

12.04.010 PURPOSE AND INTENT

1. The purpose and intent of this ordinance is to lessen congestion in the streets; to conserve health; to secure safety from fire, flood, panic and other dangers; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to encourage housing for persons of all income levels; to facilitate the adequate provision of transportation, water, water supply, drainage, sewerage, schools, parks, open space and other public requirements; to conserve the value of land and buildings, including the conservation of natural resources and the prevention of blight and pollution of the environment; to encourage the most appropriate use of land throughout the city, including consideration of the recommendations of the Master Plan; and to preserve and increase amenities by the promulgation of regulations to fulfill these objectives.
2. The purposes of the Floodplain District are to ensure public safety through reducing the threats to life and personal injury; eliminate new hazards to emergency response officials; prevent the occurrence of public emergencies resulting from water quality, contamination and pollution due to flooding; avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding; eliminate costs associated with the response and cleanup of flooding conditions; and reduce damage to public and private property resulting from flooding waters.

12.08.040 FLOODPLAINS

1. Flood Plain District: The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within the City of Malden designated as Zone A or AE, on the Middlesex County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) for the administration of the National Flood Insurance Program. The map panels of the Middlesex County FIRM that are wholly or partially within the City of Malden are panel numbers 25017C0429F, 25017C0433F, 25017C0434F, 25017C0437F, 25017C0441F and 25017C0442F dated July 8, 2025. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Middlesex County Flood Insurance Study (FIS) report dated June 4, 2010. The FIRM and FIS report are incorporated herein by reference and are on file with the City Clerk, Planning Board, Building Inspector, Conservation Commission and Assessor.

2. The City of Malden hereby designates the Building Inspector to be the official floodplain administrator for the City.

The City of Malden requires a permit for all proposed construction or other development in the floodplain overlay district, including new construction or changes to existing buildings, placement of manufactured homes, placement of agricultural facilities, fences, sheds, storage facilities or drilling, mining, paving and any other development that might increase flooding or adversely impact flood risks to other properties.

3. Base Flood Elevation and Floodway Data:

In Zones A, A1-30, and AE, along watercourses that have not had a regulatory floodway designated, best available federal, state, local or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.

4. In Unnumbered A Zones, in the absence of FEMA BFE data and floodway data, the building department will obtain, review and reasonably utilize base flood elevation and floodway data available from a Federal, State, or other source as criteria for requiring new construction, substantial improvements, or other development in Zone A and as the basis for elevating residential structures to or above base flood level, for floodproofing or elevating nonresidential structures to or above base flood level, and for prohibiting encroachments in floodways.

5. Subdivision Proposals

1. Base Flood Elevation Data In A Zones: base flood elevation data is required for subdivision proposals or other developments of 3 or more lots or more than 15,000 square feet, whichever is the less and the proponent must provide technical data to determine base flood elevations for each developable parcel shown on the design plans.
2. All subdivision proposals and development proposals in the floodplain overlay district shall be reviewed to assure that: (a) Such proposals minimize flood damage, (b) Public utilities and facilities are located & constructed so as to minimize flood damage and (c) Adequate drainage is provided.

6. Requirement to submit new technical data

If the City acquires data that changes the base flood elevation in the FEMA mapped Special Flood Hazard Areas, the Town/City will, within 6 months, notify FEMA of these changes by submitting the technical or scientific data that supports the change(s.) Notification shall be submitted to:

- NFIP State Coordinator c/o Massachusetts Department of Conservation and Recreation
- NFIP Program Specialist Federal Emergency Management Agency, Region I.

7. In A, A1-30, AH, AO, AE Zones, V1-30, VE, and V Zones, all recreational vehicles shall be: (i) placed on a site must be elevated and anchored in accordance with the zone's regulations for foundation and elevation requirements or (ii) be on the site for less than 180 consecutive days or be fully licensed and highway ready.

8. Variances to building code floodplain standards

The City will request from the State Building Code Appeals Board a written and/or audible copy of the portion of the hearing related to the variance, and will maintain this record in the community's files.

The City shall also issue a letter to the property owner regarding potential impacts to the annual premiums for the flood insurance policy covering that property, in writing over the signature of a community official that (i) 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 (ii) such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with the record of all variance actions for the referenced development in the floodplain overlay district.

9. Variances to local Zoning Bylaws related to community compliance with the National Flood Insurance Program (NFIP)

A variance from these floodplain bylaws must meet the requirements set out by State law, and may only be granted if: 1) Good and sufficient cause and exceptional non-financial hardship exist; 2) the variance will not result in additional threats to public safety, extraordinary public expense, or fraud or victimization of the public; and 3) the variance is the minimum action necessary to afford relief.

10. Abrogation and greater restriction section

The floodplain management regulations found in this Floodplain Overlay District section shall take precedence over any less restrictive conflicting local laws, ordinances or codes.

11. Disclaimer of Liability

The degree of flood protection required by this bylaw [ordinance] is considered reasonable but does not imply total flood protection.

12. Severability

If any section, provision or portion of this bylaw [ordinance] is deemed to be unconstitutional or invalid by a court, the remainder of the ordinance shall be effective.

