dune system as demonstrated by observed damage to the dune, the damaged area shall be restored with material of such grain size, shape, color and other characteristics as will, in the judgment of the Dune Consultant or Dune Inspector, be compatible with the existing on-site sand to its prescribed elevation by the owner at their own expense.

### d. Dune Platforms.

- 1. One (1) dune platform per property may be constructed within the dune system with neither length nor width greater than eighteen (18) feet, stringers or ledger boards shall be no greater than six (6) inches in vertical section placed directly on grade, handrails may be constructed but shall be no more than two (2) inches in vertical section and constructed of vertical supports with a maximum horizontal section of four (4) inches to minimize visual obstructions to the views of adjoining properties. Planking shall be no more than 6 inches in width and the maximum gap area between planks shall not exceed 1/2 inch. Top of planking shall not exceed elevation 22.7 NAVD88 in USACE project constructed crest areas, however, may be a maximum of 8 inches above existing grade in natural dune areas of a higher grade. Structure shall be constructed to facilitate removal for periods of extended non-use, dune development and dune maintenance, etc.

Existing Borough approved platforms that exceed these elevations may remain as non-conforming structures.

## MANTOLOKING CODE

2. Platforms shall be located such that the eastern edge is a minimum of ten (10) feet westerly of the seaward dune crest and the northerly or southerly edge is a minimum of ten (10) feet off of the property line.
3. Due to DCA restrictions, posts shall not be utilized to secure platforms to grade unless they are designed to meet foundation criteria for structures in a “VE” Zone. Platform shall be secured either with earth anchors strapped to the frame to avoid these foundation requirements or if found absolutely necessary to support off of posts in areas of a natural dune to address uneven or undulating grades, they must comply with foundation requirements in accordance with Chapter 23 Flood Damage Prevention Ordinance Section 23-5.3. Utilizing of Chapter 23 Flood Damage Prevention Ordinance Section 23-5.3 to secure the platform will necessitate additional approval of the Borough’s Construction Office by associated permitting procedures, platform supports and foundation shall also be designed to address impacts to the stone revetment installed within the dune system for properties North of Lyman Street or the geotextile scour apron within the dune system for properties South of Lyman Street. Foundations utilized for platforms must address wave forces and scour as deemed required by Code and certified by the owner’s engaged New Jersey Professional Engineer.
4. When, in the judgment of the Dune Inspector, the platform is deemed to be jeopardizing the integrity of the dune system by physical disturbance, the disturbed area shall be restored with material of such grain size, shape, color and other characteristics as will, in the judgment of the Dune Consultant or Dune Inspector, be compatible with the existing on-site sand to restore it to its prescribed elevation by the owner at their own expense.

## PROTECTION OF BEACHES AND DUNES

### Appendix II

#### (Appendix to Subsection 11-3.7, Vegetation and Sand Fencing.)

##### a. Dune Planting.

1. For initial planting, or replanting sparse areas, "Cape" American beachgrass (*Ammophila breviligulata*) should be used. The entire Dune Area (including the crest and the Backslope and Foreslope of the Dune) shall be planted. The Borough independently or in conjunction with the NJDEP or USACE will install dune grass on the USACE project constructed dune and shall restore same when damaged in conjunction with dune restoration from damage incurred as a result of a major storm meeting NJDEP CZM rules to allow dune restoration. Damaged vegetation from minor storm events may be alternately replaced by the property owner. In addition, at the owner's discretion up to fifty (50%) percent of Panicum Grass (panic grass) can be mixed in the planted area.
2. Planting for bare stollen dune grass may take place any time between October 15th and April 1st, if the ground is not frozen. Spring planting should be accompanied by frequent watering. Initial and subsequent fertilization is recommended at the rate of approximately two (2) pounds of slow-release 10-10-10 fertilizer per one thousand (1000) square feet. If the pH is lower than seven (7), then a treatment to raise pH should be applied (pH+ or limestone).

Plantings of pot grown dune grass stock may be planted at any time suggested by the nursery.

3. Fresh bare stollen planting stock cut back to sixteen (16) to eighteen (18) inches long are preferred to be utilized. Spacing shall be no greater than eighteen (18) inches on the dune foreslope and crest and twenty-four (24) inches on the dune backslope, two (2) stems to a hole, at least seven (7) inches deep. If not planted with a water flooding method, the sand shall be compacted to eliminate air pockets.

Plantings of pot grown stock shall be done at the same spacing with depth as suggested by the nursery.

4. Sand placed by earth moving equipment shall be allowed to become compacted by rains before planting commences.
5. After beachgrass has been established, other appropriate vegetation may be added.

##### b. Sand Fencing.

1. Fencing shall be standard four (4) foot wood sand (snow) fence, or cut in half for half fence, in good condition, secured to wooden posts of a minimum cross-section of four (4) square inches and a minimum length of two and one-half (2.5) feet more than the height of the fence, with maximum span between posts of twelve (12) feet. Alternate fencing, as approved by the Dune Inspector with advice of the Dune Consultant, prior to installation, may be utilized.
2. A row of fencing shall be permitted at the easterly toe of the dune, the westerly limit of the dune, along each northern or southern property line and also on each side of any beach path, if desired. If the dune is fully planted and vegetation fully established,

## MANTOLOKING CODE

specifically as a result of the USACE Beachfill and Dune Project work, no additional fencing will be required by the property owner.

3. A straight (or zig-zag) line of fencing may be erected adjacent to the seaward toe of the dune to prevent pedestrian intrusion into the Dune Area, but no more than three (3) feet from the seaward side of the dune.

## PROTECTION OF BEACHES AND DUNES

### Appendix III

#### (Appendix to Subsection 11-3.8, Bulldozing and Mechanical Replenishment of Sand.)

##### a. Dune Location and Other Dune Parameters.

1. A severe storm may cut a sharp cliff or scarp in the dune system, as a straight or slightly curving continuous line the length of the beach, although there may be gaps in the line where the ocean has broken through. Successive storms cut scarp lines that are essentially parallel, the more severe the storm the more westerly the scarp line. Remedial action after a severe storm consists of bulldozing about the same amount, depending upon the amount of sand available in the post-storm berm, up against the scarp line, leaving the Seaward Edge of the Dune in an approximately parallel continuous line. Therefore;
2. It is desirable to have a continuous dune system. No bulldozing permit will be granted if to do so would result in displacement of the Seaward Edge of the Dune of that property more than five (5) feet seaward of the prevailing Edge of the Dune as initially constructed under the USACE Beachfill and Dune Project, subsequent Borough implemented projects, or as approved by the Dune Consultant in potential non-USACE project areas, unless the toe of the dune has migrated easterly by natural accretion. If natural accretion has occurred the dune shall match the toe on adjacent lots. Bulldozing may only be conducted in accordance with the restrictions of NJDEP CZM regulations and the Borough's prevailing GP-2 permit.
3. When a severe storm erodes the dune and especially if the erosion is past the prevailing Dune Crestline, it can potentially break through the dune system to flood the Borough and/or wash away neighboring houses; therefore it is important to define a minimum Dune Height and other parameters of dune dimension;
4. Therefore, the Borough of Mantoloking, in consultation with the Dune Consultant, shall make repairs to the damaged dune in conjunction with relevant State and Federal authorities to achieve certain standards of minimum dune height and dimensions, by affirmative action up to the adopted dune easement line, including the transport to the Dune Area of suitable off-site sand, including vegetation of same, if, in the opinion of the Dune Consultant, achieving those criteria by natural processes would be protracted or would present unacceptable risk to the public interest. The standards are hereby established as that of the United States Army Corp of Engineers dune profile developed during the Manasquan Inlet to Barnegat Inlet, New Jersey Hurricane and Storm Damage Reduction Project, which is on file with the Borough, but basically includes: a dune crest a minimum of 25' wide at Elevation 22.0 NAVD88; a foreslope and backslope with a 5H:1V ratio extending from Elevation 22.0 NAVD88 to Elevation 8.5 NAVD88 or existing grade of the beach or landward limit whichever is lower. The dune configuration and minimum criteria shall also include full vegetation with Cape American Beach Grass spaced at 18 inches on center on the dune crest and foreslope and at 24 inches on center on the dune backslope with the placement of sand fence at the seaward and landward toe of the dune. The Borough is committed to complete repairs to the dune system, however, an individual property owner may supplement these efforts for repair of minor damage to the dune system by implementing

## MANTOLOKING CODE

bulldozing and plantings by their own efforts when “allowed” under the construction of the NJDEP CZM regulations and as approved under a Borough issued dune permit.



## PROTECTION OF BEACHES AND DUNES

### Appendix IV

#### (Appendix to Subsection 11-3.9, Permits.)

##### a. Permits.

1. Permits required under this chapter shall be issued at no charge by the Borough Clerk in the Borough's form and requiring such application data as shall be prescribed by the Dune Program Director after consultation with the Dune Consultant. No permit shall be issued unless approved by the Dune Inspector.
2. The grant of any permit may be withheld for a period of up to 60 days on any property for which the Dune Inspector, with due regard to the then existing conditions of beach and dune, determines it is necessary to impose criteria more restrictive than set forth in this Chapter, if the Inspector, in consultation with the Dune Program Director and Dune Consultant, believe the more restrictive criteria would more appropriately enhance the attainment of the goals to be achieved by this chapter. The Dune Inspector shall formally request the more restrictive criteria be imposed by ordinance of the Borough Council. In the event more restrictive criteria are not approved by the Borough Council within ninety (90) days of the request of the Dune Inspector, the Inspector shall apply the existing ordinance provisions to the Permit under consideration.
3. Any owner aggrieved by the terms, conditions, denial or revocation of a permit issued or applied for under this chapter may appeal the action by written petition to the Borough Council within fourteen (14) days of the issuance or denial of any permit. Council may, upon hearing, and in summary fashion, modify, affirm or rescind the permit or the decision of the Administrative Officials.
4. Nothing herein shall be interpreted to give the Borough of Mantoloking or its officers the Authority to require a homeowner to remove a properly permitted and installed walkway, dune deck or stairs except as may be necessary to resolve a direct conflict with same and the required USACE Beachfill and Dune project dimensions and template or as necessary to facilitate maintenance or restoration efforts to be undertaken by the Borough independently or in conjunction with a NJDEP or USACE project or restoration effort.

## Chapter 12

### BOATING REGULATIONS

#### Table of Contents

- § 12-1            **Definitions.**
- § 12-2            **Operation of power vessels.**
- § 12-3            **Personal watercraft.**
- § 12-4            **Penalties.**

#### **§ 12-1. Definitions. [Ord. No. 522 § 7.1]**

As used in this chapter, unless the context clearly requires a different meaning:

**PERSONAL WATERCRAFT** — Shall mean a power vessel defined as a Class "A" vessel by the United States Coast Guard, and which:

- a. Is designed to be operated from a sitting, standing or kneeling position;
- b. Is equipped with an internal combustion engine which powers a water jet pump; and
- c. Cannot be operated in a manner so as to disengage the pump so as to prevent the vessel from making headway.

**VESSEL** — Shall mean a boat or watercraft, other than a sea plane on the water, used or capable of being used as a means of transportation on water.

## **§ 12-2. Operation of power vessels.**

### **§ 12-2.1. Speed of Power Vessels. [Ord. No. 522 § 45]**

The speed of power vessels shall at all times be regulated so as to avoid danger or injury to all manner of craft whether floating, moored, anchored or underway, or to piers, wharfs, bulkheads, draw spans or other waterfront construction, either directly or by the effect of the wash or wave raised by such power vessel through its speed or otherwise.

### **§ 12-2.2. License Requirements. [Ord. No. 522 § 61]**

Any person operating a personal watercraft in the waters surrounding the Borough must be properly trained and licensed in accordance with New Jersey statutes and regulations. Any individual who is found to have operated a personal watercraft without a proper license shall be subject to fine of \$100.00.

### **§ 12-2.3. Vessels to Have Personal Flotation Devices for Each Person on Board. [Ord. No. 522 § 77]**

A person shall not operate or allow another person to operate a vessel on the waters of this State unless the vessel has a serviceable United States Coast Guard approved personal flotation device for each person on board. Such devices shall be of a type and in sufficient number as required by the United States Coast Guard for a vessel of that class operating on navigable waters. Such devices shall be readily accessible when the vessel is under way or worn as required by regulation.

For the purpose of this subsection, the term "vessel" does not include surfboards, windsurfers, racing shells, rowing sculls and racing kayaks.

### **§ 12-2.4. Discarding Debris Prohibited; Fine; Presumption. [Ord. No. 522 § 78]**

- a. A person shall not discard debris from a vessel that is on the waters surrounding the Borough. A person who violates this subsection shall be subject to a fine of \$50.00 per incident.
- b. There shall be a rebuttable presumption that the owner of the vessel, if present on the vessel, or, in the owner's absence, the operator of the vessel, is responsible for any violation of this subsection, if:
  1. Debris of any nature is discarded from the vessel by an occupant of the vessel;
  2. There are two (2) or more occupants in the vessel; and
  3. It cannot be determined which occupant of the vessel is the violator.

### **§ 12-2.5. Duty to Obey Law Enforcement Officer. [Ord. No. 522 § 79]**

A person operating a vessel on the waters of this State shall stop or lay to when so ordered by any Law Enforcement Officer.

### **§ 12-2.6. Rotating Lights. [Ord. No. 522 § 79]**

No vessel shall display a rotating or sequential flashing light except for any Law Enforcement or Emergency vessel may display a rotating blue light beacon or any vessel engaged in activity recognized by the Coast Guard as being eligible for its use may display a rotating red and yellow

light.

**§ 12-2.7. Siren. [Ord. No. 522 § 1.6]**

No vessel shall be equipped with, nor shall any person use upon a vessel, any siren. This subsection shall not apply to any vessel operated by or for a First Aid Squad, or a Police or Fire Department.

**§ 12-2.8. Riders. [Ord. No. 522 § 1.13]**

The operator of a vessel shall not allow any person to ride in any position that would unduly endanger life or limb nor allow passengers or cargo in excess of the maximum capacity stated on the manufacturers or U.S. Coast Guard information label.

**§ 12-2.9. Finding or Recovering a Vessel. [Ord. No. 522 § 1.17]**

- a. Any person finding, recovering or coming into possession of any vessel other than through normal purchase, loan, rental, charter, or gift shall notify the Borough Police within twenty-four (24) hours.
- b. The notification shall include a description of the vessel and the specific location where it was found or recovered.

**§ 12-2.10. Unauthorized Use of Power Vessel or of Power Vessel Operator's License.**

- a. A person who lends any operator's license required pursuant to N.J.S.A. 12:7-72 to another person shall be subject to a fine of not less than twenty-five (\$25.00) dollars nor more than one hundred (\$100.00) dollars.
- b. A person owning or having control or custody of a power vessel who allows the power vessel to be operated by an unlicensed operator shall be subject to a fine of not more than one hundred (\$100.00) dollars.
- c. A person operating a power vessel who exhibits the operator's license of another shall be subject to a fine of not less than two hundred (\$200.00) dollars or to a term of imprisonment not to exceed sixty (60) days, or both.
- d. A person who exhibits the operator's license of another for purposes of identification in any situation other than as described in paragraph c of this subsection shall be subject to a fine of not less than twenty-five (\$25.00) dollars nor more than one hundred (\$100.00) dollars.

**§ 12-2.11. Failure to Complete Boat Safety Course; Failure to Present Certificate.**

Except as provided pursuant to N.J.S.A. 12:7-86, a person shall not operate a personal watercraft on the waters of this State without having successfully completed a boat safety course approved by the Superintendent of State Police in the Department of Law and Public Safety or a written test pursuant to section 8 of PL. 2005, c.292. Whenever a person who is required by law to have completed a boat safety course operates a power vessel or personal watercraft, as appropriate, on the waters surrounding the Borough, that person shall have in possession a certificate certifying that person's successful completion of a boat safety course. Failure of the person to exhibit the certificate is presumptive evidence that the person has not completed an approved boat safety course.

**§ 12-3. Personal watercraft.**

**§ 12-3.1. Limitations on the Operation of Personal Watercraft. [Ord. No. 522 § 63]**

A person shall not operate a personal watercraft:

- a. between sunset and sunrise;
- b. Above idle speed within fifty (50) feet of:
  1. A bathing beach that has its boundaries marked by buoys or signs;
  2. The shoreline; or
  3. Any person in the water; or
- c. In such a manner as to make the vessel completely leave the water or otherwise become airborne, while crossing within one hundred (100) feet of the wake of another vessel.

**§ 12-3.2. Responsibilities of Person Operating Personal Watercraft. [Ord. No. 522 § 64]**

A person operating a personal watercraft shall at all times:

- a. Wear the safety switch lanyard while the personal watercraft is underway, provided that the personal watercraft is equipped with such a lanyard cut-off device; and
- b. Proceed at a safe speed that shall allow the person operating the personal watercraft to take proper and effective action to avoid collision and to stop the personal watercraft within a safe distance, as may be appropriate under prevailing circumstances and conditions.

**§ 12-3.3. Personal Flotation Device Required. [Ord. No. 522 § 65]**

A person operating a personal watercraft or any passenger on a personal watercraft shall at all times when the personal watercraft is underway, wear a United States Coast Guard Approved Type I, II, III, or Type V Hybrid Personal Flotation Device.

**§ 12-4. Penalties.**

Notwithstanding any other section of this Chapter or any other ordinance, the maximum penalty for violating any provision of this Chapter shall be, in the discretion of the Court, a fine of up to two thousand dollars (\$2,000.00) and/or imprisonment for a period of up to ninety (90) days and/or a period of community service not exceeding ninety (90) days.

Final Version

**Chapter 13**  
**Building and Housing**  
**Table of Contents**

- §13-1 State uniform construction code enforcing agency.
- §13-2 Construction Permit Fees.
- §13-3 Buildings Unfit for Human Habitation.
- §13-4 Numbering of Buildings.
- §13-5 Violations and Penalties.

**§ 13-1. State uniform construction code enforcing agency.**

**§ 13-1.1 Findings. [Ord. No. 498 Preamble]**

The State of New Jersey has enacted the New Jersey State Uniform Construction Code, New Jersey Administrative Code: Title 5, Chapter 23, as the sole regulatory scheme governing construction in the State of New Jersey. The New Jersey State Uniform Construction Code adopts and incorporates, by reference, in whole or in part, the International Building Code, International Residential Code, International Mechanical Code, International Plumbing Code, International Fuel Gas Code and various related subcodes. The New Jersey State Uniform Construction Code provides for enforcement of its provisions in a unified fashion at the municipal, inter-local and State levels. The Borough of Mantoloking seeks to establish a municipal enforcement agency for enforcement of the Uniform Construction Code; and the Borough seeks to appoint local, county and State employees to serve as code enforcement officials.

**§ 13-1.2. Enforcing Agency Established. [Ord. No. 498 § 1; Ord. No. 558]**

There is hereby established in the Borough of Mantoloking a State Uniform Construction Code enforcing agency, consisting of a Construction Official, Building Subcode Official, Electrical Subcode Official, Plumbing Subcode Official and Fire Subcode Official, each to enforce the relevant portions of the State Uniform Construction Code. The New Jersey Department of Community Affairs shall enforce the Elevator Subcode.

**§ 13-1.3. Qualifications of Officials. [Ord. No. 498 § 2]**

Each official position created in subsection 13-1.2 shall be filled by a person qualified for such position pursuant to P.L. 1975, c. 217, as amended, and N.J.A.C. 5:23; provided that, in lieu of any particular subcode official, an on-site inspection agency may be retained by contract pursuant to N.J.A.C. 5:23-4.5(a). More than one (1) such official position may be held by the same person; provided that such person is qualified pursuant to P.L. 1975, c. 217 and N.J.A.C. 5:23 to hold each such position.

**§ 13-1.4. Appointment of Code Enforcement Officers. [Ord. No. 498 § 3; Ord. No. 558]**

The Borough may, by resolution, appoint Code Enforcement Officials, i.e. Construction, Building Subcode, Electrical Subcode, Plumbing Subcode and Fire Subcode Officials. The Department of Community Affairs is hereby appointed to serve as the Elevator Subcode Official.

**§ 13-1.5. Location of Enforcing Agency. [Ord. No. 498 § 4]**

The public shall have the right to do business with the enforcing agency at one (1) office location, except for emergencies and unforeseen or unavoidable circumstances. The office location shall be the Mantoloking Borough Hall, 202 Downer Avenue, Mantoloking, New Jersey 08738.



## **§ 13-2. Construction permit fees.**

### **§ 13-2.1. Building Subcode Fees. [Ord. No. 558; Ord. No. 563; Ord. No. 602; Ord. No. 613; Ord. No. 2014-637; Ord. No. 646-2015; Ord. No. 665-2017; Ord. No. 674-2017]**

Building Volume or Cost: The fees for new construction or alteration are as follows:

- a. Fees for new construction shall be based upon the volume of the structure. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28. The new construction fee shall be in the amount of \$0.035 per cubic foot of volume for buildings and structures of all use groups and types of construction as classified and defined in Articles 3 and 4 of the Building Subcode; except that the fee shall be \$0.035 per cubic foot of volume for use groups A-1, A-2, A-3, A-4, F-1, F-2, S-1 and S-2.

