



Oregon

Theodore R. Kubongski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

8/19/2010

TO: Subscribers to Notice of Adopted Plan  
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: City of Pendleton Plan Amendment  
DLCD File Number 003-10

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures\*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Monday, August 30, 2010

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

\*NOTE: The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Evan MacKenzie, City of Pendleton  
Gloria Gardiner, DLCD Urban Planning Specialist  
Chris Shirley, FEMA Specialist  
Grant Young, DLCD Regional Representative

<paa> YA





FORM 2

DLCD

# Notice of Adoption

In person  electronic  mailed

DATE  
STAMP

DEPT OF

AUG 12 2010

LAND CONSERVATION  
AND DEVELOPMENT

For Office Use Only

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

Jurisdiction: **City of Pendleton**

Local file number: **Ord. 3791 (Floodplain)**

Date of Adoption: **August 6, 2010**

Date Mailed: **August 9, 2010**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD?  Yes  No Date: 5-27-2010

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Adoption of a new floodplain ordinance, floodplain study, and floodplain maps in order to comply with FEMA requirements. Ordinance was approved by City Council on August 3, 2010 and signed by Mayor on August 6, 2010. (Originally noticed as Ordinance No. 3800; adopted as Ordinance No. 3791)

Does the Adoption differ from proposal? Please select one  
Minor edits only; no substantive changes.

Plan Map Changed from: **N/A**

to: **N/A**

Zone Map Changed from: **N/A**

to: **N/A**

Location: **City of Pendleton flood hazard areas**

Acres Involved:

Specify Density: Previous: **N/A**

New: **N/A**

Applicable statewide planning goals:

**1**  **2**  **3**  **4**  **5**  **6**  **7**  **8**  **9**  **10**  **11**  **12**  **13**  **14**  **15**  **16**  **17**  **18**  **19**

Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes  No

If no, do the statewide planning goals apply?

Yes  No

If no, did Emergency Circumstances require immediate adoption?

Yes  No

DLCD file No. 003-10 (18335) [16274]



Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Umatilla County

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Local Contact: **Evan MacKenzie**

Phone: (541) 966-0261

Address: **500 SW Dorion Avenue**

Fax Number: **541-966-0251**

City: **Pendleton**

Zip: **97801**

E-mail Address: [evan.mackenzie@ci.pendleton.or.us](mailto:evan.mackenzie@ci.pendleton.or.us)

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## ADOPTION SUBMITTAL REQUIREMENTS

**This Form 2 must be received by DLCD no later than 5 days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s) per ORS 197.615 and OAR Chapter 660, Division 18**

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting, please print this **Form 2** on light **green paper if available**.
3. Send this Form 2 and One (1) Complete Paper Copy and One (1) Electronic Digital CD (documents and maps) of the Adopted Amendment to the address in number 6:
4. **Electronic Submittals: Form 2 – Notice of Adoption will not be accepted via email or any electronic or digital format at this time.**
5. The Adopted Materials must include the final decision signed by the official designated by the jurisdiction. The Final Decision must include approved signed ordinance(s), finding(s), exhibit(s), and any map(s).
6. **DLCD Notice of Adoption must be submitted in One (1) Complete Paper Copy and One (1) Electronic Digital CD via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.** (for submittal instructions, also see # 5)] **MAIL the PAPER COPY and CD of the Adopted Amendment to:**

**ATTENTION: PLAN AMENDMENT SPECIALIST  
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT  
635 CAPITOL STREET NE, SUITE 150  
SALEM, OREGON 97301-2540**

7. Submittal of this Notice of Adoption must include the signed ordinance(s), finding(s), exhibit(s) and any other supplementary information (see [ORS 197.615](#) ).
8. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) of adoption (see [ORS 197.830 to 197.845](#) ).
9. In addition to sending the Form 2 - Notice of Adoption to DLCD, please notify persons who participated in the local hearing and requested notice of the final decision at the same time the adoption packet is mailed to DLCD (see [ORS 197.615](#) ).
10. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518.

Updated December 22, 2009




## CERTIFICATION

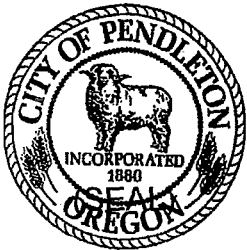
STATE OF OREGON     )  
                                  )  
COUNTY OF UMATILLA )

I, Andrea F. Denton, do hereby affirm that I am the City Recorder for the City of Pendleton, Oregon and certify that the attached is a true and correct copy of Pendleton Ordinance No. 3791 as adopted by the City Council of the City of Pendleton, Oregon, at its regularly scheduled meeting August 3, 2010. This ordinance will become effective thirty days after its adoption, on September 2, 2010.

Dated this 6 day of August, 2010.



\_\_\_\_\_  
Andrea F. Denton  
City Recorder



**ORDINANCE NO. 3791**

**AN ORDINANCE ADOPTING NATIONAL FLOOD INSURANCE  
PROGRAM FLOOD INSURANCE RATE MAPS FOR PENDLETON AND  
ENACTING REGULATIONS CONSISTENT THEREWITH**

**Whereas,** The residents of Pendleton have established The City of Pendleton to adopt regulations designed to promote the public health, safety, and general welfare of its residents; and

**Whereas,** Flood hazard areas of the City of Pendleton and those lands within its Urban Growth Boundary are subject to periodic inundation that results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood relief and protection, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare; and

**Whereas,** These flood losses are caused by structures in flood hazard areas, which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages, and by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities; and

**Whereas,** The City of Pendleton has the primary responsibility for planning, adoption and enforcement of land use regulations to accomplish proper floodplain management.

