

Article 6 Overlay Districts

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Section 10.610 Overlay Districts Generally

10.611 Relationship to Underlying Zoning Districts

Overlay districts apply special rules to manage land use in specific areas that may be portions of a single zoning district or that may overlap two or more zoning districts. The rules for **overlay districts** supplement the regulations contained in other sections of this Ordinance. Except as specifically provided otherwise in the regulations for an **overlay district**, all regulations of the underlying zoning district shall apply. Where there is a conflict between the regulations of an **overlay district** and those of the underlying district, the **overlay district** regulations control.

10.612 Establishment of Overlay Districts

The following **overlay districts** are established:

Overlay District Name	Abbreviation
Floodplain District	FP
Historic District	HD
Downtown Overlay District	DOD
Osprey Landing Overlay District	OL
Airport Approach Overlay District	AA
North End Incentive Overlay District ¹	NOD
West End Incentive Overlay District ¹	WOD
Highway Noise Overlay District	HNOD

10.613 Overlay District Locations

10.613.10 The **Floodplain District** (FP) consists of:

- (a) all lands designated as **special flood hazard areas** by the Federal Emergency Management Agency (FEMA) in its “**Flood Insurance Study** for the County of Rockingham County, NH” dated January 29, 2021 or as amended, together with associated **Flood Insurance**

¹ Administrative note: See Section 10.5A46 for North End Incentive Overlay District and West End Incentive Overlay District descriptions and requirements.

Rate Maps (FIRM) dated January 29, 2021 or as amended, which are declared to be part of this Ordinance and are hereby incorporated by reference; and

- (b) all **extended flood hazard areas** as defined in Section 10.622.20, each of which shall be contiguous and adjacent to a **special flood hazard area** and shall be delineated on the basis of mapped or surveyed elevations.

10.613.20 The **Historic District** is identified on the Zoning Map.

10.613.30 The **Downtown Overlay District (DOD)** is identified on the Zoning Map.

10.613.40 The **Osprey Landing Overlay District (OL)** is identified on the Zoning Map.

10.613.50 The **Airport Approach Overlay District (AA)** consists of:

- (a) the Approach Zones shown on the Airport Obstruction Chart AOC 678 with the associated Obstruction Data Sheet ODS 678 (Surveyed October 1990, 1st Edition, for Pease Air Force Base, Portsmouth, NH), along with two detailed drawings (Exhibits 1 and 2), a legend (Exhibit 3), and the accompanying FAR Part 77.25, Civil Airport Imaginary Surfaces (Exhibit 4), all of which documents collectively are hereinafter called the “Airport Obstruction Chart” or “AOC”; and

- (b) all the land within a distance of two miles from the **airport** reference point shown on the Pease International Tradeport Approach Map.

10.613.60 The **Highway Noise Overlay District (HN)** is identified on the Zoning Map.

Section 10.620 Floodplain District

10.621 Purpose

10.621.10 The regulations in this Section shall apply to land in the **Floodplain District**, and shall overlay and supplement the regulations of any underlying district.

10.621.20 If any provision of this Section differs or appears to conflict with any other provision of the Zoning Ordinance or other ordinance or regulation, the provision imposing the greater restriction or more stringent standard shall be controlling.

10.622 Definitions

10.622.10 Rules of Construction

10.622.11 The definitions of words and terms in Section 10.622.20 apply to the Floodplain District regulations (Section 10.620).

When a term is used in the Floodplain District Regulations and is defined in Section 10.622.20, it shall have that meaning, which shall supersede any definition in Article 15.

10.622.12 When a term is used in Section 10.620 and is not defined in Section 10.622.20, its meaning shall be determined in accordance with Article 15.

10.622.13 When a term appears in a section of the Zoning Ordinance other than Section 10.620, its meaning for the purpose of that section shall be determined in accordance with Article 15.

10.622.20 Terms Defined for the Floodplain District

Area of special flood hazard

The land in the **floodplain** within the City of Portsmouth subject to a one percent or greater possibility of flooding in any given year. The area is designated on the **FIRM** as Zones A and AE.

Base flood

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

Base flood elevation (BFE)

The **water surface elevation** having a one percent possibility of being equaled or exceeded in any given year as defined on the **flood insurance rate map (FIRM)** currently in effect.

Basement

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

Building

See **structure** in this Section.