- b. Renovation/Alteration Fees

1. Minimum Fee – Any Building Technical \$75.00
2. Renovation/Alteration: \$30.00 per \$1,000.00 of cost

For the purpose of determining estimated cost, the applicant shall submit to the Construction Official such cost data as may be available produced by the architect or engineer of record, or by a recognized estimating firm, or by the contractor. A bona fide contractor's bid if available shall be submitted. The Construction Official shall make the final decision regarding estimated cost.

- c. Fees for additions shall be computed on the same basis as for new construction for the added portion.
- d. Fees for combination renovations and additions shall be computed separately in accordance with items (a) and (b) above.
- e. Fees for swimming pools shall be as follows:
  - (1) Inground \$1,000.00
  - (2) Inground with pilings \$1,500.00

### **§ 13-2.2. Plumbing Subcode Fees. [New; Ord. No. 558; Ord. No. 563; Ord. No. 602; Ord. No. 2014-637; Ord. No. 646-2015; Ord. No. 665-2017]**

Plumbing Fixtures and Equipment: The fees shall be as follows:

- a. For fixtures, pieces of equipment, hoses, bibs, vents, appliances connected to the plumbing system, and for appliances connected to the gas or oil piping system, \$20.00 for each, except as listed in paragraph b below.
- b. Per specific device for the following:
  1. Grease traps, oil separators, water cooled air conditioning units, refrigeration units, utility service connections, backflow preventers equipped with test ports (double check valve assembly, reduced pressure zone and pressure vacuum breaker backflow preventers), steam boilers, hot water boilers (excluding those for domestic water heating), gas or fuel oil piping, sewer pumps, and interceptors: \$75.00

Minimum fee: \$75.00
- c. Fuel Fired Appliances — Residential Only: \$95.00
- d. For pool heaters: \$100.00; and \$50.00 for each drain inlet.

**§ 13-2.3. Fire Protection Subcode Fees. [New; Ord. No. 558; Ord. No. 563; Ord. No. 602; Ord. No. 2014-637; Ord. No. 646-2015; Ord. No. 665-2017]**

Fees For Fire Protection and Other Hazardous Equipment. Sprinklers, standpipes, detectors (smoke and heat), pre-engineered suppression systems, gas and oil fired appliances not connected to the plumbing system, kitchen exhaust systems and flues are as follows:

- a. The fee for sprinkler heads and/or detectors shall be as follows:

1 to 10 devices	\$50.00
11 to 20 devices	\$100.00
21 to 100 devices	\$150.00
101 to 200 devices	\$250.00
More than 200 devices	\$750.00

When computing fees for heads and detectors, fees for heads and detectors shall be separate and distinct. By way of example, if there is one (1) head, and one (1) detector, a total of two (2) fees shall be assessed.

- b. The fee for each standpipe shall be: \$250.00
- c. The fee for each independent pre-engineered system shall be: \$125.00
- d. The fee for each gas or oil fired appliance shall be: \$75.00

- e. The fee for each kitchen exhaust system shall be: \$85.00
- f. The fee for the installation of fuel tanks shall be:

Capacity under 600 gallons	\$100.00
Capacity over 600 gallons	\$125.00

- g. Fee for Fire Sub-Code Review, where required: \$75.00

**§ 13-2.4. Electrical Subcode Fees. [Ord. No. 558; Ord. No. 563; Ord. No. 602; Ord. No. 2014-637; Ord. No. 646-2015; Ord. No. 665-2017]**

The fees shall be as follows:

- a. The fees for outlets (including lighting, wall switches, fluorescent fixtures, convenience receptacles or similar fixtures, and motors or devices of less than one (1) horsepower or one (1) kilowatt shall be a minimum of \$75.00, in addition to the following:

Outlets 1 to 50 devices	\$70.00
Each additional 25 devices	\$15.00

- b. The fees for service panels shall be as follows:

1 to 200 amps	\$70.00
201 to 1000 amps	\$100.00
More than 1000 amps	\$500.00

- c. The fees for transformers or generators shall be as follows:

1 kW to 10 kW	\$15.00
11 kW to 45 kW	\$50.00
46 kW to 112 kW	\$100.00
More than 112 kW	\$500.00

- d. The fee for swimming pools shall be as follows:

In-ground	\$100.00
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- e. The fee for each of the following items shall be \$15.00: electric heater, surface units, dishwasher, heat pump, hot tubs/jacuzzi, gas/oil heaters, electric dryer, hot water heater, range, commercial exhaust fans, and ovens.

- f. The fees for air conditioner feeders and disconnects shall be: \$35.00

**§ 13-2.5. Supplemental Fees. [Ord. No. 558; Ord. No. 563; Ord. No. 602; Ord. No. 2014-637; Ord. No. 646-2015]**

- a. Refundable Portion of the Plan Review Fee. The non-refundable portion of the fee for plan review shall be the 20 percent of the permit fee as set forth in this chapter for a new construction permit, renovation or alteration permit. An amended plan review shall be \$60 per hour, with a minimum fee of \$60.00.
- b. The basic construction fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and equipment, the number of electrical fixtures and devices, and the number of sprinklers, standpipes, and detectors (smoke and heat) at the unit rates provided herein plus any special fees.
- c. Certificates and Other Permits. The fees are as follows:
1. The fee for a demolition or removal permit including tanks, shall be \$200.00.
  2. The fee for a Certificate of Occupancy shall be \$150.00.
  3. The fee for a temporary certificate of occupancy shall be \$30.00, except where the full certificate of occupancy is paid at the time of the initial issuance of the temporary certificate.
  4. The fee for a renewal of a temporary certificate shall be \$25.00.
  5. For cross connections and backflow preventers that are subject to testing and require reinspection, the fee shall be \$75.00 for each device when they are tested.
  6. The fee for each construction permit issued for an asbestos abatement project shall be \$100.00.
  7. The fee for each Certificate of Occupancy issued following the successful completion of an asbestos abatement project shall be \$50.00.
  8. The fee for a permit for a lead hazard abatement project shall be \$150.00.
  9. The fee for a Lead Abatement Clearance Certificate shall be \$50.00
  10. Continued Certificate of Occupancy: \$150.00.
  11. Fee for variation as established by N.J.A.C. 5:23-2.9-2.13: \$150.00.

### **§ 13-3. Buildings unfit for human habitation.**

#### **§ 13-3.1. Definitions. [Ord. No. 187 § 1]**

As used in this section:

##### **BUILDING**

Shall mean any building, or structure, or part thereof, whether used for human habitation or otherwise, and includes any appurtenances belonging thereto or usually enjoyed therewith.

##### **OWNER**

Shall mean the holder or holders of title in fee simple.

##### **PARTIES IN INTEREST**

Shall mean all individuals, associations and corporations who have interests of record in a building and any who are in actual possession thereof.

##### **PUBLIC AUTHORITY**

Shall mean any housing authority or any officer who is in charge of any department or branch of the government of the Borough, County or State relating to health, fire, building regulations, or to other activities concerning buildings in the Borough.

##### **PUBLIC OFFICER**

Shall mean the Construction Code Official of the Borough of Mantoloking

#### **§ 13-3.2. Powers Designated. [Ord. No. 187 § 2]**

The Construction Code Official of the Borough of Mantoloking is hereby designated and appointed to exercise the powers prescribed by this section.

#### **§ 13-3.3. Complaints; Notice of Hearing. [Ord. No. 187 § 3]**

Whenever a petition is filed with the Public Officer by a public authority or by at least five (5) residents of the Borough charging that any building is unfit for human habitation or occupancy or use or whenever it appears to the Public Officer on his own motion that any building is unfit for human habitation or occupancy or use, the Public Officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such building a complaint stating the charges in that respect and containing a notice that a hearing will be held before the Public Officer, or his designated agent, at a place therein fixed not less than ten (10) days nor more than thirty (30) days after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in the courts shall not be controlling in hearings before the Public Officer.

#### **§ 13-3.4. Order of Public Officer. [Ord. No. 187 § 4]**

If, after such notice and hearing, the Public Officer determines that the building under consideration is unfit for human habitation or occupancy or use, he shall state in writing his findings of fact in support of such determination and shall issue and cause to be served upon the owner thereof and parties in interest an order:

- a. Requiring the repair, alteration or improvement of the building to be made by the owner within a reasonable time, which time shall be set forth in the order or, at the option of the owner, to vacate or have the building vacated and closed within the times set forth in the order; and
- b. If the building is in such a condition as to make it dangerous to the health and safety of persons on or near the premises, and the owner fails to repair, alter or improve the building within the time specified in the order, then the owner shall be required to remove or demolish the building within a reasonable time as specified in the order of removal.

#### **§ 13-3.5. Failure to Comply with Order of Public Officer. [Ord. No. 187 § 5]**

If the owner fails to comply with an order to repair, alter or improve or, at the option of the owner, to vacate and close the building, the Public Officer may cause such building to be repaired, altered or improved, or to be vacated and closed; and the Public Officer may cause to be posted on the main entrance of any building so closed a placard with the following words: "This building is unfit for human habitation or occupancy or use; the use or occupation of this building is prohibited and unlawful."

#### **§ 13-3.6. Public Officer to Act. [Ord. No. 187 § 6]**

If the owner fails to comply with an order to remove or demolish the building, the Public Officer may cause such building to be removed or demolished or may contract for the removal or demolition thereof after advertisement for, and receipt of, bids therefor.

#### **§ 13-3.7. Charges to Become a Lien. [Ord. No. 187 § 7]**

All costs to the Borough to enforce this Chapter shall become municipal liens against the real property upon which the costs were incurred in accordance with the provisions of N.J.S.A. 40:48-2.5(f). These costs include, but are not limited to:

- a. The cost of the filing of legal papers, expert witnesses' fees, search fees and advertising charges, incurred in the course of any proceeding taken under this act determined in favor of the Borough; and
- b. Such cost of such repairs, alterations or improvements, or vacating and closing, or removal or demolition, if any, or the amount of the balance thereof remaining after deduction of the sum, if any, realized from the sale of materials derived from such building or from any

contract for removal or demolition thereof, shall be a Borough lien against the real property upon which such cost was incurred. If the building is removed or demolished by the Public Officer, he shall sell the materials of such building. There shall be credited against the cost of the removal or demolition the proceeds of any sale of materials or any sum derived from any contract for the removal or demolition of the building. If there are no such credits or if the sum total of such costs exceeds the total of credits, a detailed statement of the costs and the amount due shall be filed with the Borough Tax Assessor and a copy thereof shall be forwarded to the owner by certified mail. If the total of the credits exceeds such costs, the balance remaining shall be deposited in the Superior Court by the Public Officer, shall be secured in such manner as may be directed by the Court, and shall be disbursed according to the Order or Judgment of the Court to the persons found to be entitled thereto by final Order or Judgment of such Court; provided, however, that nothing in this section shall be construed to impair or limit in any way the power of the Borough to define and declare nuisances and to cause their removal or abatement by summary proceedings or otherwise. Any owner or party in interest may, within sixty (60) days from the date of the filing of the lien certificate, proceed in a summary manner in the Superior Court to contest the reasonableness of the accuracy of the costs set forth in the Borough lien certificate.

**§ 13-3.8. Conditions Causing Danger to Health or Safety. [Ord. No. 187 § 8]**

The Public Officer may determine that a building is unfit for human habitation or occupancy or use if he finds that conditions exist in such building which are dangerous or injurious to the health or safety of the occupants of such building, the occupants of neighboring buildings or other residents of the Borough; such conditions may include the following (without limiting the generality of the foregoing): defects therein increasing the hazards of fire, accident, or other calamities; lack of adequate ventilation, light, or sanitary facilities; dilapidation; disrepair, structural defects; uncleanness, disease, rodent infestation and other hazards to health or safety.

**§ 13-3.9. Service of Complaints. [Ord. No. 187 § 9]**

Complaints or orders issued by a Public Officer pursuant to this section shall be served upon the owner or parties in interest either personally or by certified mail; but, if the whereabouts of such persons is unknown and the same cannot be ascertained by the Public Officer in the exercise of reasonable diligence, then the Public Officer shall make an affidavit to that effect. The serving of such complaint or order upon such persons may be made by publishing the same once each week for two (2) successive weeks in a newspaper printed and published in the Borough, or, in the absence of such newspaper, in one printed and published in the County and circulating in the Borough. A copy of such complaint or order shall be posted in a conspicuous place on premises affected by the complaint or order. A copy of such complaint or order shall be duly recorded or lodged for record with the County Recording Officer.

**§ 13-3.10. Grievance Procedure. [Ord. No. 187 § 10]**

Any person aggrieved by an order issued by a Public Officer under this act may, within sixty (60) days after the posting and service of such order, bring an action for injunctive relief to restrain the Public Officer from carrying out the provisions of the order and for any other appropriate relief. The Court may proceed in the action in a summary manner or otherwise. The remedy herein provided shall be exclusive, and no person affected by an order of the Public Officer shall be entitled to recover any damages for action taken pursuant thereto, or because of noncompliance by any person with any order of the Public Officer.

**§ 13-3.11. Powers of Public Officer. [Ord. No. 187 § 11]**

The Public Officer shall also be authorized to exercise such powers as may be necessary to carry out and effectuate the purposes and provisions of this section:

- a. To investigate the condition of the buildings in the Borough in order to determine which buildings therein are unfit for human habitation or occupancy or use;
- b. To administer oaths, affirmations, examine witnesses and receive evidence;
- c. To appoint and fix the duties of such officers, agents and employees as he deems necessary to carry out the purposes of the section; and
- d. To delegate any of his functions and powers under this section to such officers and agents as he may designate.

**§ 13-3.12. Annual Budget of Costs. [Ord. No. 187 § 12]**

Annually, the Enforcing Agency as defined within Section 13-1.2 shall submit to the Borough Council an estimate of the expenses or costs to provide the equipment, personnel and supplies necessary for periodic examinations and investigation of the buildings in the Borough for the purpose of determining the fitness of such buildings for human habitation or occupancy or use and for the enforcement and administration of this section.

**§ 13-3.13. Powers not Abrogated. [Ord. No. 187 § 13]**

Nothing in this section shall be construed to abrogate the powers of the Courts or any Borough Department to enforce any provisions of its Code or other Borough ordinances or regulations, nor to prevent or punish violations thereof; and the powers conferred by this section shall be in addition and supplemental to the powers conferred by any other law.



#### **§ 13-4. Numbering of buildings.**

##### **§ 13-4.1. Display of Street Address Number. [Ord. No. 325 § 1]**

- a. The owner or occupant of each improved property within the Borough shall clearly affix legible identification numerals displaying the street address number of the property at such location upon the lot as will be readily visible and legible from the adjacent curblane.
- b. The placement elevation of the identification numerals shall be not less than two (2) feet or greater than eight (8) feet above the immediately adjoining finished grade elevation of the property.
- c. Numerals shall be not less than two (2) inches in height and shall be contrasting in color to the surface upon which they are affixed.
- d. Any owner or occupant who violates any provisions of this section shall, upon conviction, be liable for the penalty stated below in Section 13-5. Each day of the violation, after notice, shall constitute a separate offense.
- e. This section shall be enforced by members of the Police Department, the Land Use Officer or upon complaint of any resident.

##### **§ 13-5. Violations and Penalties.**

Any person violating this Chapter, upon conviction thereof, shall be punished by a fine not exceeding two thousand (\$2,000.00) dollars per day or by imprisonment in the county jail for a term not exceeding ninety (90) days, or both. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

## **Chapter 14**

### **FEEES AND APPLICATIONS; SOLICITATION**

#### **Table of Contents**

- §14-1                      **Fees for Borough Documents**
- §14-2                      **Fees for Police Records; Discovery**
- §14-3                      **Door to Door Commercial Solicitation**
- §14-4                      **Charitable Solicitation Permitted on State Highway**
- §14-5                      **Filming**

#### **§14-1. Fees for Borough Documents.**

Requests to the Borough for certified documentation or tax/assessment searches shall result in the following fee:

- |                                   |      |
|-----------------------------------|------|
| a. Certified Birth Certificate    | \$10 |
| b. Certified Death Certificate    | \$10 |
| c. Certified Marriage Certificate | \$10 |
| d. Certified Property Owner List  | \$10 |
| e. Property Tax/Assessment Search | \$10 |

Requests for letter/legal size printed documentation shall be assessed a fee based on the size of the response (*i.e.* \$0.05 per letter size page, and \$0.07 per legal size page). Records supplied in another medium, such as CDs, DVDs, thumb drives, large maps and plans, and other materials shall be charged at the actual cost of duplication. Mantoloking flags and magnets may be purchased for actual cost, when available.

## **§14-2. Fees for Police Records and Requests; Police Discovery.**

### **§14-2.1 Discovery.**

Requests for discovery shall be assessed a fee based on the size of the response (*i.e.* \$0.05 per letter size page, and \$0.07 per legal size page). When body-worn camera/police camera footage is requested, all videos shall be reviewed for possible redaction. Requests of body-worn/vehicle camera footage with run-times of less than one and one-half (1.5) hours shall be provided free of charge. Requests that exceed the aforementioned amount shall be assessed a fee of \$47.00 per hour of review for redaction purposes. For every one (1) hour of camera footage requested, it shall be assumed that six (6) hours were required to review the footage for redaction purposes. Redactions shall be billed in .5 hour increments.

### **§14-2.2. Police Reports.**

Police reports, including traffic accident reports, shall be assessed a fee based on the following rates:

- a. first page to tenth page: \$0.75 per page;
- b. eleventh page to twentieth page: \$0.50 per page;
- c. all pages over 20: \$0.25 per page.

For police accident reports not requested in person and not part of Municipal Court discovery, an additional fee of \$5 for the first three pages and \$1 per page thereafter to cover the administrative costs of the report shall be assessed.

### **§ 14-3. Door to Door Commercial Solicitation.**

#### **§ 14-3.1. Statement of Purpose.**

It is the purpose of this section to protect the safety of residents of the Borough of Mantoloking, to prevent fraud from being perpetrated upon them and to protect their privacy, while balancing such interests against the opportunity for commercial, political, religious, charitable, and nonprofit organizations to exercise their rights of free speech.

#### **§ 14-3.2. Definitions.**

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

**APPLICANT** — Shall mean a person or entity seeking to obtain a permit for solicitation from the Borough of Mantoloking.

**BOROUGH** — Shall mean the Borough of Mantoloking, Ocean County, New Jersey.

**EMPLOYER** — Shall mean any individual or entity providing compensation, in any form whatsoever, to an individual engaged in solicitation within the Borough of Mantoloking.

**PEDDLER** — Shall mean the person and/or entity engaged in the act of peddling.

**PEDDLING** — Shall mean the act of vending merchandise or food while in a vehicle or on foot within the public right-of-way.

**PERMIT** — Shall mean a permit for solicitation issued by the Borough of Mantoloking pursuant to the provisions of this section.

**SOLICITATION** — Shall mean to go in or upon private property in the Borough without having been invited to do so by the owner or occupant, for the purpose of (1) advertising, promoting, or selling any product, goods, or service; or (2) conducting market research or a market or opinion survey regarding commercial products or services. By way of illustration and not of limitation, solicitors shall include peddlers, hawkers, itinerant merchants and transient vendors of goods or services. Solicitation shall also include the placement upon private property of handbills or other written material advertising goods or services for sale. Solicitation shall also include the sale of goods or services which the solicitor promises to donate or deliver to a charitable or other nonprofit institution on behalf of the purchaser. Solicitation shall not include the entry upon private property without prior invitation of the owner or occupant by any person representing an entity which (1) qualifies for tax-exempt status under the Internal Revenue Code; (2) qualifies for exemption from property tax under N.J.S.A. 54:4-3.6; (3) qualifies for exemption from sales tax under N.J.S.A. 54:32B-9; or (4) was created under or is otherwise subject to the provisions of Title 15A of the New Jersey Statutes.

#### **§ 14-3.3. Permit Required.**

No person or entity shall engage in solicitation or peddling within the Borough without first having obtained a permit pursuant to the provisions of this section. Failure to obtain a permit prior to solicitation shall constitute a violation of this section. Each day of solicitation or peddling without a valid permit shall constitute a separate violation of this section.

#### **§ 14-3.4. Exemptions.**

Door to door canvassing, solicitation, campaigning, advocacy, education, proselytizing, handbill distribution, or other entry upon private property by individuals representing any entity which (1) qualifies for tax-exempt status under the Internal Revenue Code; (2) qualifies for exemption from property tax under N.J.S.A. 54:4-3.6; (3) qualifies for exemption from sales tax under N.J.S.A. 54:32B-9; (4) was created under or is otherwise subject to the provisions of Title 15A of the New Jersey Statutes, shall be exempt from the provisions of this section. Individuals selling fruits and farm products by him/herself without the help of others are also exempt from this section. Solicitation of donations by any such organizations shall not constitute solicitation as defined in this section. Individuals representing such organizations may request a copy of the Borough's "Do Not Solicit" list for their information, but no penalties shall be imposed if they enter in or upon a property identified on the "Do Not Solicit" list or a property which has posted a "No Solicitation" sign.