**Whereas,** It is appropriate to adopt this Ordinance to:

1. Protect human life, health and property;
2. Minimize damage to public facilities and utilities including but not limited to water purification and sewage treatment plants, water and gas mains, electric, telephone and sewer lines, streets and bridges located in flood hazard areas;
3. Help maintain a stable tax base by providing for the sound use and development of flood prone areas;
4. Minimize expenditure of public money for costly flood control projects;
5. Minimize the need for rescue and emergency services associated with flooding and generally undertaken at the expense of the general public;
6. Minimize unnecessary disruption of commerce, access and public service during times of flood;
7. Ensure that potential buyers are notified that property is in an area of special flood hazard;
8. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions, and;
9. Manage the alteration of flood hazard areas, stream channels and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain.

**Whereas,** In order to accomplish its purpose, this ordinance includes methods and provisions to:

1. Require that development that is vulnerable to floods, including structures and facilities necessary for the general health, safety and welfare of citizens, be protected against flood damage at the time of initial construction;
2. Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion;
3. Control filling, grading, dredging and other development which may increase flood damage or erosion;
4. Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or that may increase flood hazards to other lands;
5. Preserve and restore natural floodplains, stream channels, and natural protective barriers which carry and store flood waters, and;
6. Coordinate with and supplement provisions of Oregon building codes.

**Now, therefore, the City of Pendleton, Umatilla County, Oregon, ordains as follows:**

**Section 1. Adopt Area of Special Flood Hazard**

The City adopts the Area of Special Flood Hazard identified by the Federal Emergency Management Agency in its Flood Insurance Study (FIS) for Umatilla County, Oregon, and Incorporated Areas effective September 3, 2010, with accompanying Flood Insurance Rate Maps (FIRM) or Digital Flood Insurance Rate Maps (DFIRM), and other supporting data. The FIS and the FIRM are on file at the office of the Pendleton City Recorder, 500 SW Dorion Avenue, Pendleton, OR.

**Section 2. Definitions<sup>1</sup>**

Unless specifically defined in this Section, words or phrases used in this ordinance shall be interpreted according to the meaning they have in common usage. The definitions of this ordinance may be in conflict with other local ordinances and Oregon Revised Statutes and Structural Specialty Codes. In the case of conflict, the definitions contained herein apply only to this ordinance.

**Accessory Structure:** a structure on the same or adjacent parcel as a principal structure, the use of which is incidental and subordinate to the principal structure. A separate insurable building should not be classified as an accessory or appurtenant structure.

**Alteration of a Watercourse** includes, but is not limited to, any dam, culvert, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area or capacity, which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

**Appeal:** a request for review of the Floodplain Administrator's interpretation of provisions of this ordinance or request for a variance.

**Area of Shallow Flooding:** a designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet, and/or where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.<sup>2</sup>

**Area of Special Flood Hazard:** the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Zone designations on FIRMs include the letters A or V. Also known as the Special Flood Hazard Area (SFHA).

**Base Flood:** the flood having a one percent chance of being equaled or exceeded in any given year.

**Base Flood Elevation (BFE):** the water surface elevation during the base flood in relation to a specified datum. The Base Flood Elevation (BFE) is depicted on the FIRM to the nearest foot and in the FIS to the nearest 0.1 foot.

**Basement:** the portion of a structure with its floor sub grade (below ground level) on all sides.<sup>3</sup>

**Below-grade Crawlspace:** an enclosed area below the base flood elevation in which the interior grade is not more than two feet below the lowest adjacent exterior grade and the height, measured from the interior grade of the crawlspace to the top of the crawlspace foundation, does not exceed 4 feet at any point.

**Building:** a building or structure subject to building codes.

**Building Codes:** the combined specialty codes adopted under ORS 446.062, 446.185, 447.020 (2), 455.020 (2), 455.496, 455.610, 455.680, 460.085, 460.360, 479.730 (1) or 480.545, but does not include regulations adopted by the State Fire Marshal pursuant to ORS chapter 476 or ORS 479.015 to 479.200 and 479.210 to 479.220.

**Critical Facility:** a facility that is critical for the health and welfare of the population and is especially important following hazard events. Critical facilities include essential and occupancy structures, special occupancy structures, essential facilities, transportation systems, lifeline utility systems, high potential loss facilities and hazardous material storage facilities.

**Datum:** the vertical datum is a base measurement point (or set of points) from which all elevations are determined. Historically, that common set of points has been the National Geodetic Vertical Datum of

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<sup>1</sup> 44 CFR 59.22

<sup>2</sup> 59.2, simplified

<sup>3</sup> 59.2

1929 (NAVD29). The vertical datum currently adopted by the federal government as a basis for measuring heights is the North American Vertical Datum of 1988 (NAVD88).

**Design Flood Elevation:** As used in the Building Codes, Base Flood Elevation.

**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 operations or storage of equipment or materials located within the area of special flood hazard. <sup>4</sup> Development does not include<sup>5</sup>:

- A. Signs, markers, aids, etc. placed by a public agency to serve the public
- B. Driveways, parking lots, or other open space use areas where no alteration of topography occurs;
- C. Minor repairs or improvements to existing structures provided that the alterations do no increase the size or intensity of use, and do not constitute repair of substantial damage, or substantial improvement as defined in this section;
- D. Customary dredging associated with routine channel maintenance consistent with State or Federal laws and permits;
- E. Replacement of utility facilities necessary to serve established and permitted uses;
- F. Accessory residential or noncommercial structures less than 200 square feet in area;
- G. Storage of equipment and material associated with residential uses.