12.12.110 FLOODPLAIN DISTRICTS

1. All development in the floodplain district, including structural and non-structural activities must be in compliance with all of the following:
 1. Mass. Gen. Laws ch 131 § 40;
 2. the Flood Resistant Construction sections of the Massachusetts State Building Code;
 3. the Wetlands Protection Regulations, Inland Wetlands, Restrictions, Coastal Wetlands Restrictions of DEP, the
2. Minimum Requirements for the Subsurface Disposal of Sanitary Sewage as promulgated by the Department of Environmental Protection.
3. No variances from the provisions and requirements of the above referenced regulations may be granted except in accordance with the variance procedures outlined therein.
 1. At the time of application, the petitioner shall submit five copies of all plans, including existing contour intervals of site and elevations of existing structures.
 2. The proposed use shall comply in all respects with the provisions of the underlying district.
 3. Along watercourses that have a designated Regulatory Floodway, encroachments which would result in any increase in flood levels within the community during the occurrence of the base flood discharge. In Zone A the Building Inspector shall obtain, review and reasonably utilize any floodway data available as criteria for requiring that development meet the floodway requirements of this section.
 4. The Board must find that the work is in the interest of the common good. The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged provided that they are permitted in the underlying district and do not require structures, fill, or storage of materials or equipment:
 1. Agricultural uses;
 2. Forestry and nursery uses;
 3. Outdoor recreational uses;
 4. Conservation of water, plants or wildlife;
 5. Wildlife management areas;

6. Temporary non-residential structures used in connection with fishing, growing, harvesting, storage, or sale of crops raised in the premises.
5. All applicable federal and state permits shall be obtained before any site work may be initiated. In a riverine situation, no site work may be initiated that will result in the alteration or relocation of a watercourse until the following have been notified:
 1. adjacent communities;
 2. the National Flood Insurance Plan Coordinator for the Massachusetts Department of Conservation and Recreation
 3. the National Flood Insurance Plan Program Specialist for FEMA Region I

12.32.060 DEFINITIONS - ZONING

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DEVELOPMENT means any man-made change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials. [US Code of Federal Regulations, Title 44, Part 59]. *This definition is only applicable to property in the Flood Plain District*

Floodway or 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. *This definition is only applicable to property in the Flood Plain District*

FUNCTIONALLY DEPENDENT USE means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. [US Code of Federal Regulations, Title 44, Part 59] Also [Referenced Standard ASCE 24-14] *This definition is only applicable to property in the Flood Plain District*

HIGHEST ADJACENT GRADE means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure. [US Code of Federal Regulations, Title 44, Part 59] *This definition is only applicable to property in the Flood Plain District*

HISTORIC STRUCTURE means 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;
- (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.

[US Code of Federal Regulations, Title 44, Part 59]

NEW CONSTRUCTION. Structures for which the start of construction commenced on or after the effective date of the first floodplain management code, regulation, ordinance, or standard adopted by the authority having jurisdiction, including any subsequent improvements to such structures. *New construction includes work determined to be substantial improvement.* [Referenced Standard ASCE 24-14] *This definition is only applicable to property in the Flood Plain District*

RECREATIONAL VEHICLE means a vehicle which 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.

[US Code of Federal Regulations, Title 44, Part 59] *This definition is only applicable to property in the Flood Plain District*

REGULATORY FLOODWAY - see FLOODWAY.

SPECIAL FLOOD HAZARD AREA. The land area subject to flood hazards and shown on a Flood Insurance Rate Map or other flood hazard map as Zone A, AE, A1-30, A99, AR, AO, AH, V, VO, VE or V1-30. [Base Code, Chapter 2, Section 202] *This definition is only applicable to property in the Flood Plain District*

START OF CONSTRUCTION. The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement is within 180 days after the date of issuance. The actual start of construction means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of a slab or footings, installation of pilings or construction of columns.

Permanent construction does not include land preparation (such as clearing, excavation, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main building. 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. [Base Code, Chapter 2, Section 202] *This definition is only applicable to property in the Flood Plain District*

STRUCTURE means, 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. [US Code of Federal Regulations, Title 44, Part 59] *This definition is only applicable to property in the Flood Plain District*

SUBSTANTIAL REPAIR OF A FOUNDATION. When work to repair or replace a foundation results in the repair or replacement of a portion of the foundation with a perimeter along the base of the foundation that equals or exceeds 50% of the perimeter of the base of the foundation measured in linear feet, or repair or replacement of 50% of the piles, columns or piers of a pile, column or pier supported foundation, the building official shall determine it to be substantial repair of a foundation. Applications determined by the building official to constitute substantial repair of a foundation shall require all existing portions of the entire building or structure to meet the requirements of 780 CMR. [As amended by MA in 9th Edition BC] *This definition is only applicable to property in the Flood Plain District*

VARIANCE means a grant of relief by a community from the terms of a flood plain management regulation. [US Code of Federal Regulations, Title 44, Part 59]

VIOLATION means the failure of a structure or other development to be fully compliant with the community's flood plain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in §60.3 is presumed to be in violation until such time as that documentation is provided. [US Code of Federal Regulations, Title 44, Part 59] *This definition is only applicable to property in the Flood Plain District*

Zone A: the 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine the BFE, the best available federal, state, local and other data will be used. *This definition is only applicable to property in the Flood Plain District*

Zone AE: the 100-year floodplain where the base flood elevation has been determined.
This definition is only applicable to property in the Flood Plain District

Zone X: areas identified in the community Flood Insurance Study as areas of moderate or minimal flood hazard. *This definition is only applicable to property in the Flood Plain District*