#### **§ 14-3.5. Application for Permit.**

- a. Any person seeking to engage in solicitation within the Borough shall apply to the Borough Police Department for a solicitation permit.
- b. An applicant for a solicitation permit shall be required to provide the following information in writing:
  1. The name of each individual who will engage in solicitation within the Borough;
  2. The present address of each individual who will engage in solicitation within the Borough;
  3. As to each such individual, whether the individual has ever been convicted of a crime, and if so, the nature of the conviction, where convicted, the date of conviction, and the penalty imposed;
  4. The employer or organization for which solicitation will be made;
  5. The address of the employer or organization;
  6. The telephone number of the employer or organization;
  7. The name of a contact person at the offices of the employer or organization;
  8. The type of goods or services to be sold, or the type of survey or research to be conducted;
  9. As to any vehicle to be used by the applicant, the make, model, year, color and license plate information of the vehicle; and
  10. The expected dates of solicitation within the Borough.
- c. An applicant for a solicitation permit shall also be required to produce photo identification, which the Borough Police will photocopy and attach to the application form.
- d. The application form shall be signed by the applicant, under penalty of perjury.
- e. Application forms, including photographic identification, shall be retained by the Borough Police Department.

- f. There shall be no fee for a solicitation permit.
- g. Misrepresentation, false statements, or failure to disclose information on the solicitation permit application form shall constitute a violation of this section.

#### **§ 14-3.5.1. Application for Peddling Permit.**

Any person or entity seeking to engage in peddling shall apply to the Police Department for issuance of a peddler-peddling permit. The information to be provided by the applicant shall be as set forth above. Each individual applicant shall pay the sum of fifty (\$50.00) dollars as a nonrefundable application fee.

#### **§ 14-3.6. Issuance of Solicitation Permit.**

The Chief of Police or, in his absence, the officer in charge of the Police Department shall issue a permit upon completion of solicitation permit application form. A permit shall be issued to any and all applicants who complete the application form and provide photo identification. A separate permit shall be issued to each individual who engages in solicitation within the Borough. The permit shall be signed by the Chief of Police or, in his absence, the officer in charge of the Police Department. The permit shall state the name of the individual, the business or organization for which solicitation is made, and the date the permit was issued.

#### **§ 14-3.6.1. Issuance of Peddler Permit.**

The Chief of Police or, in his absence, the officer in charge, shall issue a permit upon presentation of a complete application, the application fee and a satisfactory criminal background investigation concerning each applicant. a record of conviction of crimes of moral turpitude shall constitute grounds for refusal of issuance of a permit. Any applicant may appeal such denial by application to the Governing Body within ten (10) days of receipt of notice of denial.

#### **§ 14-3.7. Carrying and Displaying Solicitation Permit.**

Each individual engaging in solicitation within the Borough shall carry the permit issued to him upon his person at all times while soliciting within the Borough, and shall produce the permit if requested to do so by the Police or any resident. Failure to carry the permit during solicitation shall constitute a violation of this section.

#### **§ 14-3.7.1. Carry and Display of Peddler Permit.**

Each permitted peddler shall carry the permit while engaged in the Borough and shall display the same upon request of any officer or resident.

#### **§ 14-3.8. Expiration of Solicitation Permits; Time Limits on Solicitation.**

- a. A solicitation permit shall be effective for three (3) months after the date it is issued, except for any permit issued pursuant to §4-2, which shall only be valid for two (2) consecutive days. Solicitation without a valid permit in effect shall constitute a violation of this section.

- b. Solicitation shall take place within the Borough only between the hours of 9:00 a.m. and 9:00 p.m. except for religious and educational organizations. Solicitors are encouraged to wear reflective clothing and/or to carry flashlights if soliciting after dark.

#### **§ 14-3.8.1. Expiration of Peddling Permits.**

All peddling permits shall expire on November 30th of each year. The day of issuance is the start date for the permit.

#### **§ 14-3.9. "Do Not Solicit" List.**

- a. Notwithstanding the provisions of any other subsection of this section, any person or entity owning property within the Borough may register such property on a "Do Not Solicit" list.
- b. Registration for the "Do Not Solicit" list shall be made as follows:
  - 1. The "Do Not Solicit" list shall be maintained by the Borough Police Department.
  - 2. It shall consist solely of property addresses, and shall include no further identifying information concerning the ownership of each property.
  - 3. The Borough Tax Assessor shall notify the Police Department of any change in ownership of property within the Borough. The Police Department shall remove from the "Do Not Solicit" list any property which has changed ownership.
- c. The Chief of Police or, in his absence, the Officer in charge of the Department, shall provide a copy of the "Do Not Solicit" list to each and every applicant to whom a permit is issued pursuant to this section. Upon request, the Chief of Police or his or her alternate shall also make available a copy of the "Do Not Solicit" list to any individual or entity otherwise exempt from the provisions of this section which intends to engage in door to door canvassing, solicitation, campaigning, advocacy, education, proselytizing, or handbill distribution.
- d. Solicitation at any address identified on the "Do Not Solicit" list shall constitute a violation of this section. Each and every solicitation at an address identified on the "Do Not Solicit" list shall constitute a separate violation of this section.

#### **§ 14-3.10. "No Solicitation" Signs.**

- a. In addition to registration of private property on the Borough's "Do Not Solicit" list, any person or entity owning property within the Borough may place on such property a sign indicating that the owners or occupants do not wish to be disturbed by solicitation.
- b. A "No Solicitation" sign shall not exceed two and one half (2.5) square feet in area.
- c. A resident shall be permitted to post a "No Solicitation" sign in addition to the number and types of signs permitted under the Borough's Land Use Ordinance.
- d. Solicitation at any address at which a "No Solicitation" sign is posted shall constitute a violation of this section. Each and every solicitation at a property at which a "No Solicitation" sign is posted by anyone not exempt shall constitute a separate violation of the section.

#### **§ 14-4. Charitable solicitation permitted on state highway.**

##### **§ 14-4.1. Approval by Borough Council.**

The Borough Council of the Borough of Mantoloking hereby approves the solicitation of contributions by the approved charitable organizations in the right-of-way of State Highway 35 subject to the organization's application for and receipt of a Charitable Solicitation Permit from the State Department of Transportation.

##### **§ 14-4.2. Supervision of Solicitation.**

The Police Department of the Borough of Mantoloking will be responsible for supervision of the solicitation and enforcement of the terms of any Charitable Solicitation Permit which may be issued.

##### **§14-4.3. General Conditions.**

All approved charitable solicitations shall be conducted in accordance with N.J.S.A. 39:4-60 and the regulations promulgated thereunder (presently codified at N.J.A.C. 16:40-1.1 et seq.) and including the following:

- a. Solicitation shall be subject to the specific terms and conditions of each permit granted. Such permit shall be in possession of the solicitor during all times of solicitation and shall be available for inspection by the Police Department and/or other officials upon request.
- b. No person shall solicit charitable contributions on a state highway or intersection thereof without approval from the New Jersey Department of Transportation (NJDOT), via the issuance of a charitable solicitation permit. Such permit shall be in the possession of the solicitor during all times of solicitation and be available for inspection by local, county and state police enforcement personnel.
- c. Solicitation shall not stop traffic or impede the flow of traffic. Traffic shall already be stopped before solicitation may occur and shall cease while traffic is moving. Use of flagman shall be prohibited.
- d. The solicitor shall not install any traffic control devices.
- e. Signage shall be in accordance with NJDOT regulations.
- f. All solicitors shall wear safety vests that are in accordance with NJDOT standards.
- g. Each person soliciting charitable contributions on behalf of the charitable organization shall be at least 18 years of age.
- h. Solicitors shall not drink alcoholic beverages, use drugs or be under the influence of drugs or alcohol when soliciting. Solicitors shall not harass the public.
- i. Solicitation shall be permitted in the right-of-way, but encouraged to be off the traveled way.



- j. The charitable organization shall be responsible for cleaning up any debris resulting from the solicitation activity, including trash or debris in the right-of-way.
- k. The Police Department shall be responsible for supervising solicitation activity and enforcing the terms of the solicitation permits. The Police Department may suspend solicitation operations at any time if the permit is violated or if, in the police officer's sole discretion, traffic is being impeded or delayed or the public safety is at risk.
- l. The Borough shall not be liable in any civil action for damages for property damage or personal injury resulting from any accident arising out of or in the course of solicitations.
- m. No more than two permits per calendar year shall be issued to a charitable organization for solicitation under this chapter, limited to no more than one permit per calendar month shall be issued to any charitable organization for solicitation under this chapter.

## **§ 14-5. Filming.**

### **§14-5.1. Definitions.**

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

**FILMING** — Shall mean the taking of still or motion pictures either on film, videotape or similar recording medium, for commercial or educational purposes intended for viewing on television, in theaters or for institutional uses or advertising purposes. Filming includes all rehearsals, preparations, assembly and dismantling of all equipment and structures, including but not limited to scaffolding, lights, backdrops, tools and food, and the loading and unloading of vehicles containing the equipment, structures and food.

**NEWS STORIES** — Shall mean the reporting or summarizing of information concerning something that has either recently taken place or of current events of general interest and includes such features commonly known as newscasts, news bulletins and news anthology programs.

**NONPROFIT APPLICANT** — Shall mean any charitable, religious or other organization qualifying pursuant to Sec. 501(c)(3) of the Internal Revenue Code or its successor.

**PUBLIC LANDS** — Shall mean any and every public street, highway, sidewalk, square, public park, beach or playground or any other public place within the Borough which is within the jurisdiction and control of the Borough of Mantoloking.

### **§ 14-5.2. Permit Required.**

- a. No person or organization shall film or permit filming on public or private land within the Borough of Mantoloking without first having obtained a permit from the office of the Borough Clerk, which permit shall set forth the approved location of such filming and the approved duration of such filming by specific reference to day or dates. No permit shall authorize filming for more than three (3) consecutive days in any one (1) location and in no event shall filming at one (1) location within the Borough exceed a total of six (6) days in any one (1) calendar year, regardless of the number of permits utilized in reaching this six (6) day maximum. Said permit must be readily available for inspection by Borough officials at all times at the site of the filming. A separate permit and applicable fees are required for each location.
- b. All permits shall be applied for and obtained from the Office of the Borough Clerk during normal business hours. Applications for such permits shall be in a form approved by the Borough Clerk and be accompanied by a permit fee and all other pertinent fees in the amounts established by this section in subsection 14-3.12 herein.
- c. A permit shall be sufficient to authorize outdoor or indoor filming within the defined period of time only. If a permit is issued and, due to inclement weather or other good cause, filming does not in fact take place on the dates specified, the Borough Clerk may, at the request of the applicant, issue a new permit for filming on other dates subject to full compliance with all other provisions of this section. No additional fee shall be paid for this permit.

### **§ 14-5.3. Issuance of Permits.**

- a. No permits will be issued by the Borough Clerk unless applied for not less than fourteen (14) days before the requested shooting date; provided, however, that the Borough Clerk may waive the

fourteen (14) day period if, in his judgment, the applicant has complied with all the requirements of this section.

- b. No permit shall be issued for filming upon public lands unless the applicant shall provide the Borough Clerk with satisfactory proof of the following:

1. Proof of insurance coverage as follows:
  - (a) For bodily injury to any one (1) person in the amount of one million (\$1,000,000.00) dollars and any occurrence in the aggregate amount of two million (\$2,000,000.00) dollars.
  - (b) For property damage of not less than five hundred thousand (\$500,000.00) dollars per incident and in the aggregate amount of one million (\$1,000,000.00) dollars.
2. An agreement, in writing, whereby the applicant agrees to indemnify and save harmless the Borough of Mantoloking from any and all liability, expense, claim or damages resulting from the use of public lands.
3. Agrees in writing to reimburse the Borough of Mantoloking for any lost revenue, such as parking meter revenue, repairs to public property and other revenue the Borough was prevented from earning because of the filming.
4. The posting of cash of five hundred (\$500.00) dollars or a maintenance bond of one thousand (\$1,000.00) dollars in favor of the Borough for protecting and insuring that the location utilized will be left after filming in a satisfactory condition (free of debris, rubbish and equipment) and that all Borough ordinances, laws and regulations will be followed. Within seven (7) days of the completion of the filming, the Borough will return the bond if there has been no damage to public property or public expense caused by the filming.
5. Proof of the hiring by the applicant of a Mantoloking Police Officer for the times indicated on the permit if required by the Borough Clerk upon recommendation from the Police Chief.
6. Written consent of all title owners and occupants (if different than title owners) of any private property upon which filming is proposed.
7. Agrees in writing to comply with all lawful directives issued by the Borough of Mantoloking Police Department, Fire Department, or Code Enforcement Department and to reimburse the Borough for any Police, Fire or other Borough personnel.
8. Provide notice to property owners of properties located, and occupants residing (if different than the property owners), within two hundred (200) feet of the property lines of the premises for which a permit is requested as measured along public streets. Such notice shall be in writing and shall advise the property owners and occupants of the date or dates upon which filming is proposed to take place and the location of the premises where the filming is to take place. Such notice shall either be personally served or serviced via Certified Mail Return Receipt Requested upon the property owners and occupants entitled to receive notice at least seven (7) days prior to the commencement of filming. Service by Certified Mail Return Receipt Requested shall be deemed complete upon the receipt of such mail by the property owners and occupants. Upon written request by the applicant the Borough shall, within seventy-two (72) hours, make and

certify a list from the current tax duplicates of the addresses of the property located within the Borough of Mantoloking within two hundred (200) feet of the property lines of the premises for which a permit is requested together with the names and addresses of the record owners thereof. Notice to owners and occupants of properties in adjoining municipalities shall be given by personal service or by Certified Mail Return Receipt Requested to the Clerk of such adjoining municipality. Prior to commencing filming the applicant shall file with the Borough Clerk an affidavit of proof of service in accordance herewith or the Borough Clerk shall be authorized to revoke the permit until compliance is made.

- c. The holder of the permit shall take all reasonable steps to minimize interference with the free passage of pedestrians and traffic over public lands and shall comply with all lawful directives issued by the Mantoloking Police Department with respect thereto.

#### **§ 14-5.4. Interference with Public Activity; Notice of Filming.**

- a. The holder of a permit shall conduct filming in such a manner as to minimize the inconvenience or discomfort to adjoining property owners attributable to such filming and shall, to the extent practicable, abate noise and park vehicles associated with such filming off the public streets.
- b. The holder shall avoid any interference with previously scheduled activities upon public lands and limit, to the extent possible, any interference with normal public activity on such public lands.
- c. The holder of a permit shall take all reasonable steps to minimize the creation and spread of debris and rubbish during filming and shall be responsible for removing all equipment, debris and other rubbish from the filming location upon the completion of filming or the expiration of the permit, whichever comes first.
- d. The holder of a permit shall not conduct filming in such a manner as to preclude or impede access to adjoining properties from a public street or to encroach upon adjoining property without the express written consent from the owner and occupant (if different than the owner) thereof.
- e. The holder of a permit shall not permit any lights used in connection with the filming to shine directly into any windows upon any other property nor permit any noise, in excess of the limitation specified in the Borough's Noise Ordinance, to extend across property lines. In the event of a violation hereof the Borough may abate the violation and charge the cost thereof and penalty therefor to the applicant who shall reimburse the Borough for same.

#### **§ 14-5.5. Filming in Residential Zones; Parking.**

Filming in residential zones shall be permitted Monday through Friday between the hours of 8:00 a.m. and 7:00 p.m. or sundown, whichever is earlier, except as set forth in subsection 14-3.8. The setup, production and breakdown required for all filming shall be included in the hours as set forth herein. Automobiles, trucks and all other vehicles owned, leased or used by the applicant for filming in either public or private property in the Borough of Mantoloking shall be parked, if at all possible, off the public streets, and in any event shall not be parked on more than one (1) side of the street as directed by the Police Chief or his designee and shall be parked in such a manner as to permit the unimpeded flow of public traffic. Vehicles parked in violation hereof may be towed by the Borough of Mantoloking and the cost thereof shall be reimbursed to the Borough by the applicant.

#### **§ 14-5.6. Refusal to Issue Permit; Employment of Patrolmen and Electrician.**

- a. The Borough Clerk may refuse to issue a permit whenever he determines, on the basis of objective facts and after a review of the application and a report thereon by the Police Department and by other Borough agencies involved with the proposed filming site, that filming at the location and/or the time set forth in the application would violate any law or ordinance or would unreasonably interfere with the public's use of public lands, unreasonably impede the free flow of vehicular or pedestrian traffic or otherwise endanger the public's health, safety or welfare.
- b. Further, the Borough reserves the right to require one (1) or more on-site Police Officers in situations where the proposed production may impede the proper flow of traffic, the cost of said Police Officers to be borne by the applicant as a cost of production. Where existing electrical power lines are to be utilized by the production, an on-site licensed electrician may be similarly required if the production company does not have a licensed electrician on staff.

#### **§ 14-5.7. Appeals.**

- a. Any person aggrieved by a decision of the Borough Clerk denying or revoking a permit or a person requesting relief pursuant to subsection 14-3.8 may appeal to the Borough Council. A written notice of appeal setting forth the reasons for the appeal shall be filed with the Borough Clerk.
- b. An appeal from the decision of the Borough Clerk shall be filed within ten (10) days of the Clerk's decision. The Borough Council shall set the matter down for a hearing within thirty (30) days of the day on which the notice of appeal was filed. The decision of the Borough Council shall be in the form of a resolution supporting the decision of the Borough Clerk at the first regularly scheduled public meeting of the Borough Council after the hearing on the appeal, unless the appellant agrees in writing to a later date for the decision. If such a resolution is not adopted within the time required, the decision of the Borough Clerk shall be deemed to be reversed, and a permit shall be issued in conformity with the application or the relief pursuant to subsection 14-3.8 shall be deemed denied.

#### **§ 14-5.8. Waiver of Requirements of Section by Borough Clerk.**

- a. The Borough Clerk may authorize filming other than during the hours herein described. In determining whether to allow an extension of hours under this section, the Clerk shall consider the following factors: Traffic congestion at the location caused by vehicles to be parked on the public street.
- b. Applicant's ability to remove film-related vehicles off the public streets.
- c. When the applicant is requesting restrictions on the use of public streets or public parking during the course of the filming.
- d. Nature of the film shoot itself; e.g. indoor or outdoors; day or night; on public or private lands.
- e. Prior experience of the film company/applicant with the Borough, if any.
- f. Whether a permit may be issued without endangering the public's health, safety and welfare.

#### **§ 14-5.9. Copies of Permit; Inspections.**

Copies of the approved permit will be sent to the Borough of Mantoloking Police and Fire Departments before filming takes place. The applicant shall notify the Borough of Mantoloking Fire Chief and Police Chief no later than seventy-two (72) hours before filming takes place and shall permit the Fire and/or Police Chiefs or their designees to inspect the site and the equipment to be used and to take such other measures as may be necessary to protect the public health, safety or welfare. The applicant, and all its employees, subcontractors, agents, etc. shall comply with all fire safety instructions by the Fire Chief or his designee. The applicant, and all its employees, subcontractors, agents, etc. shall comply with all safety instructions by the Police Chief or his designee.

#### **§ 14-5.10. Reimbursement of Certain Costs. [Ord. No. 559 § 10]**

In addition to any other fees or costs mentioned in this section, the applicant shall reimburse the Borough for any lost revenue, such as parking meter revenue, repairs to public property or other revenues that the Borough was prevented from earning because of filming.

#### **§ 14-5.11. Fees.**

The schedule of fees for the issuance of permits authorized by this section are as follows:

- a. Basic Filming Permit: three hundred (\$300.00) dollars.
- b. Where an applicant requests a waiver of the provision of subsection 14-3.3a requiring expedited processing of the permit application, the basic filming permit fee shall be five hundred (\$500.00) dollars.
- c. A permit fee of seven hundred fifty (\$750.00) dollars for filming on public land within the Borough of Mantoloking.
- d. Daily filming fee for each day of filming pursuant to any permit issued: seven hundred fifty (\$750.00) dollars per day (which shall be waived for nonprofit applicants filming for educational, documentary or an activity sponsored by a not-for-profit purposes). Student filmmakers who are able to provide a valid student ID shall be exempt from daily filming fees.

#### **§ 14-5.12. Violations and Penalties.**

Where the owner of the premises is not the applicant for a permit required by this Chapter, both the owner and the applicant shall each be liable for violations hereof. Any person violating this section or these rules and regulations, upon conviction thereof, shall be punished by a fine not exceeding two thousand (\$2,000.00) dollars per day or by imprisonment in the county jail for a term not exceeding ninety (90) days, or both. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

### **§ 14-5.13. Exemptions.**

The provisions of this section regarding requirement for and issuance of a permit shall not apply to the filming or reporting of news stories within the Borough of Mantoloking, however such filming shall nevertheless comply with the following restrictions:

- a. Filming in residential zones shall be permitted Monday through Friday between the hours of 8:00 a.m. and 7:00 p.m. or sundown, whichever is earlier.
- b. Such filming shall be conducted in such a manner as to minimize the inconvenience or discomfort to adjoining property owners or the interference with previously scheduled activities or the normal public activities upon public lands.
- c. Such filming shall be conducted so as to minimize the creation and spread of debris and rubbish during filming and, upon the completion of the filming, those conducting the filming shall remove all equipment, debris and other rubbish from the filming location.
- d. To the extent practical, advance notification of such filming shall be furnished to the Borough Clerk.
- e. Such filming shall be conducted in such a manner as not to preclude access to adjoining properties from the public street or to encroach upon adjoining property without the express written consent from the owner and occupant thereof.
- f. Such filming shall comply with all lawful directives issued by the Borough of Mantoloking Police, Fire or Code Enforcement Officers and officials.
- g. Automobiles, trucks and all other vehicles owned, leased or used by the applicant for filming in either public or private property in the Borough of Mantoloking shall not be parked on more than one (1) side of the street as directed by the Police Chief or his designee and shall be parked in such a manner as to permit the unimpeded flow of public traffic. Vehicles parked in violation hereof may be towed by the Borough of Mantoloking and the cost thereof shall be reimbursed to the Borough by the applicant.
- h. Lights used in connection with the filming shall not shine directly into any windows upon any other property nor shall any noise, in excess of the limitation specified in the Borough's Noise Ordinance, extend across property lines.