**Digital FIRM (DFIRM):** Digital Flood Insurance Rate Map. It depicts flood risk and zones and flood risk information. The DFIRM presents the flood risk information in a format suitable for electronic mapping applications.

**Encroachment:** the advancement or infringement of uses, fill, excavation, buildings, permanent structures or other development into a floodway which may impede or alter the flow capacity of a floodplain.

**Elevated Building:** a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

**Essential Facility:**

- A. Hospitals and other medical facilities having surgery and emergency treatment areas;
- B. Fire and police stations;
- C. Tanks or other structures containing, housing or supporting water or fire-suppression materials or equipment required for the protection of essential or hazardous facilities or special occupancy structures;
- D. Emergency vehicle shelters and garages;
- E. Structures and equipment in emergency-preparedness centers;
- F. Standby power generating equipment for essential facilities; and
- G. Structures and equipment in government communication centers and other facilities required for emergency response.

**Existing Building or Structure:** a structure for which the "start of construction" commenced before September 3, 2010.

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

**Flood or flooding:** a general and temporary condition of partial or complete inundation of normally dry land areas from:

- A. The overflow of inland waters; or
- B. The unusual and rapid accumulation or runoff of surface waters from any source.

**Flood Insurance Rate Map (FIRM):** an official map of a community, issued by the Federal Insurance Administration, delineating the areas of special flood hazard and/or risk premium zones applicable to the community.

**Flood Insurance Study (FIS):** the official report by the Federal Insurance Administration evaluating flood hazards and containing flood profiles, floodway boundaries and water surface elevations of the base flood.

<sup>4</sup> 59.2

<sup>5</sup> Work exempt from Oregon Residential Specialty Code, Section R105.2 requires a Floodplain Development Permit unless specifically exempted by definition in this ordinance.

**Floodway (Regulatory Floodway):** the channel of a river or other watercourse and those portions of the floodplain adjoining the channel required to discharge and store the floodwater or flood flows associated with the regulatory flood.

**Highest Adjacent Grade (HAG):** the highest natural elevation of the ground surface prior to construction, adjacent to the proposed walls of a structure. Refer to the Elevation Certificate, FEMA Form 81-31, for HAG for more information.

**Historic Structure:** A structure that is:

- A. Listed individually in the National Register of Historic Places (a listing maintained by the U.S. 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 to a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on the Oregon inventory of historic places and determined as eligible the Oregon State Historic Preservation Office, or;
- D. Individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified by the Oregon State Historic Preservation Office.

**Lateral Addition:** an addition that requires a foundation to be built outside of the foundation footprint of the existing building.

**Letter of Map Change (LOMC):** an official FEMA determination, by letter, to amend or revise effective Flood Insurance Rate Maps and Flood Insurance Studies. LOMCs are issued in the following categories:

**Letter of Map Amendment (LOMA):** A revision based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property is not located in a special flood hazard area;

**Letter of Map Revision (LOMR):** A revision based on technical data showing that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric features. One common type of LOMR, a LOMR-F, is a determination that a structure of parcel has been elevated by fill above the base flood elevation and is excluded from the special flood hazard area;

**Conditional Letter of Map Revision (CLOMR):** A formal review and comment by FEMA as to whether a proposed project complies with the minimum National Flood Insurance Program floodplain management criteria. A CLOMR does NOT amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies.

**Lowest Floor:** the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a structure's lowest floor provided that the enclosed area is built and maintained in accordance with the applicable design requirements of the state building code.

**Manufactured Dwelling:** a structure, transportable in one or more sections, built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "Manufactured Dwelling" does not include a "Recreational Vehicle."

**Mean Sea Level:** for purposes of the National Flood Insurance Program, the North American Vertical Datum of 1988, to which Base Flood Elevations shown on a community's FIRM are referenced.

**Natural Elevation:** the elevation of natural grade, or the grade in existence before September 3, 2010

**New Construction:** a structure for which the "start of construction" commenced after September 3, 2010 and includes subsequent substantial improvements to the 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 towed 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.



**Special Occupancy Structure**

- A. Covered structures whose primary occupancy is public assembly with a capacity greater than 300 persons;
- B. Buildings with a capacity greater than 250 individuals for every public, private or parochial school through secondary level or child care centers;
- C. Buildings for colleges or adult education schools with a capacity greater than 500 persons.
- D. Medical facilities with 50 or more resident, incapacitated patients not included in subparagraphs (A) to (C) of this paragraph;
- E. Jails and detention facilities; and
- F. All structures and occupancies with a capacity greater than 5,000 persons.<sup>6</sup>

**Start of construction:** includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or 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. 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 the alteration affects the external dimensions of a building.

**Structure:** a walled and roofed building, a manufactured dwelling, or a gas or liquid storage tank that is principally above ground.