Development

Any man-made change to improved or unimproved real estate, including but not limited to **buildings** or other **structures**, mining, dredging, filling, grading, paving, excavation, or drilling operation or storage of equipment or materials. For the purposes of this Ordinance, only storage of equipment or materials that has the potential to increase flood levels is included in this definition.

Extended flood hazard area

Any contiguous area of land adjacent to a **special flood hazard area** and less than two feet above the **base flood elevation** in that **special flood hazard area**.

FEMA

The Federal Emergency Management Agency.

FIRM

See **flood insurance rate map**.

Flood or **flooding**

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

Flood insurance rate map (FIRM)

An official map, incorporated with this Ordinance, on which **FEMA** has delineated both the **special flood hazard areas** (SFHAs) and the Risk Premium Zones applicable to the City of Portsmouth.

Flood insurance study

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

Floodplain or **flood-prone area**

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

Flood proofing

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

Floodway

See **regulatory floodway**.

Highest adjacent grade

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

Historic structure

Any **structure** that is:

- a. Listed individually in the National Register of Historic Places 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; or
- c. Individually listed on the New Hampshire State Register of Historic Places.

Lowest floor

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

Manufactured home

A **structure**, transportable in one or more sections, which is built on a permanent chassis and is designed for **use** with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 days. This includes **manufactured homes** located in a **manufactured home park or subdivision**.

Manufactured home park or subdivision

For the purposes of the **Floodplain District**, a **parcel** (or contiguous **parcels**) of land divided into two or more **manufactured home** lots for rent or sale.

Mean sea level

The National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, or other datum, to which **base flood elevations (BFE)** shown on a community's **FIRM** are referenced.

New construction

A **structure** for which the **start of construction** commenced on or after the effective date of this **floodplain** management regulation and includes any subsequent improvements to such **structure**.

Recreational vehicle

A vehicle that is:

- (a) built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) designed to be self-propelled or permanently towable by a light duty truck; and
- (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Regulatory floodway

The channel of a river or other watercourse and the **adjacent** land areas that must be reserved in order to discharge the **base flood** without cumulatively increasing the **water surface elevation** more than a designated height.

Special flood hazard area (SFHA)

See **Area of special flood hazard**.

Start of construction (including substantial improvement)

The date on which 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.

- (a) The “actual start” means either the first placement of permanent construction of a **structure** on site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a **manufactured home** on a foundation.
- (b) “Permanent construction” does not include any of the following:
 - (1) land preparation, such as clearing, grading and filling;
 - (2) the installation of **streets** and/or walkways;
 - (3) excavation for a **basement**, footings, piers, or foundations or the erection of temporary forms;
 - (4) the installation on the property of **accessory buildings**, such as garages or sheds not occupied as **dwelling units** or part of the main **structure**.

Structure

For **floodplain** management purposes, a walled and roofed **building**, including a gas or liquid storage tank, that is principally above ground, as well as a **manufactured home**.

Substantial damage

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

Substantial improvement

Any combination of repairs, reconstruction, additions, rehabilitation, **alterations**, or improvements to a **structure** in which the cost equals or exceeds 40 percent of the market value of the **structure**. The market value of the **structure** should equal:

- (a) the appraised value at the time of the submission of a building permit application for the repair or improvement; or
- (b) in the case of damage, the value of the **structure** prior to the damage occurring.

For the purposes of this definition, **substantial improvement** is considered to occur when the first **alteration** of any wall, ceiling, floor, or other structural part of the **building** commences, whether or not that **alteration** affects the external dimensions of the **structure**. This term includes **structures** which have incurred **substantial damage**, regardless of actual repair work performed. The term does not, however, include any project for improvement of a **structure** required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any **alteration** of a **historic structure**, provided that the **alteration** will not preclude the **structure**'s continued designation as a **historic structure**.

Violation

The failure of a **structure** or other **development** to be fully compliant with the floodplain management regulations. A **structure** or other **development** without the elevation certificate, other certifications, or other evidence of compliance required under 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 National Geodetic Vertical Datum (NGVD) of 1929, North American Vertical Datum (NAVD) of 1988, (or other datum, where specified) of **floods** of various magnitudes and frequencies in the **floodplains**.