## **Chapter 15**

### **PROPERTY MAINTENANCE**

#### **Table of Contents**

- §15-1      **Adoption of International Property Maintenance Code.**
- §15-2      **Grass, Weeds, Trees, and Shrubs**
- §15-3      **Abandoned and Vacant Properties; Purpose**
- §15-4      **Violations and penalties.**





## **§ 15-1. Adoption of the International Property Maintenance Code.**

### **§ 15-1.1. Adoption of Standards by Reference. [Ord. No. 677-2018]**

Chapters 1, 2 and 3 of the 2015 International Property Maintenance Code, together with any subsequent amendment, change or supplement thereto, is adopted and incorporated as fully as if set out at length herein, save and except such portions as are hereinafter deleted, modified or amended, if any, prescribed in Subsection 15-1.2.

### **§ 15-1.2. Changes, Additions and Exceptions. [Ord. No. 677-2018]**

The changes, additions and exceptions elective in this municipality to said code are as follows (section references hereinafter set forth are to sections as set forth in said International Property Maintenance Code):

- a. Section PM-101.1 (page 1, second line): insert "Borough of Mantoloking."
- b. Section PM-102.3 is deleted and replaced with, "Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the State Uniform Construction Code Act, the State Uniform Safety Act, and any other standards or procedures required by the laws of State of New Jersey and by federal law. If none are applicable, repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the International Building Code, International Fuel Gas Code, International Mechanical Code and the ICC Electrical Code."
- c. Section PM-103.1 is deleted.
- d. Section PM-103.2 is deleted and replaced with "Inspections and issuing orders in connection therewith under the provisions of the 2006 International Property Maintenance Code shall be the exclusive responsibility of the Code Enforcement Official."
- e. Section PM-103.3 is deleted.
- f. Section PM-103.5 is deleted.
- g. Section PM-106.3: replace "misdemeanor" with "ordinance."
- h. Section PM-106.4: Violations and Penalties are governed by Subsection 15-4, Violations and Penalties of the Borough Code.
- i. Section PM-109.6 is deleted.
- j. Section PM-110.3 is hereby amended and supplemented to add the following sentence to the end of said section: "The Code Official shall follow the procedures set forth in Chapter 13, Building and Housing of the Borough Code of the Borough of Mantoloking in regard to the raising, demolition and removal of the structure and placing a lien against the subject premises to recoup the costs incurred by the Borough."

- k. Sections PM-111.0 through PM-111.7 shall be deleted, and in their place inserted Sections PM-111.0 and PM-111.1, which shall provide as follows:

PM-111.1 Any person affected by decision of the Code Official of a notice or order issued under this Code shall have the right to appeal such determination to the Superior Court of the State of New Jersey in accordance with appropriate state statutes or court rules.

- l. Section PM-202.2 is hereby amended to define "Code Official" as follows:

The Code Enforcement Officer who is charged with the administration and enforcement of this Property Maintenance Code or any other duly authorized representative of the Borough of Mantoloking.

- m. Section PM-302.4 (page 11, second line): insert "10 inches."

- n. Section PM-302.8 is amended to add subsection 302.8a, Machinery.

PM-302.8a Machinery. Except as provided in other regulations, no inoperative machinery or building materials which are not in contemplation of immediate use in the construction, repair or remodeling of any house, building or other structure on the lands shall be parked, kept or stored on any premises in any Residential Zone.

#### **§ 15-1.3. Copies on File. [Ord. No. 677-2018]**

Ten (10) copies of the said code, entitled the "2006 International Property Maintenance Code," as prepared and published by the International Code Council, marked with amendments and deletions hereinabove set forth, are to be filed in the office of the Borough Clerk of the Borough of Mantoloking and shall remain on file there for use and examination by the public.

#### **§ 15-1.4. Violations and Penalties. [Ord. No. 677-2018]**

- a. Any person violating or failing to comply with any of the provisions of this section shall, upon conviction thereof, be punishable by a fine of not less than one hundred (\$100.00) dollars nor more than one thousand (\$1,000.00) dollars, by imprisonment for a term not to exceed ninety (90) days or by community service of not more than ninety (90) days, or any combination of fine, imprisonment and community service as determined in the discretion of the Municipal Court Judge except as provided for in Subsection C of this Section. The continuation of such violation for each successive day shall constitute a separate offense, and the person or persons allowing or permitting the continuation of the violation may be punished as provided above for each separate offense.
- b. The violation of any provision of this section shall be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.
- c. Penalties for Specific Offenses:
1. A violation of PM-302.4 for Grass and Noxious Weeds shall be punishable by a fine of \$79.00.
  2. A violation of PM-108.1 for unsanitary conditions shall be punishable by a fine

of \$304.00.

3. A violation of PM-302.8 for inoperative motor vehicles shall be punishable by a fine of \$150.00.
4. A violation of PM-302.8a for unused machinery shall be punishable by a fine of \$150.00.
5. A violation of PM-308.1 for accumulation of rubbish or garbage shall be punishable by a fine of \$150.00.

Final Version

## **§ 15-2. Grass, Weeds, Trees, and Shrubs**

It shall be the duty of any owner or tenant or person in possession of any lands, vacant or improved, in the Borough:

- a. To keep such lands free of brush, weeds, dead and dying trees, stumps, roots, obnoxious growths, filth, garbage, trash and debris, where the same is inimical to the preservation of public health, safety or general welfare of the Borough or which may constitute a fire hazard.
- b. Where the lands abut or border upon any public street in the Borough, to remove all grass, weeds, brush and other debris from that part of the street bordering on their respective lands.

### **§ 15-2.1. Temporary Seasonal Protection of Trees and Shrubs.**

To protect trees from deleterious weather conditions between November 15<sup>th</sup> and March 31<sup>st</sup> of the following year, protective wrapping or a protective barrier may be placed around trees and shrubs.

- a. Protective wrapping shall be of natural or synthetic burlap securely fastened by rope and/or staples or screws. Trees and shrubs may be wrapped individually or in groups.
- b. Protective barriers shall be constructed of dune fencing, wooden posts and burlap securely fastened. Protective barriers may reach a maximum height of 12 feet above ground level. Any dune fencing portion of a protective barrier is permitted only to a maximum height of 8 feet above ground level. Any portion of the protective barrier between 8 feet and 12 feet shall be solely of natural or synthetic burlap.
- c. All protective wrapping and barriers must be consistently maintained as to ensure all wrapping, posts and bracing is fully secured.
- d. No protective wrapping or protective barrier is permitted between April 1st and November 14th of any calendar year.

### **§ 15-2.2. Notice to remove.**

Wherever brush, weeds, uncut grass and/or obnoxious growths exceed 10 inches in height, or dead and dying trees, stumps, roots, obnoxious growths, filth, garbage, trash and debris are not removed, the Code Enforcement Officer shall cause 21 days' notice to be given to the owner and to the tenant of such land by registered or certified mail to their last known addresses, to cut and/or remove the same at or before the expiration of the notice period.

### **§ 15-2.3. Removal by Borough.**

In the event that the owner, tenant or person in possession of the lands in question shall refuse or neglect to abate or remedy the condition which is in violation of this chapter within 21 days after receipt of notice, the Code Enforcement Officer or their agents shall cause the same to be abated

and remedied and certify the cost thereof to the Council, which shall examine the certificate and, if found correct, cause the cost as shown thereon to be charged against the lands. The amount so charged shall forthwith become a lien upon such lands and shall be added to and become and form a part of the taxes next to be assessed and levied upon such lands, the same to bear interest at the same rate as taxes, which shall be collected and enforced by the same officer and in the same manner as taxes. Costs shall be in addition to any penalties imposed for a violation of this chapter.

#### **§ 15-2.4. Violations and penalties.**

Notwithstanding any other section of this Chapter or any other ordinance, the maximum penalty for violating any provision of this Chapter shall be, in the discretion of the Court, a fine of up to two thousand dollars (\$2,000.00) and/or imprisonment for a period of up to ninety (90) days and/or a period of community service not exceeding ninety (90) days.

The violation of any provision of this section shall be subject to abatement summarily by a restraining order or injunction issued by a court of competent jurisdiction.

### **§ 15-3. Abandoned and Vacant Properties; Purpose.**

The purpose of this article is for Borough of Mantoloking to regulate the care, maintenance, security and upkeep of the exterior of vacant or abandoned residential properties on which a summons and complaint in a foreclosure action has been filed.

#### **§ 15-3.1. Definitions. [Added 9-20-2022 by Ord. No. 735]**

As used in this article:

**ANNUAL REGISTRATION** — One year from the date of the first action that requires registration pursuant to this article, and every subsequent year that the property is still a registerable property. The date of the initial registration may be different than the date of the first action that required registration.

**CREDITOR** — A mortgagee or an agent or assignee of a mortgagee, such as the servicer, who has filed a complaint in the Superior Court seeking to foreclose upon a residential or commercial mortgage. If the entity seeking to foreclose upon the residential or commercial mortgage changes as a result of an assignment, transfer, or otherwise after the filing of the foreclosure complaint in the Superior Court, the new entity shall be deemed the creditor for purposes of this ordinance. For purposes of this ordinance, a creditor shall not include the State, a political subdivision of the State, a State, county, or local government entity, or their agent or assignee, such as the servicer.

**ENFORCEMENT OFFICER** — Any law enforcement officer, building official, zoning inspector, code enforcement officer, fire inspector, building inspector, or other person authorized by the Borough to enforce the applicable code(s).

**REGISTRABLE PROPERTY** — Any real property located in the Borough, whether vacant or occupied, that is subject to an ongoing foreclosure action by the creditor or trustee, has been the subject of a foreclosure action by a creditor, mortgagee or trustee and a judgment has been entered, or has been the subject of a foreclosure sale where the title was transferred to the beneficiary of a mortgage involved in the foreclosure and any properties transferred under a deed in lieu of foreclosure/sale. The designation of a foreclosure property as "registrable" shall remain in place until such time as the property is sold to a nonrelated bona fide purchaser in an arm's length transaction or the foreclosure action has been dismissed.

**VACANT AND ABANDONED** — In accordance with N.J.S.A. 40:48-2.12s3(b)(8), a property shall be considered vacant and abandoned if it is not legally occupied by a mortgagor or tenant, which is in such condition that it cannot be legally reoccupied, because of the presence or finding of at least two of the following:

- a. Overgrown or neglected vegetation;
- b. The accumulation of newspapers, circulars, flyers, or mail on the property;
- c. Disconnected gas, electric, or water utility services to the property;
- d. The accumulation of hazardous, noxious, or unhealthy substances or materials on the property;
- e. The accumulation of junk, litter, trash, or debris on the property;

- f. The absence of window treatments such as blinds, curtains, or shutters;
- g. The absence of furnishings and personal items;
- h. Statements of neighbors, delivery persons, or government employees indicating that the property is vacant and abandoned;
- i. Windows or entrances to the property that are boarded up or closed off, or multiple window panes that are damaged, broken, and unrepaired;
- j. Doors to the property that are smashed through, broken off, unhinged, or continuously unlocked;
- k. A risk to the health, safety, or welfare of the public or any adjoining or adjacent property owners due to acts of vandalism, loitering, criminal conduct, or the physical destruction or deterioration of the property;
- l. An uncorrected violation of a municipal building, housing, or similar code during the preceding year, or an order by municipal authorities declaring the property to be unfit for occupancy and to remain vacant and unoccupied;
- m. The creditor or other authorized party has secured or winterized the property due to the property being deemed vacant and unprotected or in danger of freezing.
- n. A written statement issued by a mortgagor expressing the clear intent of all mortgagors to abandon the property; or
- o. Any other reasonable indicia of abandonment.

**§ 15-3.2 Notice to Borough Clerk of action to foreclose; registration with Property Registration Program; fees. [Amended 9-20-2022 by Ord. No. 735]**

- a. Any creditor filing a summons and complaint in an action to foreclose real property in the Borough of Mantoloking shall, in addition to the notice provided to the municipality pursuant to N.J.S.A. 46:10B-51 or N.J.S.A. 40:48-2.12s2:
  - 1. Register the residential or commercial property with the Borough's property registration program within 10 days of filing the summons and complaint in an action to foreclose, as a property in foreclosure and, as part of that registration.
  - 2. Provide the Borough with the information regarding the creditor required by N.J.S.A. 46:10B-51 or N.J.S.A. 40:48-2.12s2.
  - 3. Provide the name of the creditor, the mailing address of the creditor, email address, telephone number and name of the representative and said person's address, email address, and telephone number, regardless of whether it is occupied or vacant.
  - 4. Identify the date the summons and complaint in an action to foreclose on a mortgage was filed against the subject property, the court in which it was filed, and the docket number of the filing; and

- i. Identify whether the property is vacant and abandoned in accordance with the definition herein under § 15-3.
  - ii. Register a separate registration for each property subject to a filing a summons and complaint in an action to foreclose real property.
- b. If there is any change in the name, address, or telephone number for a representative, agent, or individual authorized to accept service on behalf of a creditor required to register pursuant to the property registration program following the filing of the summons and complaint, the creditor shall update the property registration program within 10 days of the change in that information.
- c. A creditor filing a summons and complaint in an action to foreclose shall, if the registered property becomes vacant and abandoned as defined in § 15-3 after the property is initially registered with the Borough, update the property registration with the Borough to reflect the change in the property's status within 10 days of the change in status.
- d. A creditor filing a summons and complaint in an action to foreclose shall be responsible for the care, maintenance, security, and upkeep of the exterior of the property if the property is vacant and abandoned at any time while the property is registered with the property registration program.
- e. Any creditor located out-of-State shall be responsible for appointing an in-State representative or agent to act for the foreclosing creditor and shall provide the name and contact of said in-State representative or agent to the Borough Administrator within 10 days of the appointment of same.
- f. At the time of initial registration, each registrant shall pay a nonrefundable annual registration fee of \$500 for each property that is required to be registered because a summons and complaint in an action to foreclose was filed by the creditor. Subsequent nonrefundable annual registrations of properties and fees in the amount of \$500 are due within 10 days of the expiration of the previous registration. An additional \$2,000 per property shall be assessed annually if the property is vacant or abandoned pursuant to § 15-3 when the summons and complaint in an action to foreclose is filed, or becomes vacant and abandoned pursuant to § 15-3 at any time thereafter while the property is in foreclosure. Said fees shall be deposited to a special account in the Borough's department dedicated to the cost of implementation and enforcement of this chapter and fulfilling the purpose and intent of this chapter. None of the funds provided for in this section shall be utilized for the legal defense of foreclosure actions.
- g. If the mortgage and/or servicing on a property is sold or transferred, the new mortgagee/creditor is subject to all the terms of this chapter. Within 10 days of the transfer, the new creditor shall register the property or update the existing registration. The previous creditor(s) will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that creditor's involvement with the registrable property.
- h. If the creditor sells or transfers the registrable property in a non-arm's-length transaction



to a related entity or person, the transferee is subject to all the terms of this article. Within 10 days of the transfer, the transferee shall register the property or update the existing registration. Any and all previous unpaid fees, fines, and penalties, regardless of who the creditor was at the time registration was required, including but not limited to unregistered periods during the foreclosure process, are the responsibility of the transferee and are due and payable with the updated registration. The previous creditor will not be released from the responsibility of paying all previous unpaid fees, fines, and penalties accrued during that creditor's involvement with the registrable property.

- i. This section shall also apply to properties that have been the subject of a foreclosure sale where title is transferred to the creditor as well as any properties transferred to the creditor under a deed in lieu of foreclosure or by any other legal means.
- j. Properties subject to this section shall remain subject to the annual registration requirement and the inspection, security, and maintenance standards of this section as long as the property remains registrable.
- k. Failure of the creditor and/or property owner of record to properly register or to modify the registration to reflect a change of circumstances as required by this article is a violation of this article and shall be subject to enforcement by any of the enforcement means available to the Borough.
- l. If any property is in violation of this article, the Borough may take the necessary action to ensure compliance with and/or place a lien on the property for the cost of the outstanding obligation and any additional cost incurred to bring the property into compliance.
- m. Registration of foreclosure property does not alleviate the creditor and/or owner from obtaining all required licenses, permits and inspections required by applicable code or state statutes. Acquisition of required licenses, permits and inspections or registration of rental property does not alleviate the requirement for the property to be registered under this section. The creditor and/or owner is expected to update the status of the property in the event of a creditor-managed rental.

**§ 15-3.3. Maintenance requirements. [Amended 9-20-2022 by Ord. No. 735]**

- a. Properties subject to this article shall be kept free of weeds, overgrown brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspaper circulars, flyers, notices, except those required by federal, state or local law, discarded personal items, including, but not limited to, furniture, clothing, large and small appliances, printed material, or any other items that give the appearance that the property is abandoned.
- b. Registrable property shall be maintained free of graffiti or similar markings by removal or painting over with an exterior-grade paint that matches the color of the exterior structure.

- c. Front, side, and rear yards, including landscaping, of registrable property shall be maintained in accordance with the applicable code(s) at the time registration is required.
- d. Registrable yard maintenance shall include, but not be limited to, grass, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod. Acceptable maintenance of yards and/or landscape shall not include weeds, broken asphalt, broken concrete or similar material.
- e. Maintenance shall include, but not be limited to, watering, irrigation, cutting and mowing of required ground cover or landscape and removal of all trimmings.
- f. Pools and spas shall be maintained so the water remains free and clear of pollutants and debris and shall comply with the regulations set forth in the applicable code(s). If property is vacant, pools must be drained, closed and covered.
- g. Failure of the creditor, owner, and transferees to properly maintain the property as required by this chapter may result in a violation of the applicable code(s) and issuance of a citation or notice of violation in accordance with the applicable code of the Borough. Pursuant to a finding and determination by a court of competent jurisdiction, the Borough may take the necessary action to ensure compliance with this section.
- h. In addition to the above, the property is required to be maintained in accordance with the applicable code(s) of the Borough.

**§ 15-3.4. Security requirements; posting of information. [Amended 9-20-2022 by Ord. No. 735]**

- a. Properties subject to this chapter shall be maintained in a secure manner so as not to be accessible to unauthorized persons.
- b. A "secure manner" shall include, but not be limited to, the closure and locking of windows, doors, gates and other openings of such size that may allow a child to access pools, spas, and/or the interior of the property or structure. Broken windows, doors, gates, and other openings of such size that may allow a child to access the interior of the property or structure must be repaired. Broken windows shall be secured by reglazing of the window.
- c. If a property is registrable and the property has become vacant or blighted, a representative shall be designated by the creditor or owner to perform the work necessary to bring the property into compliance with the applicable code(s), and the representative must perform regular inspections to verify compliance with the requirements of this article and any other applicable laws.
- d. In addition to the above, the property is required to be secured in accordance with the applicable code(s) of the Borough.

- e. When a property subject to this chapter becomes vacant, it shall be posted with the name, address and telephone number of the creditor or out-of-State creditor's in-State representative or agent for the purpose of receiving service of process. There shall also be posted the name of the Representative, email address and twenty-four-hour contact telephone number of the representative. The representative shall be available to be contacted by the Borough Monday through Friday between 9:00 a.m. and 5:00 p.m., legal holidays excepted.

The sign shall be placed in a window facing the street and shall be visible from the street. The posting shall be no less than 18 inches by 24 inches and shall be of a font that is legible from a distance of 45 feet. The posting shall contain the following language with supporting information:

- Creditor (or if applicable, out-of-state creditor's in-state representative or agent);
- Creditor's address;
- Creditor's telephone number;
- Property Manager Name;
- Property Manager telephone number; and
- Property Manager e-mail.

**§ 15-3.4. Enforcement authority. [Amended 9-20-2022 by Ord. No. 735]**

- a. If the Enforcement Officer has reason to believe that a property subject to the provisions of this article is posing a serious threat to the public health, safety, and welfare, the Code Enforcement Officer may temporarily secure the property at the expense of the creditor and may issue Notice of Violation(s) as necessary to address the conditions of the property. Nothing herein shall limit the Borough from abating any nuisance or unsafe condition as allowed by applicable law. The Enforcement Officer shall have the authority to require the creditor to implement additional maintenance and/or security measures, including, but not limited to, securing any and all doors, windows or other openings, employment of an on-site security guard or other measures as may be reasonably required to help prevent further decline of the property.
- b. In the case of a violation for failure to provide care, maintenance, security, and upkeep of the exterior of vacant and abandoned property, such notice shall require the person or entity to correct the violation within 30 days of receipt of the notice, or within 10 days of receipt of the notice if the violation presents an imminent threat to public health and safety. Failure to abate the violation in accordance with the notice of violation shall result in a summons and complaint to be addressed by the court of appropriate jurisdiction.
- c. If there is a finding by an Enforcement Officer that the condition of the property is posing a serious threat to the public health, safety, and welfare, the Borough may abate the

violations and charge the creditor with the cost of the abatement. The Borough may seek any available recourse against the creditor would have against the title owner of the property to enforce a lien pursuant to applicable law.