**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 its market value before the damage occurred.

**Substantial Improvement:** reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 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 market value of the structure should be:

- A. The appraised real market value of the structure prior to the start of the initial repair or improvement, or
  - B. In the case of damage, the appraised real market value of the structure prior to the damage occurring.
- The term does not include either:
- 1. A 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
  - 2. Alteration of an Historic Structure, provided that the alteration will not preclude the structure's continued designation as an Historic Structure.<sup>7</sup>

**Variance:** a grant of relief by the governing body from a requirement of this ordinance.<sup>8</sup>

**Vertical Addition:** the addition of a room or rooms on top of an existing building.

**Watercourse:** a lake, river, creek, stream, wash, arroyo, channel or other topographic feature in, on, through, or over which water flows at least periodically.

**Water Dependent Use:** a facility that cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair facilities. The term does not include long-term storage, manufacture, sales, or service facilities.

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<sup>6</sup> ORS 455.447

<sup>7</sup> 59.2

<sup>8</sup> 59.2

**Water Surface Elevation:** the height, in relation to a specific datum, of floods of various magnitudes and frequencies in the flood plains of coastal or riverine areas.<sup>9</sup>

## **Part II. GENERAL PROVISIONS**

### **Section 11. Lands to Which This Ordinance Applies.**

The regulations of this Ordinance apply to all Special Flood Hazard Areas within the City of Pendleton and, when co-adopted by Umatilla County, within the City's Urban Growth Boundary. Nothing in this Ordinance is intended to allow uses or structures that are otherwise prohibited by the zoning ordinance or building codes.

### **Section 12. Coordination with Building Codes.**

Pursuant to the requirement established in State statute that the City of Pendleton administers and enforces the State building codes, the City of Pendleton acknowledges that the State building codes contain certain provisions that apply to the design and construction of buildings and structures located in Areas of Special Flood Hazard. Therefore, this ordinance is intended to be administered and enforced in conjunction with the state building codes.

### **Section 13. Establishment of Floodplain Development Permit**

A Floodplain Development Permit shall be required prior to initiating development activities in any Areas of Special Flood Hazard established in Article III Section B.

Any Floodplain Development Permit that requires an engineering certification or engineering analysis, calculations or modeling to process shall be considered a land use action requiring a quasi-judicial land use hearing.

### **Section 14. Interpretation.**

In the interpretation and application of this ordinance all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body and;
3. Deemed neither to limit nor repeal any other powers granted under state statutes, including state building codes.

### **Section 15. Warning and Disclaimer of Liability**

The degree of flood protection required by this ordinance 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. This ordinance does not imply that land outside Areas of Special Flood Hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Pendleton or by any officer or employee thereof for flood damages that result from reliance on this ordinance or an administrative decision lawfully made hereunder.

## **Part III. ADMINISTRATION**

### **Section 21. Designation of Floodplain Ordinance Administrator**

The City Manager or the Manager's designee is the Floodplain Administrator, responsible for administering and implementing the provisions of this ordinance.

### **Section 22. Duties and Responsibilities of the Administrator**

Duties of the Floodplain Administrator shall include, but shall not be limited to:

1. Review all development permit applications to determine whether proposed new development will be located in Areas of Special Flood Hazard;<sup>10</sup>
2. Review applications for modifications of any existing development in Areas of Special Flood Hazard for

<sup>9</sup> 59.2

<sup>10</sup> 44 CFR 60.3(a)(1)



compliance with the requirements of this ordinance;<sup>11</sup>

3. Interpret flood hazard area boundaries, provide available flood hazard information, and provide base flood elevations, where they exist;<sup>12</sup>
4. Review proposed development to assure that necessary permits have been received from governmental agencies from which approval is required by federal or state law, including but not limited to section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334; the Endangered Species Act of 1973, 16 U.S.C. 1531-1544; and State of Oregon Removal-Fill permits. Copies of such permits shall be maintained on file.
5. Review all development permit applications to determine if the proposed development is located in the floodway, and if so, ensure that the encroachment standards Section 32 of this Ordinance are met.
6. When Base Flood Elevation data or floodway data are not available, then the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other authoritative source in order to administer the provisions of this ordinance.
7. When Base Flood Elevations or other engineering data are not available from an authoritative source, the Floodplain Administrator shall take into account the flood hazards, to the extent they are known, to determine whether a proposed building site or subdivision will be reasonably safe from flooding.
8. Where interpretation is needed of the exact location of boundaries of the Areas of Special Flood Hazard including regulatory floodway (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Floodplain Administrator shall make the interpretation. Any person contesting the location of the boundary shall be given an opportunity to appeal the interpretation as provided in Section 54 of this Ordinance.
9. Issue floodplain development permits when the provisions of this ordinance have been met, or disapprove the same in the event of noncompliance;<sup>13</sup>
10. Coordinate with the Building Official to assure that applications for building permits comply with the requirements of this ordinance;<sup>14</sup>
11. Obtain, verify and record the actual elevation in relation to the vertical datum used on the effective FIRM, or highest adjacent grade where no BFE is available, of the lowest floor level, including basement, of all new construction or substantially improved buildings and structures.<sup>15</sup>
12. Obtain, verify and record the actual elevation, in relation to the vertical datum used on the effective FIRM, or highest adjacent grade where no BFE is available, to which any new or substantially improved buildings or structures have been flood-proofed. When flood-proofing is utilized for a structure, the Floodplain Administrator shall obtain certification of design criteria from a registered professional engineer or architect;<sup>16</sup>
13. Ensure that all records pertaining to the provisions of this ordinance are permanently maintained in the office of the city/county clerk or his/her designee and shall be open for public inspection.<sup>17</sup>
14. Make inspections in Areas of Special Flood Hazard to determine whether development has been undertaken without issuance of a floodplain development permit, ensure that development is undertaken in accordance with a the floodplain development permit and this ordinance, and verify that existing buildings and structures maintain compliance with this ordinance;<sup>18</sup>
15. Coordinate with the Building Official to inspect areas where buildings and structures in flood hazard areas have been damaged, regardless of the cause of damage, and notify owners that permits may be required prior to repair, rehabilitation, demolition, relocation, or reconstruction of the building or structure;<sup>19</sup>
16. Make Substantial Improvement or Substantial Damage determinations based on criteria set forth in Section 24