10.623 Building Permits

- 10.623.10 All proposed **development** in a **special flood hazard area** or **extended flood hazard area** shall require a **building permit**.
- 10.623.20 The **Code Official** shall review all **building permit** applications for **new construction** or **substantial improvements** to determine (a) whether the proposed **building site** will be in a **special flood hazard area** and (b) if so, that all **new construction** or **substantial improvements** will comply with the requirements of this section.
- 10.623.30 The **Code Official** shall not grant a **building permit** until the applicant certifies that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

10.624 Water and Sewer Systems

Where new or replacement water and sewer systems (including on-site systems) are proposed in a **special flood hazard area**, the applicant shall provide the **Code Official** with assurance that these systems will be designed to minimize or eliminate infiltration of **flood** waters into the systems and discharges from the systems into **flood** waters, and on-site waste disposal systems will be located to avoid impairment to them or contamination from them during periods of **flooding**.

10.625 Flood Information

- 10.625.10 For all new or substantially improved **structures** located in Zones A or AE the applicant shall furnish the following information to the **Code Official**:
 - (a) A completed and certified copy of a **FEMA** Elevation Certificate that includes the as-built elevation (in relation to **mean sea level**) of the lowest floor of the **structure** and whether or not the **structure** has a basement.

- (b) If a non-residential **structure** includes **floodproofing**, a completed and certified copy of the **FEMA** Floodproofing Certificate for Non-Residential Structures that includes the as-built elevation (in relation to **mean sea level**) to which the **structure** was floodproofed and certification of **floodproofing**.

10.625.20 The **Code Official** shall maintain the above information for public inspection and shall furnish such information upon request.

10.626 Watercourse Alteration, Relocation or Encroachment

10.626.10 In riverine situations, prior to the **alteration** or relocation of a watercourse the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the **Code Official** in addition to the copies required by provisions of State law. Further, the applicant shall be required to submit copies of said notification to those **adjacent** communities as determined by the **Code Official**, including notice of all scheduled hearings before the Wetlands Bureau.

10.626.20 The applicant shall submit to the **Code Official** certification provided by a registered professional engineer assuring that the **flood** carrying capacity of an altered or relocated watercourse can and will be maintained.

10.626.30 The **Code Official** shall obtain, review, and reasonably utilize any **floodway** data available from Federal, State, or other sources as criteria for requiring that all **development** located in Zone A meet the following **floodway** requirement:

“No encroachments, including fill, new construction, substantial improvements, and other development are allowed within the floodway that would result in any increase in flood levels within the community during the base flood discharge.”

10.626.40 Along watercourses that have not had a **regulatory floodway** designated, no **new construction, substantial improvement** or other **development** (including fill) shall be permitted within Zone AE on the **FIRM**, unless it is demonstrated by the applicant that the cumulative effect on the proposed **development**, when combined with all existing and anticipated **development**, will not increase the **water surface elevation** of the **base flood** more than one foot at any point within the community.

10.627 Determination of Base Flood Elevation

10.627.10 In a **special flood hazard area** (SFHA) the **Code Official** shall determine the **base flood elevation** in the following order of precedence according to the data available:

- 10.627.11 In Zone AE, refer to the elevation data provided in the community's **flood insurance study** and accompanying **FIRM**;
- 10.627.12 In Zone A, the **Code Official** shall obtain, review, and reasonably utilize any **base flood elevation** data available from any Federal, State or other source including data submitted for **development** proposals submitted to the community (i.e. subdivisions, site approvals);
- 10.627.13 In Zone A where a **base flood elevation** is not available, the **base flood elevation** shall be at least two feet above the highest adjacent grade.

10.628 Construction Standards in Special Flood Hazard Areas and Extended Flood Hazard Areas

- 10.628.10 In Zones A and AE, any **new construction** or **substantial improvement** shall be reasonably safe from flooding and:
 - (a) be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the **structure** resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
 - (b) be constructed with materials resistant to **flood** damage;
 - (c) be constructed by methods and practices that minimize **flood** damage; and
 - (d) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and located so as to prevent water from entering or accumulating within the components during conditions of **flooding**.
- 10.628.20 Any **new construction** of a residential **structure** shall have the **lowest floor** (including **basement**) elevated to at least two (2) feet above the **base flood elevation** if in Zone A or AE, and to at least two (2) feet above **the base flood elevation** of the adjacent **special flood hazard area** if in an **extended flood hazard area**.
- 10.628.30 Any **substantial improvement** of a residential **structure** shall have the lowest floor (including basement) elevated to at least one (1) foot above the **base flood elevation** if in Zone A or AE.
- 10.628.40 Any **new construction** of a nonresidential **structure** shall have the **lowest floor** (including **basement**) elevated to at least two (2) feet above the **base flood elevation** if in Zone A or AE, and to at least two (2) feet above the **base flood elevation** of the adjacent **special flood hazard**

area if in an **extended flood hazard area**; or together with attendant utility and sanitary facilities, shall:

- (a) be floodproofed so that below two (2) feet above the **base flood elevation** in Zone A or AE, or below two (2) feet above the **base flood elevation** of the adjacent **special flood hazard area** in an **extended flood hazard area**, the **structure** is watertight with walls substantially impermeable to the passage of water;
- (b) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
- (c) be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.