**§ 15-3.5. Violations and penalties. [Amended 9-20-2022 by Ord. No. 735]**

- a. A creditor found by the municipal court of the Borough in which the property subject to this article is located, or by any other court of competent jurisdiction, to be in violation, shall be subject to a fine of \$1,500 for each day of the violation. Any fines imposed pursuant to this paragraph shall commence 31 days following receipt of the notice of violation, except if the violation presents an imminent risk to public health and safety, in which case any fines shall commence 11 days following receipt of the notice.
- b. An out-of-State creditor found by the municipal court of the Borough in which the property subject to the ordinance is located, or by any other court of competent jurisdiction, to be in violation of the requirement to appoint an in-State representative or agent pursuant to the ordinance shall be subject to a fine of \$2,500 for each day of the violation. Any fines imposed on a creditor for the failure to appoint an in-State representative or agent shall commence on the day after the ten-day period set forth in N.J.S.A. 46:10B-51 or N.J.S.A. 40:48-2.12s3 for providing notice to the municipal clerk that a summons and complaint in an action to foreclose on a mortgage has been served.

#### **§ 15-4. Violations and Penalties.**

For all other violations of this Chapter, any person violating this Chapter, upon conviction thereof, shall be punished by a fine not exceeding two thousand (\$2,000.00) dollars per day or by imprisonment in the county jail for a term not exceeding ninety (90) days, or both. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues.

Final Version

## §16 FLOOD HAZARD AREAS

### §16.-1. SCOPE AND ADMINISTRATION

**§16-1.1. Title.** These regulations, in combination with the flood provisions of the Uniform Construction Code (UCC) N.J.A.C. 5:23 (hereinafter “Uniform Construction Code,” consisting of the Building Code, Residential Code, Rehabilitation Subcode, and related codes, and the New Jersey Flood Hazard Area Control Act (hereinafter “FHACA”), N.J.A.C. 7:13, shall be known as the *Floodplain Management Regulations* of Borough of Mantoloking (hereinafter “these regulations”).

**§16-1.2. Scope.** These regulations, in combination with the flood provisions of the Uniform Construction Code and FHACA shall apply to all proposed development in flood hazard areas established in **Section 16-2** of these regulations.

**§16-1.3. Purposes and objectives.** The purposes and objectives of these regulations are to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific flood hazard areas through the establishment of comprehensive regulations for management of flood hazard areas, designed to:

- A. Protect human life and health.
- B. Prevent unnecessary disruption of commerce, access, and public service during times of flooding.
- C. Manage the alteration of natural floodplains, stream channels and shorelines;
- D. Manage filling, grading, dredging and other development which may increase flood damage or erosion potential.
- E. Prevent or regulate the construction of flood barriers which will divert floodwater or increase flood hazards.
- F. Contribute to improved construction techniques in the floodplain.
- G. Minimize damage to public and private facilities and utilities.
- H. Help maintain a stable tax base by providing for the sound use and development of flood hazard areas.
- I. Minimize the need for rescue and relief efforts associated with flooding.
- J. Ensure that property owners, occupants, and potential owners are aware of property located in flood hazard areas.
- K. Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events.
- L. Meet the requirements of the National Flood Insurance Program for community participation set forth in Title 44 Code of Federal Regulations, Section 59.22.



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**§16-1.4. Coordination with Building Codes.** Pursuant to the requirement established in N.J.A.C. 5:23, the Uniform Construction Code, that the Borough of Mantoloking administer and enforce the State building codes, the Mayor and Borough Council of the Borough of Mantoloking hereby acknowledge that the Uniform Construction Code contains certain provisions that apply to the design and construction of buildings and structures in flood hazard areas. Therefore, these regulations are intended to be administered and enforced in conjunction with the Uniform Construction Code.

**§16-1.5. Ordinary Building Maintenance and Minor Work.** Improvements defined as ordinary building maintenance and minor work projects by the Uniform Construction Code including non-structural replacement-in-kind of windows, doors, cabinets, plumbing fixtures, decks, walls, partitions, new flooring materials, roofing, etc. shall be evaluated by the Floodplain Administrator through the floodplain development permit to ensure compliance with the Substantial Damage and Substantial Improvement Section 16-3.13 of this ordinance.

**§16-1.6. Warning.** 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. Flood heights may be increased by man-made or natural causes. Enforcement of these regulations does not imply that land outside the special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage.

**§16-1.7. Other laws.** The provisions of these regulations shall not be deemed to nullify any provisions of local, State, or Federal law.

**§16-1.8. Violations and Penalties for Noncompliance.** No structure or land shall hereafter be constructed, re-located to, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a violation under N.J.S.A. 40:49-5. Any person who violates this ordinance or fails to comply with any of its requirements shall be subject to one (1) or more of the following: a fine up to \$2000 under N.J.S.A 40:49-5], imprisonment for a term not exceeding ninety (90) days or a period of community service not exceeding 90 days.

Each day in which a violation of an ordinance exists shall be considered to be a separate and distinct violation subject to the imposition of a separate penalty for each day of the violation as the Court may determine except that the owner will be afforded the opportunity to cure or abate the condition during a 30 day period and shall be afforded the opportunity for a hearing before the court for an independent determination concerning the violation. Subsequent to the expiration of the 30 day period, a fine up to \$2000 under N.J.S.A 40:49-5 may be imposed if the court has not determined otherwise, or if upon reinspection of the property, it is determined that the abatement has not been substantially completed.



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Any person who is convicted of violating an ordinance within one year of the date of a previous violation of the same ordinance and who was fined for the previous violation, shall be sentenced by a court to an additional fine as a repeat offender. The additional fine imposed by the court upon a person for a repeated offense shall not be less than the minimum or exceed the maximum fine fixed for a violation of the ordinance but shall be calculated separately from the fine imposed for the violation of the ordinance.

**§16-1.8.1 Solid Waste Disposal in a Flood Hazard Area.** Any person who has unlawfully disposed of solid waste in a floodway or floodplain who fails to comply with this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than \$2500 or up to a maximum penalty by a fine not exceeding \$10,000 under N.J.S.A. 40:49-5.

**§16-1.9. Abrogation and greater restrictions.** These regulations supersede any ordinance in effect in flood hazard areas. However, these regulations are not intended to repeal or abrogate any existing ordinances including land development regulations, subdivision regulations, zoning ordinances, stormwater management regulations, or building codes. In the event of a conflict between these regulations and any other ordinance, code, or regulation, the more restrictive shall govern.

## **§16-2. APPLICABILITY**

**§16-2.1. General.** These regulations, in conjunction with the Uniform Construction Code, provide minimum requirements for development located in flood hazard areas, including the subdivision of land and other developments; site improvements and installation of utilities; placement and replacement of manufactured homes; placement of recreational vehicles; new construction and alterations, repair, reconstruction, rehabilitation or additions of existing buildings and structures; substantial improvement of existing buildings and structures, including repair of substantial damage; installation of tanks; temporary structures and temporary or permanent storage; utility and miscellaneous Group U buildings and structures; and certain building work exempt from permit under the Uniform Construction Code; and other buildings and development activities.

**§16-2.2. Establishment of Flood Hazard Areas.** The Borough of Mantoloking was accepted for participation in the National Flood Insurance Program on **September 30, 1977.**

The National Flood Insurance Program (NFIP) floodplain management regulations encourage that all Federal, State, and Local regulations that are more stringent than the minimum NFIP standards take precedence in permitting decisions. The FHACA requires that the effective Flood Insurance Rate Map, most recent preliminary FEMA mapping and flood studies, and Department delineations be compared to determine the most restrictive mapping. The FHACA also regulates unstudied flood hazard areas in watersheds measuring 50 acres or greater in size and most riparian zones in New Jersey. Because of these higher standards, the regulated flood hazard area in New Jersey may be more expansive and more restrictive than the FEMA Special



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Flood Hazard Area. Maps and studies that establish flood hazard areas are on file at the Office of the Borough Construction Code Official at 202 Downer Avenue, Mantoloking Borough, New Jersey.

The following sources identify flood hazard areas in this jurisdiction and must be considered when determining the Best Available Flood Hazard Data Area:

- 1) **Effective Flood Insurance Study.** Special Flood Hazard Areas (SFHAs) identified by the Federal Emergency Management Agency in a scientific and engineering report entitled Flood Insurance Study, Ocean County, New Jersey (All Jurisdictions) dated September 29, 2006 and revised December 16, 2021, and the accompanying Flood Insurance Rate Maps (FIRM) identified in Table 102.2(1) whose top level document (Index map) effective date is September 29, 2006 are hereby adopted by reference.

Table 102.2(1)

Map Panel #	Effective Date	Revision Letter
34029C0216	9-29-2006	F
34029C0218	9-29-2006	F

- 2) **Federal Best Available Information.** The Borough of Mantoloking shall utilize Federal flood information as listed in the table below that provides more detailed hazard information, higher flood elevations, larger flood hazard areas, and results in more restrictive regulations. This information may include but is not limited to preliminary flood elevation guidance from FEMA (such as Advisory Flood Hazard Area Maps, Work Maps or Preliminary FIS and FIRM). Additional Federal Best Available studies issued after the date of this ordinance must also be considered. These studies are listed on FEMA's Map Service Center. This information shall be used for floodplain regulation purposes only.

Table 102.2(2)

Map Panel #	Preliminary Date	
34029C0216G	1-30-2015	
34029C0218G	1-30-2015	

### **§16-2.3. Establishing the Local Design Flood Elevation (LD FE).**

The Local Design Flood Elevation (LD FE) is established in the flood hazard areas determined in Section 16-2.2, above, using the best available flood hazard data sources, and the Flood Hazard Area Control Act minimum Statewide elevation requirements for lowest floors in A, Coastal A, and V flood zones, ASCE 24 requirements for critical facilities as specified by the building code, plus additional freeboard as specified by this ordinance.

At a minimum, the Local Design Flood Elevation shall be as follows:

- 1) For a delineated watercourse, the elevation associated with the Best Available Flood Hazard Data Area determined in Section 16-2.2, above plus three feet or as described by N.J.A.C. 7:13 of freeboard; or
- 2) For any undelineated watercourse (where mapping or studies described in 16-2.2 (1) and (2) above are not available) that has a contributory drainage area of 50 acres or more, the applicants must provide one of the following to determine the Local Design Flood Elevation:
  - a. A copy of an unexpired NJDEP Flood Hazard Area Verification plus three feet of freeboard and any additional freeboard as required by ASCE 24; or
  - b. A determination of the Flood Hazard Area Design Flood Elevation using Method 5 or Method 6 (as described in N.J.A.C. 7:13) plus three feet of freeboard and any additional freeboard as required by ASCE 24. Any determination using these methods must be sealed and submitted according to Section 16-5.2-5.3.
- 3) AO Zones – For Zone AO areas on the municipality’s FIRM (or on preliminary flood elevation guidance from FEMA), the Local Design Flood Elevation is determined from the FIRM panel as the highest adjacent grade plus the depth number specified plus three feet of freeboard. If no depth number is specified, the Local Design Flood Elevation is three (3) feet above the highest adjacent grade plus three feet of freeboard.
- 4) Class IV Critical Facilities - For any proposed development of new and substantially improved Flood Design Class IV Critical Facilities, the Local Design Flood Elevation must be the higher of the 0.2% annual chance (500 year) flood elevation plus one foot or the Flood Hazard Area Design Flood Elevation with an additional two (2) feet of freeboard in accordance with ASCE 24.
- 5) Class III Critical Facilities - For proposed development of new and substantially improved Flood Design Class III Critical Facilities in coastal high hazard areas, the Local Design Flood Elevation must be the higher of the 0.2% annual chance (500 year)



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flood elevation plus one foot or the Flood Hazard Area Design Flood Elevation with an additional one (1) foot of freeboard in accordance with ASCE 24.

### **§16-3. DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR**

**§16-3.1. Floodplain Administrator Designation.** The Borough Engineer is designated the Floodplain Administrator. The Floodplain Administrator shall have the authority to delegate performance of certain duties to other employees.

**§16-3.2. General.** The Floodplain Administrator is authorized and directed to administer the provisions of these regulations. The Floodplain Administrator shall have the authority to render interpretations of these regulations consistent with the intent and purpose of these regulations and to establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies and procedures shall be consistent with the intent and purpose of these regulations and the flood provisions of the building code and shall not have the effect of waiving specific requirements without the granting of a variance pursuant to Section 16-7 of these regulations.

**§16-3.3. Coordination.** The Floodplain Administrator shall coordinate with the Construction Official to administer and enforce the flood provisions of the Uniform Construction Code.

**§16-3.4. Duties.** The duties of the Floodplain Administrator shall include but are not limited to:

- (1) Review all permit applications to determine whether proposed development is located in flood hazard areas established in Section 16-2 of these regulations.
- (2) Require development in flood hazard areas to be reasonably safe from flooding and to be designed and constructed with methods, practices and materials that minimize flood damage.
- (3) Interpret flood hazard area boundaries and provide available flood elevation and flood hazard information.
- (4) Determine whether additional flood hazard data shall be obtained or developed.
- (5) Review required certifications and documentation specified by these regulations and the building code to determine that such certifications and documentations are complete.
- (6) Establish, in coordination with the Construction Official, written procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to Section 16-3.13 of these regulations.
- (7) Coordinate with the Construction Official and others to identify and investigate damaged buildings located in flood hazard areas and inform owners of the



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requirement to obtain permits for repairs.

- (8) Review requests submitted to the Construction Official seeking approval to modify the strict application of the flood load and flood resistant construction requirements of the Uniform Construction code to determine whether such requests require consideration as a variance pursuant to Section 16-7 of these regulations.
- (9) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps when the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within 6 months of such data becoming available.
- (10) Require applicants who propose alteration of a watercourse to notify adjacent jurisdictions and the NJDEP Bureau of Flood Engineering, and to submit copies of such notifications to the Federal Emergency Management Agency (FEMA).
- (11) Inspect development in accordance with Section 16-6 of these regulations and inspect flood hazard areas to determine if development is undertaken without issuance of permits.
- (12) Prepare comments and recommendations for consideration when applicants seek variances in accordance with Section 16-7 of these regulations.
- (13) Cite violations in accordance with Section 16-8 of these regulations.
- (14) Notify the Federal Emergency Management Agency when the corporate boundaries of the Borough of Mantoloking have been modified.
- (15) Permit Ordinary Maintenance and Minor Work in the regulated areas discussed in Section 16-2.2.

**§16-3.5. Use of changed technical data.** The Floodplain Administrator and the applicant shall not use changed flood hazard area boundaries or base flood elevations for proposed buildings or developments unless the Floodplain Administrator or applicant has applied for a Conditional Letter of Map Revision (CLOMR) to the Flood Insurance Rate Map (FIRM) revision and has received the approval of the Federal Emergency Management Agency. A revision of the effective FIRM does not remove the related feature(s) on a flood hazard area delineation that has been promulgated by the NJDEP. A separate application must be made to the State pursuant to N.J.A.C. 7:13 for revision of a flood hazard design flood elevation, flood hazard area limit, floodway limit, and/or other related feature.

**§16-3.6. Other permits.** It shall be the responsibility of the Floodplain Administrator to assure that approval of a proposed development shall not be given until proof that necessary permits have been granted by Federal or State agencies having jurisdiction over such development, including section 404 of the Clean Water Act. In the event of conflicting permit requirements, the Floodplain Administrator



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must ensure that the most restrictive floodplain management standards are reflected in permit approvals.

**§16-3.7. Determination of Local Design Flood Elevations.** If design flood elevations are not specified, the Floodplain Administrator is authorized to require the applicant to:

- (1) Obtain, review, and reasonably utilize data available from a Federal, State, or other source, or
- (2) Determine the design flood elevation in accordance with accepted hydrologic and hydraulic engineering techniques. Such analyses shall be performed and sealed by a licensed professional engineer. Studies, analyses, and computations shall be submitted in sufficient detail to allow review and approval by the Floodplain Administrator. The accuracy of data submitted for such determination shall be the responsibility of the applicant.

It shall be the responsibility of the Floodplain Administrator to verify that the applicant's proposed Best Available Flood Hazard Data Area and the Local Design Flood Elevation in any development permit accurately applies the best available flood hazard data and methodologies for determining flood hazard areas and design elevations described in 16-2.2 and 16-2.3 respectively. This information shall be provided to the Construction Official and documented according to Section 16-3.14.

**§16-3.8. Requirement to submit new technical data.** Base Flood Elevations may increase or decrease resulting from natural changes (e.g. erosion, accretion, channel migration, subsidence, uplift) or man-made physical changes (e.g. dredging, filling, excavation) affecting flooding conditions. As soon as practicable, but not later than six (6) months after the date of a man-made change or when information about a natural change becomes available, the Floodplain Administrator shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Title 44 Code of Federal Regulations Section 65.3. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements will be based upon current data.

**§16-3.9. Floodway encroachment.** Prior to issuing a permit for any floodway encroachment, including fill, new construction, substantial improvements and other development or land-disturbing-activity, the Floodplain Administrator shall require submission of a certification prepared by a licensed professional engineer, along with supporting technical data, that demonstrates that such development will not cause any increase in the base flood level.

**A. Floodway revisions.** A floodway encroachment that increases the level of the base

flood is authorized if the applicant has applied for a Conditional Letter of Map Revision (CLOMR) to the Flood Insurance Rate Map (FIRM) and has received the approval of FEMA.

**§16-3.10. Watercourse alteration.** Prior to issuing a permit for any alteration or relocation of any watercourse, the Floodplain Administrator shall require the applicant to provide notification of the proposal to the appropriate authorities of all adjacent government jurisdictions, as well as the NJDEP Bureau of Flood Engineering and the Division of Land Resource Protection. A copy of the notification shall be maintained in the permit records and submitted to FEMA.

**A. Engineering analysis.** The Floodplain Administrator shall require submission of an engineering analysis prepared by a licensed professional engineer, demonstrating that the flood-carrying capacity of the altered or relocated portion of the watercourse will be maintained, neither increased nor decreased. Such watercourses shall be maintained in a manner that preserves the channel's flood-carrying capacity.

**§16-3.11. Alterations in coastal areas.** The excavation or alteration of sand dunes is governed by the New Jersey Coastal Zone Management (CZM) rules, N.J.A.C. 7:7. Prior to issuing a flood damage prevention permit for any alteration of sand dunes in coastal high hazard areas and Coastal A Zones, the Floodplain Administrator shall require that a New Jersey CZM permit be obtained and included in the flood damage prevention permit application. The applicant shall also provide documentation of any engineering analysis, prepared by a licensed professional engineer, that demonstrates that the proposed alteration will not increase the potential for flood damage.

**§16-3.12. Development in riparian zones** All development in Riparian Zones as described in N.J.A.C. 7:13 is prohibited by this ordinance unless the applicant has received an individual or general permit or has complied with the requirements of a permit by rule or permit by certification from NJDEP Division of Land Resource Protection prior to application for a floodplain development permit and the project is compliant with all other Floodplain Development provisions of this ordinance. The width of the riparian zone can range between 50 and 300 feet and is determined by the attributes of the waterbody and designated in the New Jersey Surface Water Quality Standards N.J.A.C. 7:9B. The portion of the riparian zone located outside of a regulated water is measured landward from the top of bank. Applicants can request a verification of the riparian zone limits or a permit applicability determination to determine State permit requirements under N.J.A.C. 7:13 from the NJDEP Division of Land Resource Protection.

**§16-3.13. Substantial improvement and substantial damage determinations.** When buildings and structures are damaged due to any cause including but not limited to man-made, structural, electrical, mechanical, or natural hazard events, or are determined to be unsafe as described in N.J.A.C. 5:16; and for applications for building permits to improve buildings and structures, including alterations, movement, repair,

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additions, rehabilitations, renovations, ordinary maintenance and minor work, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Construction Official, shall:

- i. Estimate the market value or require the applicant to obtain a professional appraisal prepared by a qualified independent appraiser, of the market value of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.
- ii. Determine and include the costs of all ordinary maintenance and minor work, as discussed in Section 16-2.2, performed in the floodplain regulated by this ordinance in addition to the costs of those improvements regulated by the Construction Official in substantial damage and substantial improvement calculations.
- iii. Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, where applicable, to the market value of the building or structure.
- iv. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage. This determination requires the evaluation of previous permits issued for improvements and repairs over a period of one year prior to the permit application or substantial damage determination as specified in the definition of substantial improvement.
- v. Notify the applicant in writing when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the building code is required and notify the applicant in writing when it is determined that work does not constitute substantial improvement or repair of substantial damage. The Floodplain Administrator shall also provide all letters documenting substantial damage and compliance with flood resistant construction requirements of the building code to the NJDEP Bureau of Flood Engineering.