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<sup>11</sup> 44 CFR 60.3(a)(1)

<sup>12</sup> 44 CFR 60.3(b)(4)

<sup>13</sup> 44 CFR 59.24

<sup>14</sup> 44 CFR 59.24

<sup>15</sup> 44 CFR 60.3(b)(5), amended to address no BFE

<sup>16</sup> 44 CFR 60.3(b)(5), amended to address no BFE

<sup>17</sup> 44 CFR 60.3(b)(5)

<sup>18</sup> 44 CFR 59.24

<sup>19</sup> 44 CFR 59.24

of this ordinance.<sup>20</sup>

### **Section 23. Permit Procedures**

Application for a Floodplain Development Permit shall be made to the Floodplain Administrator on forms furnished by the Administrator or the Administrator's designee prior to starting development activities.<sup>21</sup> Specifically, the following information is required:

#### **1. Application Stage**

- a. Plans in duplicate drawn to scale with elevations of the project area and the nature, location, dimensions of existing and proposed structures, earthen fill placement, storage of materials or equipment and drainage facilities;<sup>22</sup>
- b. Delineation of flood hazard areas, floodway boundaries including base flood elevations, or flood depth in AO zones, where available;<sup>23</sup>
- c. For all proposed structures, elevation in relation to the highest adjacent grade and the base flood elevation, or flood depth in AO zones, of the:
  1. lowest enclosed area, including crawlspace or basement floor;<sup>24</sup>
  2. top of the proposed garage slab, if any, and;
  3. next highest floor;
- d. Locations and sizes of all flood openings in any proposed building;
- e. Elevation to which any non-residential structure will be flood-proofed;<sup>25</sup>
- f. Certification from a registered professional engineer or architect that any proposed non-residential flood-proofed structure will meet the flood-proofing criteria of the NFIP and building codes;<sup>26</sup>
- g. Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development;<sup>27</sup>

#### **2. Construction Stage**

- a. For all new construction and substantial improvements, the permit holder shall provide to the Floodplain Administrator an as-built certification of the floor elevation or flood-proofing level immediately after the lowest floor or flood-proofing is placed and prior to further vertical construction;<sup>28</sup>
- b. Any deficiencies identified by the Floodplain Administrator shall be corrected by the permit holder immediately and prior to work proceeding. Failure to submit certification or failure to make the corrections shall be cause for the Floodplain Administrator to issue a stop-work order for the project.<sup>29</sup>

#### **3. Certificate of Occupancy**

- a. In addition to the requirements of the building codes pertaining to certificate of occupancy, prior to the final inspection the owner or authorized agent shall submit the following documentation that has been prepared and sealed by a registered surveyor or engineer,<sup>30</sup>
  1. For elevated buildings and structures in non-coastal Areas of Special Flood Hazard (A zones), the as-built elevation of the lowest floor, including basement or where no base flood elevation is available the height above highest adjacent grade of the lowest floor;
  2. For buildings and structures in coastal Areas of Special Flood Hazard (V zones), the elevation of the bottom of the lowest horizontal structural member supporting the lowest floor, and;
  3. For buildings and structures that have been floodproofed, the elevation to which the building or structure was floodproofed.
- b. Failure to submit certification or failure to correct violations shall be cause for the Floodplain

<sup>20</sup> 44 CFR 59.24

<sup>21</sup> 44 CFR Part 60.3(a)(1) and (b)(1)

<sup>22</sup> Oregon Residential Specialty Code R106.5 requires one set to be retained and the second to be returned to the applicant

<sup>23</sup> Oregon Residential Specialty Code R106.1.3

<sup>24</sup> Oregon Residential Specialty Code R106.1.3

<sup>25</sup> 44 CFR Part 60.3(b)(5)

<sup>26</sup> 44 CFR Part 60.3 (c)(4)

<sup>27</sup> 44 CFR Part 60.3(b)(6)

<sup>28</sup> Oregon Residential Specialty Code R109

<sup>29</sup> Based on 44 CFR Part 59.24

<sup>30</sup> 44 CFR Part 60.3(b)(5)



Administrator to withhold a certificate of occupancy until such deficiencies are corrected.

