



## Brenner, Saltzman & Wallman LLP

Attorneys at Law — Established 1963

*Via Email Al Lucas*

The Honorable Alder Tyisha Walker-Myers  
President, New Haven Board of Alders  
City of New Haven  
165 Church Street  
New Haven, CT 06510

September 5, 2023

Re: Flood Damage Prevention Ordinance - OR 2023-0021

Dear President Walker-Myers:

We are writing to you to request that OR-2023-0021, the proposed Ordinance Amendment to Title IV of the City of New Haven's Code of Ordinances to Bring the Flood Damage Prevention Ordinance Into Compliance with the Uniform Building Code for the State of Connecticut (the "**Proposed Ordinance**"), scheduled for a second reading at tonight's Board of Alders meeting be placed on the Suspension Calendar and be referred to the Legislation Committee for a public hearing.

We represent a manufacturing client who occupies property within the Special Flood Hazard area. Our client would like to acquire the property and build an addition to the existing building in order to increase its business operations. In reviewing the Proposed Ordinance, we noted the language was ambiguous whether when there is an addition to an existing building, the existing building as well as the addition are required to comply with the new elevation requirements of the Proposed Ordinance.

Specifically, Section 5.1.1 of the Proposed Ordinance requires that the lowest finished living space of "new construction or substantial improvement of any structure" be elevated at least two feet above the base flood elevation (the "**BFE Requirement**"). The Proposed Ordinance defines "substantial improvement" as the cumulative cost of repairs, reconstruction or improvements to a structure equaling or exceeding fifty percent (50%) of the value of the structure before the start of construction of the improvement and states that "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". It is unclear from this language whether if a building owner desires to erect an addition to an existing structure, such building owner will be required to also elevate the entire floor of the existing structure.

Additionally, Section 3.5 of the Proposed Ordinance is also unclear whether an existing building needs to comply with the new requirements when an addition to the building is made.



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This section provides that “any expansion, extension, structural alteration or location change shall trigger full compliance” with the Proposed Ordinance. It is unclear from this language whether only the “substantial improvement” to an existing structure would need to comply with all of the requirements of the Proposed Ordinance or whether the entire existing structure would need to comply with all of the requirements of the Proposed Ordinance when an addition is constructed.

Requiring existing structures to comply with the Ordinance Amendment when additions are added is not only inordinately burdensome to current business and property owners, but also is not consistent with the purpose of the proposal of the Proposed Ordinance. In the communication of the Proposed Ordinance from the New Haven City Plan Department which stated that the purpose of the Proposed Ordinance was to require *new buildings* to comply with the BFE Requirement.

In order to clarify that the Ordinance Amendment does not apply to existing structures when additions are made to such buildings, we propose the following changes to the draft legislation (which are underlined):

### **Section 3.5 Abrogation and Greater Restrictions**

This ordinance is not intended to repeal, abrogate or impair any existing easements, covenants or deed restrictions. Any use in existence at the time of adoption of this ordinance may continue in its current form and footprint; however, any expansion, extension, structural alteration or location change shall trigger ~~full~~ compliance with the provisions of this ordinance applicable to such such expansion, extension, structural alteration or location change.

5.1.1 The lowest Finished Living Space of any N~~new~~ construction or substantial improvement made to ~~of any existing~~ structure shall ~~have the lowest Finished Living Space~~ be elevated at least two feet above the base flood elevation. Fully enclosed areas built below the BFE shall only be used for parking, building, access or egress, or limited storage.

We very much appreciate your prompt attention to these questions and believe that a public hearing before the Legislation Committee would be an appropriate way to clarify the language of the proposed Ordinance.



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Thank you for your attention to this matter.

Very Truly Yours,

Carolyn W. Kone

cc: Alder Salvatore Punzo  
Alder Anna Festa  
Alder Ellen Cupo  
Al Lucas, Executive Director of Legislative Services  
David Kendall