**§16-3.14. Department records.** In addition to the requirements of the building code and these regulations, and regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of these regulations and the flood provisions of the Uniform Construction Code, including Flood Insurance Studies, Flood Insurance Rate Maps; documents from FEMA that amend or revise FIRMs; NJDEP delineations, records of issuance of permits and denial of permits; records of ordinary maintenance and minor work, determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required certifications and documentation specified by the Uniform Construction Code and these regulations including as-built Elevation Certificates ; notifications to adjacent communities, FEMA, and the State related to alterations of watercourses; assurance that the flood



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carrying capacity of altered waterways will be maintained; documentation related to variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to these regulations and the flood resistant provisions of the Uniform Construction Code. The Floodplain Administrator shall also record the required elevation, determination method, and base flood elevation source used to determine the Local Design Flood Elevation in the floodplain development permit.

**§16-3.15. Liability.** The Floodplain Administrator and any employee charged with the enforcement of these regulations, while acting for the jurisdiction in good faith and without malice in the discharge of the duties required by these regulations or other pertinent law or ordinance, shall not thereby be rendered liable personally and is hereby relieved from personal liability for any damage accruing to persons or property as a result of any act or by reason of an act or omission in the discharge of official duties. Any suit instituted against an officer or employee because of an act performed by that officer or employee in the lawful discharge of duties and under the provisions of these regulations shall be defended by legal representative of the jurisdiction until the final termination of the proceedings. The Floodplain Administrator and any subordinate shall not be liable for cost in any action, suit or proceeding that is instituted in pursuance of the provisions of these regulations.

#### **§16-4. PERMITS**

**§16-4.1. Permits Required.** Any person, owner or authorized agent who intends to conduct any development in a flood hazard area shall first make application to the Floodplain Administrator and shall obtain the required permit. Depending on the nature and extent of proposed development that includes a building or structure, the Floodplain Administrator may determine that a floodplain development permit or approval is required in addition to a building permit.

**§16-4.2. Application for permit.** The applicant shall file an application in writing on a form furnished by the Floodplain Administrator. Such application shall:

- (1) Identify and describe the development to be covered by the permit.
- (2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
- (3) Indicate the use and occupancy for which the proposed development is intended.
- (4) Be accompanied by a site plan and construction documents as specified in Section 16-5 of these regulations, grading and filling plans and other information deemed appropriate by the Floodplain Administrator.
- (5) State the valuation of the proposed work, including the valuation of ordinary maintenance and minor work.
- (6) Be signed by the applicant or the applicant's authorized agent.

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**§16-4.3. Validity of permit.** The issuance of a permit under these regulations or the Uniform Construction Code shall not be construed to be a permit for, or approval of, any violation of this appendix or any other ordinance of the jurisdiction. The issuance of a permit based on submitted documents and information shall not prevent the Floodplain Administrator from requiring the correction of errors. The Floodplain Administrator is authorized to prevent occupancy or use of a structure or site which is in violation of these regulations or other ordinances of this jurisdiction.

**§16-4.4. Expiration.** A permit shall become invalid when the proposed development is not commenced within 180 days after its issuance, or when the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions shall be requested in writing and justifiable cause demonstrated. The Floodplain Administrator is authorized to grant, in writing, one or more extensions of time, for periods not more than 180 days each.

**§16-4.5. Suspension or revocation.** The Floodplain Administrator is authorized to suspend or revoke a permit issued under these regulations wherever the permit is issued in error or on the basis of incorrect, inaccurate or incomplete information, or in violation of any ordinance or code of this jurisdiction.

## **§16-5. SITE PLANS AND CONSTRUCTION DOCUMENTS**

**§16-5.1. Information for development in flood hazard areas.** The site plan or construction documents for any development subject to the requirements of these regulations shall be drawn to scale and shall include, as applicable to the proposed development:

- (1) Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), and ground elevations when necessary for review of the proposed development. For buildings that are located in more than one flood hazard area, the elevation and provisions associated with the most restrictive flood hazard area shall apply.
- (2) Where base flood elevations or floodway data are not included on the FIRM or in the Flood Insurance Study, they shall be established in accordance with Section 16-5.2.
- (3) Where the parcel on which the proposed development will take place will have more than 50 lots or is larger than 5 acres and base flood elevations are not included on the FIRM or in the Flood Insurance Study, such elevations shall be established in accordance with Section 16-5.2(3) of these regulations.
- (4) Location of the proposed activity and proposed structures, and locations of existing buildings and structures; in coastal high hazard areas and Coastal A zones, new buildings shall be located landward of the reach of mean high tide.
- (5) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.



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- (6) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose. The applicant shall provide an engineering certification confirming that the proposal meets the flood storage displacement limitations of N.J.A.C. 7:13.
- (7) Extent of any proposed alteration of sand dunes.
- (8) Existing and proposed alignment of any proposed alteration of a watercourse.
- (9) Floodproofing certifications, V Zone / Coastal A Zone and Breakaway Wall Certifications, Operations and Maintenance Plans, Warning and Evacuation Plans and other documentation required pursuant to FEMA publications.

The Floodplain Administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by these regulations but that are not required to be prepared by a registered design professional when it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance.

**§16-5.2. Information in flood hazard areas without base flood elevations (approximate Zone A).** Where flood hazard areas are delineated on the effective or preliminary FIRM and base flood elevation data have not been provided, the applicant shall consult with the Floodplain Administrator to determine whether to:

- (1) Use the Approximation Method (Method 5) described in N.J.A.C. 7:13 in conjunction with Appendix 1 of the FHACA to determine the required flood elevation.
- (2) Obtain, review, and reasonably utilize data available from a Federal, State or other source when those data are deemed acceptable to the Floodplain Administrator to reasonably reflect flooding conditions.
- (3) Determine the base flood elevation in accordance with accepted hydrologic and hydraulic engineering techniques according to Method 6 as described in N.J.A.C. 7:13. Such analyses shall be performed and sealed by a licensed professional engineer.

Studies, analyses, and computations shall be submitted in sufficient detail to allow review and approval by the Floodplain Administrator prior to floodplain development permit issuance. The accuracy of data submitted for such determination shall be the responsibility of the applicant. Where the data are to be used to support a Letter of Map Change (LOMC) from FEMA, the applicant shall be responsible for satisfying the submittal requirements and pay the processing fees.

**§16-5.3. Analyses and certifications by a Licensed Professional Engineer.** As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following



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analyses signed and sealed by a licensed professional engineer for submission with the site plan and construction documents:

- i. For development activities proposed to be located in a regulatory floodway, a floodway encroachment analysis that demonstrates that the encroachment of the proposed development will not cause any increase in base flood elevations; where the applicant proposes to undertake development activities that do increase base flood elevations, the applicant shall submit such analysis to FEMA as specified in Section 16-5.4 of these regulations and shall submit the Conditional Letter of Map Revision, if issued by FEMA, with the site plan and construction documents.
- ii. For alteration of a watercourse, an engineering analysis prepared in accordance with standard engineering practices which demonstrates that the flood-carrying capacity of the altered or relocated portion of the watercourse will not be decreased, and certification that the altered watercourse shall be maintained, neither increasing nor decreasing the channel's flood-carrying capacity. The applicant shall submit the analysis to FEMA as specified in Section 16-5.4 of these regulations. The applicant shall notify the chief executive officer of all affected adjacent jurisdictions, the NJDEP's Bureau of Flood Engineering and the Division of Land Resource Protection; and shall provide documentation of such notifications.
- iii. For activities that propose to alter sand dunes in coastal high hazard areas (Zone V) and Coastal A Zones, an engineering analysis that demonstrates that the proposed alteration will not increase the potential for flood damage and documentation of the issuance of a New Jersey Coastal Zone Management permit under N.J.A.C. 7:7.
- iv. For analyses performed using Methods 5 and 6 (as described in N.J.A.C. 7:13) in flood hazard zones without base flood elevations (approximate A zones).

**§16-5.4. Submission of additional data.** When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change (LOMC) from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a licensed professional engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant.

## **§16-6. INSPECTIONS**

**§16-6.1. General.** Development for which a permit is required shall be subject to inspection. Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of these regulations or the building code. Inspections presuming to give authority to violate or cancel the provisions of these regulations or the building code or other ordinances shall not be valid.

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**§16-6.2. Inspections of development.** The Floodplain Administrator or the Construction Code Official or Subcode Officials shall inspect all development in flood hazard areas authorized by issuance of permits under these regulations. The Floodplain Administrator or Land Use Official shall inspect flood hazard areas from time to time to determine if development is undertaken without issuance of a permit.

**§16-6.3. Buildings and structures.** The Construction Official shall make or cause to be made, inspections for buildings and structures in flood hazard areas authorized by permit in accordance with the Uniform Construction Code, N.J.A.C. 5:23.

- 1) **Lowest floor elevation.** Upon placement of the lowest floor, including the basement, and prior to further vertical construction, certification of the elevation required in Section 16-15.2 shall be submitted to the Construction Official on an Elevation Certificate.
- 2) **Lowest horizontal structural member.** In V zones and Coastal A zones, upon placement of the lowest floor, including the basement, and prior to further vertical construction, certification of the elevation required in Section 16-15.2 shall be submitted to the Construction Official on an Elevation Certificate.
- 3) **Installation of attendant utilities** (electrical, heating, ventilating, air-conditioning, and other service equipment) and sanitary facilities elevated as discussed in Section 16-15.2.
- 4) **Final inspection.** Prior to the final inspection, certification of the elevation required in Section 16-15.2 shall be submitted to the Construction Official on an Elevation Certificate.

**§16-6.4. Manufactured homes.** The Floodplain Administrator shall inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of these regulations and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor shall be submitted on an Elevation Certificate to the Floodplain Administrator prior to the final inspection.

**§16-6.5. Inspections pursuant to non-conversion agreements.** Properties that have been deed-restricted against conversion as described in §16-16.2 of these regulations shall be subject to periodic inspections by duly authorized agents of the Borough, without notice, at reasonable times and intervals as determined by the Borough. This may be in addition to, or concurrent with, other routine inspections performed by the Borough including, but not limited to, zoning inspections during and post construction, licensing inspections, fire inspections, and inspections upon transfer of ownership of the property.

**§16-6.6.** Inspections shall be conducted in accordance with Appendix – Inspections.



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## §16-7. VARIANCES

**§16-7.1. General.** The Joint Planning Board / Zoning Board of Adjustment shall hear and decide requests for variances. The Joint Planning Board / Zoning Board of Adjustment shall base its determination on technical justifications submitted by applicants, the considerations for issuance in Section 16-7.5, the conditions of issuance set forth in Section 16-7.6, and the comments and recommendations of the Floodplain Administrator, and, as applicable, the Construction Official. The Joint Planning Board / Zoning Board of Adjustment has the right to attach such conditions to variances as it deems necessary to further the purposes and objectives of these regulations.

**§16-7.2. Historic structures.** A variance to the substantial improvement requirements of this ordinance is authorized provided that the repair or rehabilitation of a historic structure is completed according to N.J.A.C. 5:23-6.33, Section 1612 of the International Building Code and R322 of the International Residential Code; the repair or rehabilitation will not preclude the structure's continued designation as a historic structure; the structure meets the definition of the historic structure as described by this ordinance; and the variance is the minimum necessary to preserve the historic character and design of the structure.

**§16-7.3. Functionally dependent uses.** A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use provided the variance is the minimum necessary to allow the construction or substantial improvement, and that all due consideration has been given to use of methods and materials that minimize flood damage during the base flood and create no additional threats to public safety.

**§16-7.4. Restrictions in floodways.** A variance shall not be issued for any proposed development in a floodway when any increase in flood levels would result during the base flood discharge, as evidenced by the applicable analysis and certification required in Section 16-5.3.(i) of these regulations.

**§16-7.5. Considerations.** In reviewing requests for variances, all technical evaluations, all relevant factors, all other portions of these regulations, and the following shall be considered:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage.
- (2) The danger to life and property due to flooding or erosion damage.
- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners.
- (4) The importance of the services provided by the proposed development to the community.
- (5) The availability of alternate locations for the proposed development that are not

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subject to flooding or erosion and the necessity of a waterfront location, where applicable.

- (6) The compatibility of the proposed development with existing and anticipated development.
- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for that area.
- (8) The safety of access to the property in times of flood for ordinary and emergency vehicles.
- (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwater and the effects of wave action, where applicable, expected at the site.
- (10) 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, streets, and bridges.

**§16-7.6. Conditions for issuance.** Variances shall only be issued upon:

- (1) Submission by the applicant of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of these regulations or renders the elevation standards of the building code inappropriate.
- (2) A determination that failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable.
- (3) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws or ordinances.
- (4) A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Notification to the applicant in writing over the signature of the Floodplain Administrator that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and that such construction below the base flood level increases risks to life and property.

**§16-8. VIOLATIONS**

**§16-8.1. Violations.** Any development in any flood hazard area that is being performed without an issued permit or that is in conflict with an issued permit shall be deemed a violation. A building or structure without the documentation of elevation of



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the lowest floor, the lowest horizontal structural member if in a V or Coastal A Zone, other required design certifications, or other evidence of compliance required by the building code is presumed to be a violation until such time as that documentation is provided.

**§16-8.2. Authority.** The Floodplain Administrator is authorized to serve notices of violation or stop work orders to owners of property involved, to the owner's agent, or to the person or persons doing the work for development that is not within the scope of the Uniform Construction Code but is regulated by these regulations and that is determined to be a violation.

**§16-8.3. Unlawful continuance.** Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by N.J.S.A. 40:49-5 as appropriate.

**§16-8.4. Review Period to Correct Violations.** A 30-day period shall be given to the property owner as an opportunity to cure or abate the condition. The property owner shall also be afforded an opportunity for a hearing before the court for an independent determination concerning the violation. Subsequent to the expiration of the 30-day period, a fine greater than \$1,250.00 [or optional higher threshold amount up to \$2000.00 under N.J.S.A. 40:49-5] may be imposed if a court has not determined otherwise or, upon reinspection of the property, it is determined that the abatement has not been substantially completed.

## **§16-9. DEFINITIONS**

**§16-9.1. General.** The following words and terms shall, for the purposes of these regulations, have the meanings shown herein. Other terms are defined in the Uniform Construction Code N.J.A.C. 5:23 and terms are defined where used in the International Residential Code and International Building Code (rather than in the definitions section). Where terms are not defined, such terms shall have ordinarily accepted meanings such as the context implies.

### **§16-9. Definitions**

**30 DAY PERIOD** – The period of time prescribed by N.J.S.A. 40:49-5 in which a property owner is afforded the opportunity to correct zoning and solid waste disposal after a notice of violation pertaining to this ordinance has been issued.

**100 YEAR FLOOD ELEVATION** – Elevation of flooding having a 1% annual chance of being equaled or exceeded in a given year which is also referred to as the Base Flood Elevation.



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**500 YEAR FLOOD ELEVATION** – Elevation of flooding having a 0.2% annual chance of being equaled or exceeded in a given year.

**A ZONES** – Areas of ‘Special Flood Hazard’ in which the elevation of the surface water resulting from a flood that has a 1% annual chance of equaling or exceeding the Base Flood Elevation (BFE) in any given year shown on the Flood Insurance Rate Map (FIRM) zones A, AE, AH, A1–A30, AR, AR/A, AR/AE, AR/A1– A30, AR/AH, and AR/AO. When used in reference to the development of a structure in this ordinance, A Zones are not inclusive of Coastal A Zones because of the higher building code requirements for Coastal A Zones.

**AH ZONES** – Areas subject to inundation by 1-percent-annual-chance shallow flooding (usually areas of ponding) where average depths are between one and three feet. Base Flood Elevations (BFEs) derived from detailed hydraulic analyses are shown in this zone.

**AO ZONES** – Areas subject to inundation by 1-percent-annual-chance shallow flooding (usually sheet flow on sloping terrain) where average depths are between one and three feet.

**ACCESSORY STRUCTURE** – Accessory structures are also referred to as appurtenant structures. An accessory structure is a structure which is on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. For example, a residential structure may have a detached garage or storage shed for garden tools accessory structures. Other examples of accessory structures include gazebos, picnic pavilions, boathouses, small pole barns, storage sheds, and similar buildings.

**AREA OF SHALLOW FLOODING** – A designated Zone AO, AH, AR/AO or AR/AH (or VO) on a community’s Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow. **AREA OF SPECIAL FLOOD HAZARD** – see SPECIAL FLOOD HAZARD AREA

**ALTERATION OF A WATERCOURSE** – A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard, or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

**ASCE 7** – The standard for the Minimum Design Loads for Buildings and Other Structures, referenced by the building code and developed and published by the American Society of Civil Engineers, Reston, VA, which includes but is not limited to methodology and equations necessary for determining structural and flood-related design requirements and determining the design requirements for structures that may experience a combination of loads including those from natural hazards. Flood related equations include those for determining erosion, scour, lateral, vertical, hydrostatic, hydrodynamic, buoyancy, breaking wave, and debris impact.

**ASCE 24** – The standard for Flood Resistant Design and Construction, referenced by the building code and developed and published by the American Society of Civil Engineers,



Reston, VA. References to ASCE 24 shall mean ASCE 24-14 or the most recent version of ASCE 24 adopted in the UCC Code [N.J.A.C. 5:23].

**BASE FLOOD ELEVATION (BFE)** – The water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year, as shown on a published Flood Insurance Study (FIS), or preliminary flood elevation guidance from FEMA. May also be referred to as the “100-year flood elevation”.

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

**BEST AVAILABLE FLOOD HAZARD DATA** - The most recent available preliminary flood risk guidance FEMA has provided. The Best Available Flood Hazard Data may be depicted on but not limited to Advisory Flood Hazard Area Maps, Work Maps, or Preliminary FIS and FIRM.

**BEST AVAILABLE FLOOD HAZARD DATA AREA** - The areal mapped extent associated with the most recent available preliminary flood risk guidance FEMA has provided. The Best Available Flood Hazard Data may be depicted on but not limited to Advisory Flood Hazard Area Maps, Work Maps, or Preliminary FIS and FIRM.

**BEST AVAILABLE FLOOD HAZARD DATA ELEVATION** - The most recent available preliminary flood elevation guidance FEMA has provided. The Best Available Flood Hazard Data may be depicted on but not limited to Advisory Flood Hazard Area Maps, Work Maps, or Preliminary FIS and FIRM.

**BREAKAWAY WALLS** – Any type of wall subject to flooding that is not required to provide structural support to a building or other structure and that is designed and constructed such that, below the Local Design Flood Elevation, it will collapse under specific lateral loads such that (1) it allows the free passage of floodwaters, and (2) it does not damage the structure or supporting foundation system. Certification in the V Zone and Coastal A Zone Design Certificate of the design, plans, and specifications by a licensed design professional that these walls are in accordance with accepted standards of practice is required as part of the permit application for new and substantially improved V Zone and Coastal A Zone structures. A signed and sealed completed certification must be submitted at permit application.

**BUILDING** – Per the FHACA, “Building” means a structure enclosed with exterior walls or fire walls, erected, and framed of component structural parts, designed for the housing, shelter, enclosure, and support of individuals, animals, or property of any kind. A building may have a temporary or permanent foundation. A building that is intended for regular human occupation and/or residence is considered a habitable building.

**COASTAL A ZONE** – An Area of Special Flood Hazard starting from a Velocity (V) Zone and extending up to the landward Limit of the Moderate Wave Action (LiMWA) delineation. Where no V Zone is mapped the Coastal A Zone is the portion between the open coast and the landward Limit of the Moderate Wave Action delineation. Coastal A Zones may be subject to

wave effects, velocity flows, erosion, scour, or a combination of these forces. Construction and development in Coastal A Zones are to be regulated similarly to V Zones/Coastal High Hazard Areas except as allowed by ASCE 24.

**COASTAL HIGH HAZARD AREA** – An Area of Special Flood Hazard inclusive of the V Zone extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

**CONDITIONAL LETTER OF MAP REVISION** - A Conditional Letter of Map Revision (CLOMR) is FEMA's comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The letter does not revise an effective NFIP map, it indicates whether the project, if built as proposed, would be recognized by FEMA. FEMA charges a fee for processing a CLOMR to recover the costs associated with the review that is described in the Letter of Map Change (LOMC) process. Building permits cannot be issued based on a CLOMR, because a CLOMR does not change the NFIP map.

**CONDITIONAL LETTER OF MAP REVISION - FILL** -- A Conditional Letter of Map Revision - Fill (CLOMR-F) is FEMA's comment on a proposed project involving the placement of fill outside of the regulatory floodway that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The letter does not revise an effective NFIP map, it indicates whether the project, if built as proposed, would be recognized by FEMA. FEMA charges a fee for processing a CLOMR to recover the costs associated with the review that is described in the Letter of Map Change (LOMC) process. Building permits cannot be issued based on a CLOMR, because a CLOMR does not change the NFIP map.

**CRITICAL BUILDING** – Per the FHACA, “Critical Building” means that:

- a. It is essential to maintaining continuity of vital government operations and/or supporting emergency response, sheltering, and medical care functions before, during, and after a flood, such as a hospital, medical clinic, police station, fire station, emergency response center, or public shelter; or
- b. It serves large numbers of people who may be unable to leave the facility through their own efforts, thereby hindering or preventing safe evacuation of the building during a flood event, such as a school, college, dormitory, jail or detention facility, day care center, assisted living facility, or nursing home.