4. **Expiration of Floodplain Development Permit**

- a. A floodplain development permit shall expire 180 days after issuance unless the permitted activity has been substantially begun and thereafter is pursued to completion.<sup>31</sup>
- b. Commencement of work includes start of construction, when the permitted work requires a building permit.<sup>32</sup>

**Section 24. Substantial Damage and Substantial Improvement Determination**<sup>33</sup>

For applications for permits to improve buildings and structures, including additions, repairs, renovations, and alterations, the Floodplain Administrator, shall:

1. Estimate the market value, or require the applicant to obtain a professional appraisal of the market value, of the building or structure before the proposed work is performed; when repair of damage is proposed, the market value of the building or structure shall be the market value before the damage occurred;
2. Compare the cost of improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
  - a. Except as indicated in subsections (b) through (d) below, all costs to repair substantial damage, including emergency repairs, including the costs of complying with any county, state, or federal regulation other must be included;
  - b. The costs associated with the correction of pre-existing violations of state or local health, sanitary, or safety code specifications that were identified by the building official, the director of environmental health, or any other local code enforcement official prior to the improvement or repair and that are the minimum necessary to ensure safe living conditions shall not be included;
  - c. Costs associated with the following items are not included:
    1. The preparation and approval of all required plans, calculations, certifications, and specifications;
    2. The performance of surveys or other geotechnical or engineering studies and resulting reports;
    3. Permit and review fees, and;
    4. The construction, demolition, repair, or modification of outdoor improvements, including landscaping, fences, swimming pools, detached garages and sheds, etc.;
  - d. Proposed alterations of a designated historic building or structure is not to be considered substantial improvement unless the alteration causes a loss of said designation.
3. Floodplain Administrator staff shall make the determination of whether the proposed improvement or repair constitutes a substantial improvement or substantial damage.
4. Floodplain Administrator shall notify the applicant of the results of the determination by letter.
5. Applicant has the right to appeal the determination pursuant to Section 54 of this Ordinance.

**Part IV PROVISIONS FOR FLOOD HAZARD REDUCTION**

**Section 31. Site Improvements and Subdivisions**

1. All proposed new development and subdivisions shall be consistent with the need to minimize flood damage and ensure that building sites will be reasonably safe from flooding.<sup>34</sup>
2. Building lots shall have adequate buildable area outside of floodways.
3. New development proposals and subdivision development plans shall include the mapped flood hazard zones from the effective FIRM, if available.<sup>35</sup>
4. Base flood elevation data shall be generated and/or provided for subdivision proposals and all other proposed development, including manufactured home parks and subdivisions, greater than fifty lots or five acres,

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<sup>31</sup> 44 CFR 59.1

<sup>32</sup> 44 CFR 59.1

<sup>33</sup> Best Practice summarized from FEMA 213 and FEMA-301

<sup>34</sup> 44 CFR 60.3(a)(3) and (4)

<sup>35</sup> Oregon Residential Specialty Code R106.1.3

whichever is less.<sup>36</sup>

5. New development and subdivisions shall have public utilities and facilities such as sewer, gas, electric and water systems located and constructed to minimize flood damage.<sup>37</sup>
6. On-site waste disposal systems shall be located and constructed to avoid functional impairment, or contamination from them, during flooding.<sup>38</sup>
7. Subdivisions shall have adequate drainage provided to reduce exposure to flood hazards.<sup>39</sup> In AO and AH zones, drainage paths shall be provided to guide floodwater around and away from all proposed and existing structures.<sup>40</sup>

### **Section 32. Development in Floodways**

1. Except as provided in paragraph (4), encroachments, including fill, new construction, substantial improvements, and other development are prohibited unless certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that such encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.<sup>41</sup>
2. Any fill allowed to be placed in the floodway shall be designed to be stable under conditions of flooding, including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and flood-related erosion and scour.
3. Applicants shall obtain a Conditional Letter of Map Revision (CLOMR) from FEMA before an encroachment, including fill, new construction, substantial improvement, and other development, into the floodway is permitted that will cause any increase in the base flood elevation.<sup>42</sup>
4. Projects for stream habitat restoration may be permitted in the floodway provided:<sup>43</sup>
  - a. The project qualifies for a Department of the Army, Portland District Regional General Permit for Stream Habitat Restoration (NWP-2007-1023); and,
  - b. A qualified professional (a Registered Professional Engineer; or staff of NRCS; the county; or fisheries, natural resources, or water resources agencies) has provided a feasibility analysis and certification that the project was designed to keep any rise in 100-year flood levels as close to zero as practically possible given the goals of the project; and,
  - c. No structures would be impacted by a potential rise in flood elevation; and,
  - d. An agreement to monitor the project, correct problems, and ensure that flood carrying capacity remains unchanged is included as part of the local approval.
5. Fences shall not cause any rise in base flood elevation and are subject to the no-rise and CLOMR provisions of paragraph (1) and (3).<sup>44</sup>

### **Section 33. Zones with Base Flood Elevations but No Floodway**

1. In areas within Zones A1-30 and AE on the community's FIRM with a base flood elevation, or where a base flood elevation is developed according to Article V, Section E, but where no regulatory floodway has been designated, new construction, substantial improvements, or other development (including fill) shall be prohibited, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other 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.<sup>45</sup>
2. Applicants of proposed projects that increase the base flood elevation more than one foot should obtain from

<sup>36</sup> 44 CFR 60.3(a)(4)

<sup>37</sup> 44 CFR 60.3(a)(4) and (5)

<sup>38</sup> 44 CFR 60.3(a)(6)

<sup>39</sup> 44 CFR 60.3(a)(4) and 60.3(c)(1)

<sup>40</sup> 44 CFR 60.3(c)(11)

<sup>41</sup> 44 CFR Part 60.3(d)(3)

<sup>42</sup> 44 CFR Part 60.3(d)(4).