10.628.50 Any **substantial improvement** of a nonresidential **structure** shall have the lowest floor (including basement) elevated to at least one (1) foot above the **base flood elevation** if in Zone A or AE; or together with attendant utility and sanitary facilities, shall:

- (a) be floodproofed so that areas below one (1) foot above the **base flood elevation** in Zone A or AE, the structure is watertight with walls substantially impermeable to the passage of water;
- (b) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
- (c) be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.

10.628.60 Any **manufactured home** to be placed or substantially improved within a **special flood hazard area** shall be elevated on a permanent foundation such that the **lowest floor** of the **manufactured home** is at least two (2) feet above the **base flood elevation**; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind forces;

10.628.70 For any **new construction** or **substantial improvement**, fully enclosed areas below the **lowest floor** that are subject to **flooding** are permitted provided they meet the following requirements:

- (a) the enclosed area is unfinished or **flood** resistant, usable solely or the parking of vehicles, **building** access or storage;
- (b) the area is not a **basement**;

- (c) the area shall be designed to automatically equalize hydrostatic **flood** forces on exterior walls by allowing for the entry and exit of floodwater certified by a registered professional engineer or architect, or must meet or exceed the following minimum criteria:
 - (i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to **flooding** shall be provided.
 - (ii) The bottom of all openings shall be no higher than one foot above grade.
 - (iii) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

- 10.628.80 Any **recreational vehicle** placed on a site within Zones A and AE for 180 or more consecutive days shall either:
- (a) be fully licensed, on wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions, or
 - (b) meet all standards of Section 10.623.10 of this ordinance and the elevation and anchoring requirements for **manufactured homes** in Section 10.628.60 of this ordinance.

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.

10.629 Variances and Appeals

- 10.629.10 Any order, requirement, decision or determination of the **Code Official** made under this Section 10.620 may be appealed to the Board of Adjustment as set forth in accordance with the provisions of State law.
- 10.629.20 If the applicant, upon appeal, requests a variance as authorized by the provisions of State law, the applicant shall have the burden of showing in addition to the usual variance standards under State law:
- (a) That the variance will not result in increased **flood** heights, additional threats to public safety, or extraordinary public expense;
 - (b) That if the requested variance is for activity within a designated **regulatory floodway**, no increase in **flood** levels during the **base flood** discharge will result; and
 - (c) That the variance is the minimum necessary considering the **flood** hazard, to afford relief.
- 10.629.30 The Board of Adjustment shall notify the applicant in writing that:

- (a) The issuance of a variance to construct below the required elevation may result in increased premium rates for **flood** insurance up to amounts as high as \$25 for \$100 of insurance coverage; and
- (b) Such construction below the required elevation increases risks to life and property.

Such notification shall be maintained with a record of all variance actions.

10.629.40 The community shall:

- (a) Maintain a record of all variance actions, including their justification for their issuance, and
- (b) Report such variances issued in its annual or biennial report submitted to **FEMA**'s Federal Insurance Administrator.

Section 10.630 Historic District

10.631 Purpose, Objectives and Applicability

10.631.10 The Historic District is established to preserve the architectural and historic resources of the City of Portsmouth; to foster its architectural and historic character and its sense of place; to conserve property values; to strengthen the local economy; and to promote the **use** of the District for education, pleasure and welfare of residents and visitors.

10.631.20 This Section is intended to achieve the following objectives:

- (1) To preserve the integrity of the Historic District;
- (2) To maintain the special character of the District as reflected in the scale, mass, location and style of **buildings**;
- (3) To assess the historical and architectural value of **buildings** and **structures**, their settings, and their local or national significance in terms of the represented time period, visible architecture, construction materials, or relationship to a historically recognized individual or event;
- (4) To encourage designs for new **buildings** and **structures**, additions to **buildings** and **structures**, and the reuse of existing **buildings** and **structures** that complement and enhance the City's architectural and historic character and contribute to its sense of place;
- (5) To foster Portsmouth's heritage and economic well-being through the conservation and enhancement of property values; and