**DEEP FOUNDATIONS** – Per ASCE 24, deep foundations refer to those foundations constructed on erodible soils in Coastal High Hazard and Coastal A Zones which are founded on piles, drilled shafts, caissons, or other types of deep foundations and are designed to resist erosion and scour and support lateral and vertical loads as described in ASCE 7. Foundations shall extend to 10 feet below Mean Water Level (MWL) unless the design demonstrates that

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pile penetration will provide sufficient depth and stability as determined by ASCE 24, ASCE 7, and additional geotechnical investigations if any unexpected conditions are encountered during construction.

**DEVELOPMENT** – Any manmade change to improved or unimproved real estate, including but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of materials, mining, dredging, filling, grading, paving, excavations, drilling operations and other land-disturbing activities.

**DRY FLOODPROOFING** – A combination of measures that results in a non-residential structure, including the attendant utilities and equipment as described in the latest version of ASCE 24, being watertight with all elements substantially impermeable and with structural components having the capacity to resist flood loads.

**ELEVATED BUILDING** – A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns. Solid perimeter foundations walls are not an acceptable means of elevating buildings in Coastal A, V, and VE Zones.

**ELEVATION CERTIFICATE** – An administrative tool of the National Flood Insurance Program (NFIP) that can be used to provide elevation information, to determine the proper insurance premium rate, and to support an application for a Letter of Map Amendment (LOMA) or Letter of Map Revision based on fill (LOMR-F).

**ENCROACHMENT** – The placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

**FEMA PUBLICATIONS** – Any publication authored or referenced by FEMA related to building science, building safety, or floodplain management related to the National Flood Insurance Program. Publications shall include but are not limited to technical bulletins, desk references, and American Society of Civil Engineers Standards documents including ASCE 24.

## FLOOD OR FLOODING

- a. A general and temporary condition of partial or complete inundation of normally dry land areas from:
  1. The overflow of inland or tidal waters.
  2. The unusual and rapid accumulation or runoff of surface waters from any source.
- b. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.



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**FLOOD HAZARD AREA DESIGN FLOOD ELEVATION** – Per the FHACA, the peak water surface elevation that will occur in a water during the flood hazard area design flood. This elevation is determined via available flood mapping adopted by the State, flood mapping published by FEMA (including effective flood mapping dated on or after January 31, 1980, or any more recent advisory, preliminary, or pending flood mapping; whichever results in higher flood elevations, wider floodway limits, greater flow rates, or indicates a change from an A zone to a V zone or Coastal A zone), approximation, or calculation pursuant to the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-3.1 – 3.6 and is typically higher than FEMA's base flood elevation. A water that has a drainage area measuring less than 50 acres does not possess, and is not assigned, a flood hazard area design flood elevation.

**FLOOD INSURANCE RATE MAP (FIRM)** – The official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY (FIS)** – The official report in which the Federal Emergency Management Agency has provided flood profiles, as well as the Flood Insurance Rate Map(s) and the water surface elevation of the base flood.

**FLOODPLAIN OR FLOOD PRONE AREA** – Any land area susceptible to being inundated by water from any source. See "Flood or Flooding."

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

**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 sanitary facilities, structures, and their contents.

**FLOODPROOFING CERTIFICATE** – Certification by a licensed design professional that the design and methods of construction for floodproofing a non-residential structure are in accordance with accepted standards of practice to a proposed height above the structure's lowest adjacent grade that meets or exceeds the Local Design Flood Elevation. A completed floodproofing certificate is required at permit application.

**FLOODWAY** – The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than 0.2 foot.<sup>1</sup>

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<sup>1</sup> The current effective and preliminary FEMA FIRM mapping in Mantoloking as of the date of the adoption of this ordinance do not reflect floodways designated within the Borough of Mantoloking.

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

**FUNCTIONALLY DEPENDENT USE** – A use that cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities necessary for the loading or unloading of cargo or passengers, and shipbuilding and ship repair facilities. The term does not include long-term storage or related manufacturing facilities.

**HABITABLE BUILDING**– Pursuant to the FHACA Rules (N.J.A.C. 7:13), means a building that is intended for regular human occupation and/or residence. Examples of a habitable building include a single-family home, duplex, multi-residence building, or critical building; a commercial building such as a retail store, restaurant, office building, or gymnasium; an accessory structure that is regularly occupied, such as a garage, barn, or workshop; mobile and manufactured homes, and trailers intended for human residence, which are set on a foundation and/or connected to utilities, such as in a mobile home park (not including campers and recreational vehicles); and any other building that is regularly occupied, such as a house of worship, community center, or meeting hall, or animal shelter that includes regular human access and occupation. Examples of a non-habitable building include a bus stop shelter, utility building, storage shed, self-storage unit, construction trailer, or an individual shelter for animals such as a doghouse or outdoor kennel.

**HARDSHIP** – As related to Section 16-7 of this ordinance, meaning the exceptional hardship that would result from a failure to grant the requested variance. The Joint Planning Board/Zoning Board of Adjustment requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

**HIGHEST ADJACENT GRADE** – The highest natural elevation of the ground surface prior to construction next to the proposed or existing 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 or a district preliminarily determined by the Secretary to qualify as a registered historic district;



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- 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.

**LAWFULLY EXISTING** – Per the FHACA, means an existing fill, structure and/or use, which meets all Federal, State, and local laws, and which is not in violation of the FHACA because it was established:

- a. Prior to January 31, 1980; or
- b. On or after January 31, 1980, in accordance with the requirements of the FHACA as it existed at the time the fill, structure and/or use was established.

Note: Substantially damaged properties and substantially improved properties that have not been elevated are not considered “lawfully existing” for the purposes of the NFIP. This definition is included in this ordinance to clarify the applicability of any more stringent statewide floodplain management standards required under the FHACA.

**LETTER OF MAP AMENDMENT** - A Letter of Map Amendment (LOMA) is an official amendment, by letter, to an effective National Flood Insurance Program (NFIP) map that is requested through the Letter of Map Change (LOMC) process. A LOMA establishes a property's location in relation to the Special Flood Hazard Area (SFHA). LOMAs are usually issued because a property has been inadvertently mapped as being in the floodplain but is actually on natural high ground above the base flood elevation. Because a LOMA officially amends the effective NFIP map, it is a public record that the community must maintain. Any LOMA should be noted on the community's master flood map and filed by panel number in an accessible location.

**LETTER OF MAP CHANGE** – The Letter of Map Change (LOMC) process is a service provided by FEMA for a fee that allows the public to request a change in flood zone designation in an Area of Special Flood Hazard on a Flood Insurance Rate Map (FIRM). Conditional Letters of Map Revision, Conditional Letters of Map Revision – Fill, Letters of Map Revision, Letters of Map Revision-Fill, and Letters of Map Amendment are requested through the Letter of Map Change (LOMC) process.

**LETTER OF MAP REVISION** - A Letter of Map Revision (LOMR) is FEMA's modification to an effective Flood Insurance Rate Map (FIRM). Letter of Map Revisions are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective Base Flood Elevations (BFEs), or the Special Flood Hazard Area (SFHA). The LOMR officially revises the Flood Insurance Rate Map (FIRM) and sometimes the Flood Insurance Study (FIS) report, and when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM or FIS report. Because a LOMR officially revises the effective NFIP map, it is a public record that the community must maintain. Any LOMR



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should be noted on the community's master flood map and filed by panel number in an accessible location.

**LETTER OF MAP REVISION – FILL --** A Letter of Map Revision Based on Fill (LOMR-F) is FEMA's modification of the Special Flood Hazard Area (SFHA) shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway may be initiated through the Letter of Map Change (LOMC) Process. Because a LOMR-F officially revises the effective Flood Insurance Rate Map (FIRM) map, it is a public record that the community must maintain. Any LOMR-F should be noted on the community's master flood map and filed by panel number in an accessible location.

**LICENSED DESIGN PROFESSIONAL** – Licensed design professional shall refer to either a New Jersey Licensed Professional Engineer, licensed by the New Jersey State Board of Professional Engineers and Land Surveyors or a New Jersey Licensed Architect, licensed by the New Jersey State Board of Architects.

**LICENSED PROFESSIONAL ENGINEER** - A licensed professional engineer shall refer to individuals licensed by the New Jersey State Board of Professional Engineers and Land Surveyors.

**LIMIT OF MODERATE WAVE ACTION (LiMWA)** – Inland limit of the area affected by waves greater than 1.5 feet during the Base Flood. Base Flood conditions between the VE Zone and the LiMWA will be similar to, but less severe than, those in the VE Zone.

**LOCAL DESIGN FLOOD ELEVATION (LD FE)** – The elevation reflective of the most recent available preliminary flood elevation guidance FEMA has provided as depicted on but not limited to Advisory Flood Hazard Area Maps, Work Maps, or Preliminary FIS and FIRM which is also inclusive of freeboard specified by the New Jersey Flood Hazard Area Control Act and Uniform Construction Codes and any additional freeboard specified in a community's ordinance. In no circumstances shall a project's LD FE be lower than a permit-specified Flood Hazard Area Design Flood Elevation or a valid NJDEP Flood Hazard Area Verification Letter plus the freeboard as required in ASCE 24 and the effective FEMA Base Flood Elevation.

**LOWEST ADJACENT GRADE** – The lowest point of ground, patio, or sidewalk slab immediately next a structure, except in AO Zones where it is the natural grade elevation.

**LOWEST FLOOR** – In A Zones, the lowest floor is the top surface of the lowest floor of the lowest enclosed area (including basement). In V Zones and coastal A Zones, the bottom of the lowest horizontal structural member of a building is the lowest floor. An unfinished or flood resistant enclosure, usable solely for the parking of vehicles, building access, or storage in an area other than a basement is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of other applicable non-elevation design requirements of these regulations.



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**LOWEST HORIZONTAL STRUCTURAL MEMBER** - In an elevated building in a Coastal A or Coastal High Hazard Zone, the lowest beam, joist, or other horizontal member that supports the building is the lowest horizontal structural member. Grade beams installed to support vertical foundation members where they enter the ground are not considered lowest horizontal members.

**MANUFACTURED HOME** – A structure that is transportable in one or more sections, eight (8) feet or more in width and greater than four hundred (400) square feet, built on a permanent chassis, designed for use with or without a permanent foundation when attached to the required utilities, and constructed to the Federal Manufactured Home Construction and Safety Standards and rules and regulations promulgated by the U.S. Department of Housing and Urban Development. The term also includes mobile homes, park trailers, travel trailers and similar transportable structures that are placed on a site for 180 consecutive days or longer.

**MANUFACTURED HOME PARK OR SUBDIVISION** – A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**MARKET VALUE** – The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in these regulations, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value shall be determined by one of the following methods (1) Actual Cash Value (replacement cost depreciated for age and quality of construction), (2) tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser, or (3) established by a qualified independent appraiser.

**NEW CONSTRUCTION** – Structures for which the start of construction commenced on or after the effective date of the first floodplain regulation adopted by a community; includes any subsequent improvements to such structures. New construction includes work determined to be a substantial improvement.

**NON-RESIDENTIAL** – Pursuant to ASCE 24, any building or structure or portion thereof that is not classified as residential.

**ORDINARY MAINTENANCE AND MINOR WORK** – This term refers to types of work excluded from construction permitting under N.J.A.C. 5:23 in the March 5, 2018 New Jersey Register. Some of these types of work must be considered in determinations of substantial improvement and substantial damage in regulated floodplains under 44 CFR 59.1. These types of work include but are not limited to replacements of roofing, siding, interior finishes, kitchen cabinets, plumbing fixtures and piping, HVAC and air conditioning equipment, exhaust fans, built in appliances, electrical wiring, etc. Improvements necessary to correct existing violations of State or local health, sanitation, or code enforcement officials which are the minimum necessary to assure safe living conditions and improvements of historic structures as discussed in 44 CFR 59.1 shall not be included in the determination of ordinary maintenance and minor work.



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

**RESIDENTIAL** – Pursuant to the ASCE 24:

- a. Buildings and structures and portions thereof where people live or that are used for sleeping purposes on a transient or non-transient basis;
- b. Structures including but not limited to one- and two-family dwellings, townhouses, condominiums, multi-family dwellings, apartments, congregate residences, boarding houses, lodging houses, rooming houses, hotels, motels, apartment buildings, convents, monasteries, dormitories, fraternity houses, sorority houses, vacation time-share properties; and
- c. institutional facilities where people are cared for or live on a 24-hour basis in a supervised environment, including but not limited to board and care facilities, assisted living facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug centers, convalescent facilities, hospitals, nursing homes, mental hospitals, detoxification facilities, prisons, jails, reformatories, detention centers, correctional centers, and prerelease centers.

**SOLID WASTE DISPOSAL** – “Solid Waste Disposal” shall mean the storage, treatment, utilization, processing or final disposition of solid waste as described in N.J.A.C. 7:26-1.6 or the storage of unsecured materials as described in N.J.A.C. 7:13-2.3 for a period of greater than 6 months as specified in N.J.A.C. 7:26 which have been discharged, deposited, injected, dumped, spilled, leaked, or placed into any land or water such that such solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

**SPECIAL FLOOD HAZARD AREA** – The greater of the following: (1) Land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year, shown on the FIRM as Zone V, VE, V1-3-, A, AO, A1-30, AE, A99, or AH; (2) Land and the space above that land, which lies below the peak water surface elevation of the flood hazard area design flood for a particular water, as determined using the methods set forth in the New Jersey Flood Hazard Area Control Act in N.J.A.C. 7:13; (3) Riparian Buffers as determined in the New Jersey Flood Hazard Area Control Act in N.J.A.C. 7:13. Also referred to as the AREA OF SPECIAL FLOOD HAZARD.

**START OF CONSTRUCTION** – The Start of Construction is as follows:

- a. For other than new construction or substantial improvements, under the Coastal Barrier Resources Act (CBRA), this is the date the building permit was issued, provided that the actual start of construction, repair, rehabilitation, addition, placement, or other improvement



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was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a building on site, such as the pouring of a slab or footing, the installation of piles, the construction of columns or any work beyond the stage of excavation, or the placement of a manufactured (mobile) home on a foundation. For a substantial improvement, actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

- b. For the purposes of determining whether proposed construction must meet new requirements when National Flood Insurance Program (NFIP) maps are issued or revised and Base Flood Elevation's (BFEs) increase or zones change, the Start of Construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation.

Permanent construction does not include land preparation, such as clearing, grading, and filling, nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. Such development must also be permitted and must meet new requirements when National Flood Insurance Program (NFIP) maps are issued or revised and Base Flood Elevation's (BFEs) increase or zones change.

For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

For determining if new construction and substantial improvements within the Coastal Barrier Resources System (CBRS) can obtain flood insurance, a different definition applies.

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

**SUBSTANTIAL DAMAGE** – Damage of any origin sustained by a structure whereby the cumulative cost of restoring the structure to its before damaged condition over a one year period would equal or exceed 49 percent of the market value of the structure before the damage occurred.



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**SUBSTANTIAL IMPROVEMENT** – Any reconstruction, rehabilitation, addition, or other improvement of a structure taking place over a one year period, the cumulative cost of which equals or exceeds 49 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure to correct existing violations of State or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- b. Any alteration of a "historic structure", provided that the alteration will not preclude the structure's continued designation as a "historic structure."

**UTILITY AND MISCELLANEOUS GROUP U BUILDINGS AND STRUCTURES** – Buildings and structures of an accessory character and miscellaneous structures not classified in any special occupancy, as described in ASCE 24.

**V ZONE AND COASTAL A ZONE DESIGN CERTIFICATE** - A certificate that contains a certification signed by a licensed design professional certifying that the designs, plans, and specifications and the methods of construction in V Zones and Coastal A Zones are in accordance with accepted standards of practice. This certificate also includes an optional Breakaway Wall Design Certification for enclosures in these zones below the Best Available Flood Hazard Data Elevation. A completed, signed, and sealed certification is required at permit application.

**V ZONES** – Areas of Special Flood Hazard in which the elevation of the surface water resulting from a flood that has a 1% annual chance of equaling or exceeding the Base Flood Elevation in any given year shown on the Flood Insurance Rate Map (FIRM) zones V1-V30 and VE and is referred to as the Coastal High Hazard Area.

**VARIANCE** – A grant of relief from the requirements of this section which permits construction in a manner otherwise prohibited by this section where specific enforcement would result in unnecessary hardship.

**VIOLATION** – A development that is not fully compliant with these regulations or the flood provisions of the building code. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

**WATER SURFACE ELEVATION** – the height, in relation to the North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.



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**WATERCOURSE** – A river, creek, stream, channel, or other topographic feature in, on, through, or over which water flows at least periodically.

**WET FLOODPROOFING** – Floodproofing method that relies on the use of flood damage resistant materials and construction techniques in areas of a structure that are below the Local Design Flood Elevation by intentionally allowing them to flood. The application of wet floodproofing as a flood protection technique under the National Flood Insurance Program (NFIP) is limited to enclosures below elevated residential and non-residential structures and to accessory structures that have been issued variances by the community.

## **§16-10. SUBDIVISIONS AND OTHER DEVELOPMENTS**

**§16-10.1. General.** Any subdivision proposal, including proposals for manufactured home parks and subdivisions, or other proposed new development in a flood hazard area shall be reviewed to assure that:

- (1) All such proposals are consistent with the need to minimize flood damage.
- (2) All public utilities and facilities, such as sewer, gas, electric and water systems are located and constructed to minimize or eliminate flood damage.
- (3) Adequate drainage is provided to reduce exposure to flood hazards; in Zones AH and AO, adequate drainage paths shall be provided to guide floodwater around and away from structures.

**§16-10.2. Subdivision requirements.** Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:

- (1) The flood hazard area, including floodways, coastal high hazard areas, and Coastal A Zones, and base flood elevations, as appropriate, shall be delineated on tentative subdivision plots.
- (2) Residential building lots shall be provided with adequate buildable area outside the floodway.
- (3) The design criteria for utilities and facilities set forth in these regulations and appropriate codes shall be met.

## **§16-11. SITE IMPROVEMENT**

**§16-11.1. Encroachment in floodways.** Development, land disturbing activity, and encroachments in floodways shall not be authorized unless it has been demonstrated through hydrologic and hydraulic analyses required in accordance with Section 16-5.3(i) of these regulations, that the proposed encroachment will not result in any increase in the base flood level during occurrence of the base flood discharge. If Section 16-5.3(i) is satisfied, proposed elevation, addition, or reconstruction of a lawfully existing structure within a floodway shall also be in accordance with Section 16-15.2 of this ordinance and the floodway requirements of N.J.A.C. 7:13.

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**§16-11.2. Prohibited in floodways.** The following are prohibited activities:

- (1) The storage of unsecured materials is prohibited within a floodway pursuant to N.J.A.C. 7:13.
- (2) Fill and new structures are prohibited in floodways per N.J.A.C. 7:13.

**§16-11.3. Coastal High Hazard Areas (V Zones) and Coastal A Zones.** In Coastal High Hazard Areas and Coastal A Zones:

- (1) New buildings shall only be authorized landward of the reach of mean high tide.
- (2) The placement of manufactured homes shall be prohibited except in an existing manufactured home park or subdivision.
- (3) Basements or enclosures that are below grade on all sides are prohibited.
- (4) The use of fill for structural support of buildings is prohibited.

**§16-11.4. Sewer facilities.** All new and replaced sanitary sewer facilities, private sewage treatment plants (including all pumping stations and collector systems) and on-site waste disposal systems shall be designed in accordance with the New Jersey septic system regulations contained in N.J.A.C. 14A and N.J.A.C. 7:9A, the UCC Plumbing Subcode (N.J.A.C. 5:23) and Chapter 7, ASCE 24, to minimize or eliminate infiltration of floodwater into the facilities and discharge from the facilities into flood waters, or impairment of the facilities and systems. All open plumbing drains for sanitary sewers, including rinsing stations, for residential and non-residential structures and accessory structures which are connected to a downstream public sanitary sewer system shall be located above the Local Design Flood Elevation (LDFE).

**§16-11.5. Water facilities.** All new and replacement water facilities shall be designed in accordance with the New Jersey Safe Drinking Water Act (N.J.A.C. 7:10) and the provisions of Chapter 7 ASCE 24, to minimize or eliminate infiltration of floodwater into the systems.

**§16-11.6. Storm drainage.** Storm drainage shall be designed to convey the flow of surface waters to minimize or eliminate damage to persons or property.

**§16-11.7. Streets and sidewalks.** Streets and sidewalks shall be designed to minimize potential for increasing or aggravating flood levels.

**§16-11.8. Limitations on placement of fill.** Subject to the limitations of these regulations, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwater, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, when intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the UCC (N.J.A.C. 5:23). Proposed fill and encroachments in flood



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hazard areas shall comply with the flood storage displacement limitations of N.J.A.C. 7:13.