<sup>43</sup> Oregon Solutions Regulatory Streamlining Project 2009

<sup>44</sup> Clarifies that no-rise requirements pertain to all development in the floodway

<sup>45</sup> 44 CFR 60.3(c)(10)



FEMA a Conditional Letter of Map Revision (CLOMR) before the project may be permitted.<sup>46</sup>

### **Section 34. Zones Without Base Flood Elevations**

The following standards apply in riverine areas of special flood hazard where no base flood elevation data have been provided (approximate A Zones):

1. When base flood elevation or floodway data have not been identified by FEMA in a Flood Insurance Study and /or Flood Insurance Rate Maps, the Floodplain Administrator shall obtain, review, and reasonably utilize scientific or historic base flood elevation and floodway data available from a federal, state, or other source, in order to administer this ordinance.<sup>47</sup> If base flood elevations are not available, subsection (3) shall apply.
2. Where the floodplain administrator has obtained base flood elevation data, Sections 33 and Sections 35 through 42 of this Ordinance apply.<sup>48</sup>
3. In special flood hazard areas without base flood elevation data,
  - a. No encroachments, including structures or fill, shall be located in an Area of Special Flood Hazard within an area equal to the width of the stream or fifty feet, whichever is greater, measured from the ordinary high water mark, unless a base flood elevation is developed by a licensed professional engineer,<sup>49</sup> or;
  - b. The lowest floor of any insurable building or structure, including manufactured dwellings, shall be elevated a minimum of three (3) feet above highest adjacent grade. Below grade crawlspaces are not allowed.<sup>50</sup>

### **Section 35. Building Design and Construction**

Buildings and structures, including manufactured dwellings, within the scope of the building codes, including repair of substantial damage and substantial improvement of such existing buildings and structures, shall be designed and constructed in accordance with the flood-resistant construction provisions of these codes, including but not limited to Section R324 of the Residential Specialty Code and Section 1612 of the Structural Specialty Code.<sup>51</sup>

### **Section 36. Manufactured Dwellings**

1. New and replacement manufactured dwellings are within the scope of the building codes; and,
2. All new manufactured dwellings and replacement manufactured dwellings 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. Methods of anchoring 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.

### **Section 37. Below Grade Crawlspaces**

Below-grade crawlspace foundations are allowed, unless no base flood elevations are available, provided that they conform to guidelines in FEMA TB 11-01, Crawlspace Construction for Structures Located in Special Flood Hazard Areas and building codes.

### **Section 38. Accessory Structures**

Relief from the elevation or dry flood-proofing standards may be granted for an accessory structure containing no more than 200 square feet. Such a structure must meet the following standards:

1. It shall not be subject to building codes;
2. The accessory structure shall be located on a property, or an adjacent property with same owner, as a dwelling;

<sup>46</sup> 44 CFR Part 60.3(c)(13)

<sup>47</sup> 44 CFR 60.3(b)(4)

<sup>48</sup> 44 CFR Part 60.3(b)(4)

<sup>49</sup> Note that if BFE is developed Article V, Section D(2) applies.

<sup>50</sup> Based on high costs of flood insurance for un-elevated buildings, or buildings with below grade crawlspaces, located in approximate A Zones and consistency with Oregon Residential Specialty Code R324.2.2 which requires lowest floor be elevated a minimum of three feet above highest adjacent grade in AO zones where no depth number is specified.

<sup>51</sup> This Section links local ordinance to building codes.

3. It shall not be used for human habitation and may be used solely for parking of vehicles or storage of items having low damage potential when submerged;
4. Toxic material, oil or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality shall not be stored below BFE, or where no BFE is available lower than three feet above grade, unless confined in a tank installed in compliance with this ordinance;
5. It shall be constructed of flood resistant materials;
6. It shall be constructed and placed on the lot to offer the minimum resistance to the flow of floodwaters;
7. It shall be firmly anchored to prevent flotation;
8. Services such as electrical and heating equipment shall be elevated or flood-proofed to or above the base flood elevation, and;
9. It shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater. Designs for complying with this requirement must be certified by a licensed professional engineer or architect or
  - a. Provide a minimum of two openings with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
  - b. The bottom of all openings shall be no higher than one foot above the higher of the exterior or interior grade or floor immediately below the opening;
  - c. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwater in both directions without manual intervention.

#### **Section 39. Recreational Vehicles**

In all Areas of Special Flood Hazard, Recreational Vehicles that are an allowed use or structure under the zoning ordinance must either:<sup>52</sup>

1. Be placed on the site for fewer than 180 consecutive days;
2. Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached structures or addition, or
3. Meet all the requirements of Section 36 of this Ordinance: Manufactured Dwellings, including the anchoring and elevation requirements.

#### **Section 40. Critical Facilities**

Construction of new critical facilities shall be, to the extent possible, located outside the limits of the area of special flood hazard. Construction of new critical facilities shall be permissible within the area of special flood hazard if no feasible alternative site is available. Critical facilities constructed within the areas of special flood hazard shall have the lowest floor elevated three feet above BFE (or depth number in AO zones) or to the height of the 0.2 percent (500-year) flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances or priority organic pollutants as defined by the Oregon Department of Environmental Quality will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

#### **Section 41. Tanks**<sup>53</sup>

1. Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy assuming the tank is empty, during conditions of the design flood.<sup>54</sup>
2. Above-ground tanks in flood hazard areas shall be:
  - a. Attached to and elevated to or above the base flood elevation (or depth number in AO zones) on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions

<sup>52</sup> 44 CFR 60.3(e)(9) and 44 CFR 60.3(c)(14) Note: 44 CFR Part 60.3(c)(14) does not include AO zones.