**§16-11.9. Limitations on sites in coastal high hazard areas (V Zones) and Coastal A Zones.**

In coastal high hazard areas and Coastal A Zones, alteration of sand dunes shall be permitted only when the engineering analysis required by Section 16-5.3(iii) of these regulations demonstrates that the proposed alteration will not increase the potential for flood damage. Construction or restoration of dunes under or around elevated buildings and structures shall comply with Section 16-15.9(3) of these regulations and as permitted under the NJ Coastal Zone Management Rules (N.J.A.C. 7:7).

**§16-11.10. Hazardous Materials.** The placement or storage of any containers holding hazardous substances in a flood hazard area is prohibited unless the provisions of N.J.A.C. 7:13 which cover the placement of hazardous substances and solid waste is met.

**§16-12. MANUFACTURED HOMES (Reserved)**

**16.12.1 General.** All manufactured homes installed in flood hazard areas shall be installed pursuant to the Nationally Preemptive Manufactured Home Construction and Safety Standards Program (24 CFR 3280).

**16.12.2 Elevation.** All new, relocated, and replacement manufactured homes to be placed or substantially improved in a flood hazard area shall be elevated such that the bottom of the frame is elevated to or above the elevation specified in Section 801.2.

**16.12.3 Foundations.** All new, relocated, and replacement manufactured homes, including substantial improvement of existing manufactured homes, shall be placed on permanent, reinforced foundations that are designed in accordance with Section R322 of the Residential Code.

**16.12.4 Anchoring.** All new, relocated, and replacement manufactured homes to be placed or substantially improved in a flood hazard area shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces.

**16.12.5 Enclosures.** Fully enclosed areas below elevated manufactured homes shall comply with the requirements of Section 801.2.

**16.13 Protection of mechanical equipment and outside appliances.** Mechanical equipment and outside appliances shall be elevated to or above the elevation of the bottom of the frame required in Section 801.2 of these regulations.

**Exception.** Where such equipment and appliances are designed and installed to prevent

water from entering or accumulating within their components and the systems are constructed to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding up to the elevation required by Section 801.2, the systems and equipment shall be permitted to be located below that elevation. Electrical wiring systems shall be permitted below the design flood elevation provided they conform to the provisions of NFPA 70 (National Electric Code).

## **§16-13. RECREATIONAL VEHICLES**

**§16-13.1. Placement prohibited.** The placement of recreational vehicles shall not be authorized in coastal high hazard areas and in floodways. See Section 30-6.11 of the Borough Code for additional regulations for recreational vehicles as accessory uses.

**§16-13.2. Temporary placement.** Recreational vehicles in flood hazard areas shall be fully licensed and ready for highway use and shall be placed on a site for less than 180 consecutive days.

**§16-13.3. Permanent placement.** Recreational vehicles that are not fully licensed and ready for highway use, or that are to be placed on a site for more than 180 consecutive days, shall meet the requirements of Section 801.2 for habitable buildings. The use of recreational vehicles for habitation is prohibited.

## **§16-14. TANKS**

**§16-14.1. Tanks.** Underground and above-ground tanks shall be designed, constructed, installed, and anchored in accordance with ASCE 24 and N.J.A.C. 7:13.

## **§16-15. OTHER DEVELOPMENT AND BUILDING WORK**

**§16-15.1. General requirements for other development and building work.** All development and building work, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in these regulations or the Uniform Construction Code (N.J.A.C. 5:23), shall:

- (1) Be located and constructed to minimize flood damage;
- (2) Meet the limitations of Section 16-5.3(i) of this ordinance when located in a regulated floodway;
- (3) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic and hydrodynamic loads, including the effects of buoyancy, during the conditions of flooding up to the Local Design Flood Elevation determined according to Section 16-2.3;
- (4) Be constructed of flood damage-resistant materials as described in ASCE 24 Chapter 5;

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- (5) Have mechanical, plumbing, and electrical systems above the Local Design Flood Elevation determined according to Section 16-2.3 or meet the requirements of ASCE 24 Chapter 7 which requires that attendant utilities are located above the Local Design Flood Elevation unless the attendant utilities and equipment are:
  - i. Specifically allowed below the Local Design Flood Elevation; and
  - ii. Designed, constructed, and installed to prevent floodwaters, including any backflow through the system from entering or accumulating within the components.
- (6) Not exceed the flood storage displacement limitations in fluvial flood hazard areas in accordance with N.J.A.C. 7:13; and
- (7) Not exceed the impacts to frequency or depth of offsite flooding as required by N.J.A.C. 7:13 in floodways.

**§16-15.2. Requirements for Habitable Buildings and Structures.**

- 1) Construction and Elevation in A Zones not including Coastal A Zones.
  - a. No portion of a building is located within a V Zone.
  - b. No portion of a building is located within a Coastal A Zone, unless a licensed design professional certifies that the building's foundation is designed in accordance with ASCE 24, Chapter 4.
  - c. All new construction and substantial improvement of any habitable building (as defined in Section 16-9) located in flood hazard areas shall have the lowest floor, including basement, together with the attendant utilities (including all electrical, heating, ventilating, air-conditioning, emergency generators, and other service equipment) and sanitary facilities, elevated to or above the Local Design Flood Elevation as determined in Section 16-2.3, be in conformance with ASCE Chapter 7, and be confirmed by an Elevation Certificate.
  - d. All new construction and substantial improvements of non-residential structures shall:
    - i. Have the lowest floor, including basement, together with the attendant utilities (including all electrical, heating, ventilating, air-conditioning and other service equipment) and sanitary facilities, elevated to or above the Local Design Flood Elevation as determined in Section 16-2.3, be in conformance with ASCE Chapter 7, and be confirmed by an Elevation Certificate; or
    - ii. Together with the attendant utility and sanitary facilities, be designed so that below the Local Design Flood Elevation, the structure:
      1. Meets the requirements of ASCE 24 Chapters 2 and 7; and
      2. Is constructed according to the design plans and specifications provided at permit application and signed by a licensed design



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professional, is certified by that individual in a Floodproofing Certificate, and is confirmed by an Elevation Certificate.

- e. All new construction and substantial improvements with fully enclosed areas below the lowest floor shall be used solely for parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding. Enclosures shall:

- i. For habitable structures, be situated at or above the adjoining exterior grade along at least one entire exterior wall, in order to provide positive drainage of the enclosed area in accordance with N.J.A.C. 7:13; enclosures (including crawlspaces and basements) which are below grade on all sides are prohibited;
- ii. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters unless the structure is non-residential and the requirements of 16-15.2(1)(d)(ii) are met;
- iii. Be constructed to meet the requirements of ASCE 24 Chapter 2;
- iv. Have openings documented on an Elevation Certificate; and
- v. Have documentation that a deed restriction has been obtained for the lot if the enclosure is greater than six feet in height. This deed restriction shall be recorded in the Office of the County Clerk or the Registrar of Deeds and Mortgages in which the building is located, shall conform to the requirements in N.J.A.C.7:13, and shall be recorded within 90 days of receiving a Flood Hazard Area Control Act permit or prior to the start of any site disturbance (including pre-construction earth movement, removal of vegetation and structures, or construction of the project), whichever is sooner. Deed restrictions must explain and disclose that:

1. The enclosure is likely to be inundated by floodwaters which may result in damage and/or inconvenience.
2. The depth of flooding that the enclosure would experience to the Flood Hazard Area Design Flood Elevation;
3. The deed restriction prohibits habitation of the enclosure and explains that converting the enclosure into a habitable area may subject the property owner to enforcement;

## 2) Construction and Elevation in V Zones and Coastal A Zones.

- a. All new construction and substantial improvements shall be constructed according to structural designs, plans and specifications conforming with ASCE 24 Chapter 4 which are signed by a licensed design professional and certified by that individual in a signed and sealed V Zone and Coastal A Zone Design Certificate.
- b. All new construction and substantial improvement of any habitable building (as defined in Section 16-9) located in coastal high hazard areas shall have the lowest



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horizontal structural member, together with the attendant utilities (including all electrical, heating, ventilating, air-conditioning and other service equipment) and sanitary facilities, elevated to the Local Design Flood Elevation as determined in Section 16-2.3, be in conformance with ASCE Chapter 7, and be confirmed by an Elevation Certificate.

- c. All new construction and substantial improvements of non-residential structures shall:
  - i. Have the lowest horizontal structural member, including basement, together with the attendant utilities (including all electrical, heating, ventilating, air-conditioning and other service equipment) and sanitary facilities, elevated to or above the Local Design Flood Elevation as determined in Section 16-2.3, be in conformance with ASCE 24 Chapter 7, and be confirmed by an Elevation Certificate; or
  - ii. Together with the attendant utility and sanitary facilities, be designed so that below the Local Design Flood Elevation, the structure:
    - 1. Meets the requirements of ASCE 24 Chapters 4 and 7; and
    - 2. Is constructed according to the design plans and specifications provided at permit application and signed by a licensed design professional, is certified by that individual in a Floodproofing Certificate, and is confirmed by an Elevation Certificate.
- d. All new construction and substantial improvements shall have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. All breakaway walls shall be constructed according to structural designs, plans and specifications conforming with ASCE 24 Chapter 4, signed by a licensed design professional, and certified by that individual in a Breakaway Wall Certificate.
- e. All new construction and substantial improvements with fully enclosed areas below the lowest floor shall be used solely for parking of vehicles, building access, or storage in an area other than a basement and which is subject to flooding. Enclosures shall:
  - i. Be situated at or above the adjoining exterior grade along at least one entire exterior wall, in order to provide positive drainage of the enclosed area in accordance with N.J.A.C. 7:13; enclosures (including crawlspaces and basements) which are below grade on all sides are prohibited.
  - ii. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters unless the structure is non-residential and the requirements of 16-15.2(2)(c)(ii) are met;
  - iii. Be constructed to meet the requirements of ASCE 24 Chapter 4;



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- iv. Have openings documented on an Elevation Certificate and have breakaway wall construction documented on a Breakaway Wall Certificate unless the requirements of 16-15.2(2)(c)(ii) are met for a non-residential structure; and
- v. Have documentation that a deed restriction has been obtained for the lot if the enclosure is greater than six feet in height. This deed restriction shall be recorded in the Office of the County Clerk or the Registrar of Deeds and Mortgages in which the building is located, shall conform to the requirements in N.J.A.C.7:13, and shall be recorded within 90 days of receiving a Flood Hazard Area Control Act permit or prior to the start of any site disturbance (including pre-construction earth movement, removal of vegetation and structures, or construction of the project), whichever is sooner. Deed restrictions must explain and disclose that:
  1. The enclosure is likely to be inundated by floodwaters which may result in damage and/or inconvenience.
  2. The depth of flooding that the enclosure would experience to the Flood Hazard Area Design Flood Elevation;
  3. The deed restriction prohibits habitation of the enclosure and explains that converting the enclosure into a habitable area may subject the property owner to enforcement;

**§16-15.3. Garages and accessory structures.** Garages and accessory structures shall be designed and constructed in accordance with the Uniform Construction Code. All accessory structures shall also be designed to meet the requirements and standards of this code and of the requirements in ASCE 24, whichever is more stringent.

**§16-15.4. Fences.** Fences in floodways that have the potential to block the passage of floodwater, such as stockade fences and wire mesh fences, shall meet the requirements of Section 16-5.3(i) of these regulations. Pursuant to N.J.A.C. 7:13, any fence located in a floodway shall have sufficiently large openings so as not to catch debris during a flood and thereby obstruct floodwaters, such as barbed-wire, split-rail, or strand fence. A fence with little or no open area, such as a chain link, lattice, or picket fence, does not meet this requirement. Foundations for fences greater than 6 feet in height must conform with the Uniform Construction Code. Fences for pool enclosures having openings not in conformance with this section but in conformance with the Uniform Construction Code to limit climbing require a variance as described in Section 16-7 of this ordinance.

**§16-15.5. Retaining walls, sidewalks, and driveways.** Retaining walls, sidewalks and driveways that involve placement of fill in floodways shall meet the requirements of Section 16-5.3(i) of these regulations and N.J.A.C. 7:13. Retaining walls in any flood zone shall not be constructed to divert floodwaters.



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**§16-15.6. Swimming pools.** Swimming pools shall be designed and constructed in accordance with the Uniform Construction Code. Below-ground swimming pools that involve placement of fill in floodways shall also meet the requirements of Section 16-5.3(ii) of these regulations. Above-ground swimming pools are prohibited.

**§16-15.7. Roads and watercourse crossings.**

1. For any railroad, roadway, or parking area proposed in a flood hazard area, the travel surface shall be constructed at least one foot above the Flood Hazard Area Design Elevation in accordance with N.J.A.C. 7:13.
2. Roads and watercourse crossings that encroach into regulated floodways or riverine waterways with base flood elevations where floodways have not been designated, including roads, bridges, culverts, low- water crossings and similar means for vehicles or pedestrians to travel from one side of a watercourse to the other side, shall meet the requirements of Section 105.3(1) of these regulations

**§16-15.8. Other development in coastal high hazard areas (Zone V) and Coastal A Zones.** In Coastal High Hazard Areas (V Zones) and Coastal A Zones, development activities other than buildings and structures shall be permitted only when also authorized by the appropriate Federal, State or local authority; when located outside the footprint of, and not structurally attached to, buildings and structures; and when analyses prepared by a licensed professional engineer demonstrates no harmful diversion of floodwater or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

- (1) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures; and
- (2) Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the base flood or otherwise function to avoid obstruction of floodwater.
- (3) On-site filled or mound sewage systems

**§16-15.9. Nonstructural fill in coastal high hazard areas (Zone V) and Coastal A Zones.** In coastal high hazard areas and Coastal A Zones:

- (1) Minor grading and the placement of minor quantities of nonstructural fill shall be permitted for landscaping and for drainage purposes under and around buildings.
- (2) Nonstructural fill with finished slopes that are steeper than one (1) unit vertical to five (5) units horizontal shall be permitted only when an analysis prepared by a licensed professional engineer demonstrates no harmful diversion of floodwater or wave runup and wave reflection that would increase damage to adjacent buildings and structures.



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- (3) Sand dune construction and restoration of sand dunes under or around elevated buildings are permitted without additional engineering analysis or certification of the diversion of floodwater or wave runup and wave reflection where the scale and location of the dune work is consistent with local beach-dune morphology and the vertical clearance is maintained between the top of the sand dune and the lowest horizontal structural member of the building.

## **§16-16. TEMPORARY STRUCTURES AND TEMPORARY STORAGE**

**§16-16.1. Temporary structures.** Temporary structures shall be erected for a period of less than 180 days. Temporary structures shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the base flood. Fully enclosed temporary structures shall have flood openings that are in accordance with ASCE 24 to allow for the automatic entry and exit of flood waters.

**§16-16.2. Temporary storage.** Temporary storage includes storage of goods and materials for a period of less than 180 days. Stored materials shall not include hazardous materials.

**§16-16.3. Floodway encroachment.** Temporary structures and temporary storage in floodways shall meet the requirements of Section 16-5.3(i) of these regulations.

## **§16-17. UTILITY AND MISCELLANEOUS GROUP U**

**§16-17.1. Utility and Miscellaneous Group U.** In accordance with Section 312 of the International Building Code, Utility and Miscellaneous Group U includes buildings and structures that are accessory in character and miscellaneous structures not classified in any specific occupancy in the Building Code, including, but not limited to, carports, communication equipment structures (gross floor area less than 1,500 sq. ft.), fences more than 6 feet high, private garages, retaining walls, sheds, tanks, and towers.

**§16-17.2. Flood loads.** Utility and miscellaneous Group U buildings and structures, including substantial improvement of such buildings and structures, shall be anchored to prevent flotation, collapse or lateral movement resulting from flood loads, including the effects of buoyancy, during conditions up to the Local Design Flood Elevation as determined in Section 16-2.3.

**§16-17.3. Elevation.** Utility and miscellaneous Group U buildings and structures, including substantial improvement of such buildings and structures, shall be elevated such that the lowest floor, including basement, is elevated to or above the Local Design Flood Elevation as determined in Section 16-2.3 and in accordance with ASCE 24. Utility lines shall be designed and elevated in accordance with N.J.A.C. 7:13.

**§16-17.4. Enclosures below base flood elevation.** Fully enclosed areas below the design flood elevation shall be constructed in accordance with Section 16-15.2 and with



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ASCE 24 for new construction and substantial improvements. Existing enclosures such as a basement or crawlspace having a floor that is below grade along all adjoining exterior walls shall be abandoned, filled-in, and/or otherwise modified to conform with the requirements of N.J.A.C. 7:13 when the project has been determined to be a substantial improvement by the Floodplain Administrator.

**§16-17.5. Flood-damage resistant materials.** Flood-damage-resistant materials shall be used below the Local Design Flood Elevation determined in Section 16-2.3.

**§16-17.6. Protection of mechanical, plumbing, and electrical systems.** Mechanical, plumbing, and electrical systems, equipment and components, heating, ventilation, air conditioning, plumbing fixtures, duct systems, and other service equipment, shall be elevated to or above the Local Design Flood Elevation determined in Section 16-2.3.

**Exception:** In accordance with the design standards of ASCE 24, certain electrical systems, equipment and components, and heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment shall be permitted to be located below the Local Design Flood Elevation provided that they are designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding to the Local Design Flood Elevation in compliance with the flood-resistant construction requirements of ASCE 24. Electrical wiring systems shall be permitted to be located below the Local Design Flood Elevation provided they conform to the provisions of NFPA 70 (National Electric Code).



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## Appendix – Inspections

1. The permit application records must include a site plan that shows:
  - a. The site plan's scale and north orientation arrow;
  - b. The parcel boundaries and the location and names of adjacent streets;
  - c. All watercourses on the parcel;
  - d. All floodplain, V-Zone, Coastal A-Zone, and floodway boundaries that run through the parcel;
  - e. All required buffer or setback lines from shorelines or channel banks;
  - f. All drainage and utility easements;
  - g. All areas to be cleared, cut, graded, or filled; and
  - h. The location of all existing and proposed fences, walls, and other structures.
2. If the permit includes a new building or an expansion of an existing building,
  - a. The site plan must show the footprint of all existing and proposed buildings and building additions.
  - b. The permit application papers must include:
    - The elevation of the lowest floor of the building (or addition) and of an attached garage, including the elevation of the interior grade or floor of a crawl space;
    - The location and elevation of all mechanical and utility equipment servicing the building; and
    - For buildings with solid foundation walls and buildings with enclosures below the base flood elevation, the total area of each enclosed area (in square feet) measured on the outside, the location and specifications of all flood openings, and either the total net open area (in square inches) of flood openings below the base flood elevation, accounting for screens, louvers, faceplates, and grilles; or a statement of certification if engineered openings are specified (see NFIP Technical Bulletin #1).
3. The first inspection is conducted when the site is staked out or otherwise marked. The inspector checks that areas subject to special requirements are clearly marked on the ground. For example, if the floodway, Coastal A-Zone, or V-Zone line goes through the parcel or there is a natural area that is not to be disturbed, it should be staked out. If there are no such areas, then this inspection does not need to be conducted for CRS credit (however, it is still a good idea to place stakes or other markings to show the building footprint in order to verify setbacks and other code requirements).
4. The second inspection is conducted when the lowest floor is built for a building or building addition. The builder provides the community with documentation of the surveyed lowest floor elevation. The inspector checks that
  - a. The foundation or forms for the structure are correctly located on the site;
  - b. Where buildings have foundation walls or other enclosures below the base flood elevation, the location and size of the openings are as specified on the approved plans; and



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- c. In coastal high hazard areas (V Zones) and coastal A Zones, slabs placed under the building are not connected to the foundation.

The inspection records must include a record that the elevation of the lowest floor was surveyed and found to be compliant. This could be, but does not have to be, a FEMA Elevation Certificate. At this point the inspector verifies that the lowest floor will be at or above the required elevation. This inspection is not needed if the project does not involve construction of a new building or a substantial improvement.

5. The third inspection is conducted when the project is finished, the Elevation Certificate is submitted, and before or during the final building inspection. The inspector checks ~~the~~
  - a. The foundation and floor elevation have not been altered since the second inspection;
  - b. All areas below the required elevation are constructed with materials resistant to flood damage;
  - c. All required manufactured home tie downs are in place;
  - d. Where buildings have foundation walls or other enclosures below the base flood elevation, the location and size of the openings are as specified on the approved plans and recorded on the Elevation Certificate;
  - e. All electrical, heating, ventilation, plumbing, air conditioning, ductwork, and other equipment is located, elevated, or protected as specified on the approved plans and recorded on the Elevation Certificate;
  - f. There has been no alteration of the ground since the second inspection OR the ground has been graded according to the approved plans (e.g., the lowest floor is at the correct height above the highest adjacent grade);
  - g. V-Zone and breakaway wall certificates have been obtained, as appropriate, for new and substantially improved buildings in V-Zone and coastal A Zone areas; and
  - h. Buildings with enclosures in coastal A Zones meet the A-Zone vent requirements.
6. The inspection records must include
  - a. A completed FEMA Elevation or Floodproofing Certificate, as appropriate, that has been checked by the community for completeness and accuracy;
  - b. Photographs of all sides of the structure;
  - c. Close-up photographs of typical openings; and

Photographs of all mechanical and utility equipment located outside the building showing (1) its relation to the building and ground and (2) its required anchoring



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