<sup>53</sup> Optional if added to Other Development subsection: tanks are regulated by NFIP but specific standards are not found in 44 CFR Part 60.3

<sup>54</sup> From ASCE 24

of the design flood; or be

- b. Anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy assuming the tank is empty, during conditions of the design flood.<sup>55</sup>
3. Tank inlets, fill openings, outlets and vents shall be:
  - a. A minimum of 2 feet above BFE or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tank during conditions of the design flood; and
  - b. Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.<sup>56</sup>

#### **Section 42. On-site Sewage Systems**

1. Soil absorption systems shall be located outside of flood hazard areas. Where suitable soil absorption sites outside of the flood hazard area are not available, the soil absorption site is permitted to be located within the flood hazard area provided it is located to minimize the effects of inundation under conditions of the base flood.<sup>57</sup>
2. Mound systems in flood hazard areas shall be prohibited.<sup>58</sup>

#### **Section 43. Fences and Walls**

New fencing shall be designed to collapse under conditions of the base flood or to allow the passage of water by having flaps or openings in the areas at or below the base flood elevation sufficient to allow flood water and associated debris to pass freely.<sup>59</sup>

#### **Section 44. Other Development in Non-Coastal High Hazard Areas**

All development in non-coastal high hazard areas (A zones) for which specific provisions are not specified in this ordinance or building codes, shall:

1. Be located and constructed to minimize flood damage;<sup>60</sup>
2. Be designed so as not to impede flow of flood waters under base flood conditions;
3. If located in a floodway, meet the limitations of Section 33 of this Ordinance;<sup>61</sup>
4. Be anchored to prevent flotation or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;<sup>62</sup>
5. Be constructed of flood damage-resistant materials;<sup>63</sup> and
6. Have electric service and or mechanical equipment elevated above the base flood elevation (or depth number in AO zones), except for minimum electric service required to address life safety and electric code requirements.<sup>64</sup>

#### **Section 45. Temporary Structures, Storage, and Bridges**<sup>65</sup>

A floodplain development permit is required for construction or placement of temporary structures, temporary storage associated with non-residential uses, and temporary bridges located in areas of special flood hazard:

1. Temporary structures, not including bridges, shall be limited as to time of service, but shall not be permitted for more than 90 days. The Floodplain Administrator is authorized to grant extensions for demonstrated cause; such cause shall reaffirm the temporary nature of the structure. Temporary structures shall be anchored

<sup>55</sup> From ASCE 24

<sup>56</sup> From International Private Sewage Disposal Code of 2003, Chapter 3

<sup>57</sup> From International Private Sewage Disposal Code of 2003, Chapter 3

<sup>58</sup> From International Private Sewage Disposal Code of 2003, Chapter 3

<sup>59</sup> See Appendix B: Oregon Guidance Concerning Fencing and Walls in Areas of Special Flood Hazard

<sup>60</sup> 44 CFR 60.3(a)(3)

<sup>61</sup> 44 CFR 60.3(d)(3)

<sup>62</sup> 44 CFR 60.3(a)(3)

<sup>63</sup> 44 CFR 60.3(a)(3)

<sup>64</sup> 44 CFR 60.3(a)(3)

<sup>65</sup> These requirements are summarized from FEMA Region X Guidance Memorandum: Temporary Encroachments into the Floodway (October 2009)

to prevent flotation, collapse, or lateral movement.<sup>66</sup>

2. Temporary storage of 20 or more cubic yards shall be limited as to time of service, but shall not be permitted for more than 90 days. The Floodplain Administrator is authorized to grant extensions for demonstrated cause; such cause shall reaffirm the temporary nature of the storage. Stored material shall be anchored or contained to prevent flotation or release outside the assigned storage area. Hazardous materials priority persistent pollutants identified by the Oregon Department of Environmental Quality shall not be stored in the floodway.
3. Temporary encroachments in the floodway for the purposes of capitol improvement projects (including bridges) require a floodplain development permit<sup>67</sup>. No CLOMR/LOMR is required<sup>68</sup>

#### **Section 46. Requirement to Submit New Technical Data**

1. It is the responsibility of the applicant to have technical data prepared in a format required for a Conditional Letter of Map Revision or Letter of Map Revision and to submit such data to FEMA on the appropriate application forms. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.
2. Applicants shall be responsible for all costs associated with obtaining a Conditional Letter of Map Amendment (CLOMR) or Letter of Map Revision from FEMA.
3. The City of Pendleton shall be under no obligation to sign the Community Acknowledgement Form, which is part of the CLOMR/LOMR application.
4. Within six months of project completion, an applicant who obtains an approved CLOMR from FEMA, or whose development modifies floodplain boundaries or base flood elevations shall obtain from FEMA a Letter of Map Revision (LOMR) reflecting the as-built changes to the FIRM.<sup>69</sup>

#### **Section 47. Watercourse Alterations**

A water course is considered altered when any change occurs within its banks, including installation of new culverts and bridges, or size modifications to existing culverts and bridges (as shown on effective FIRM).

1. The bankfull flood carrying capacity of the altered or relocated portion of the water course shall not be diminished. Prior to issuance of a floodplain development permit, the applicant must submit a description of the extent to which any water course will be altered or relocated as a result of the proposed development and submit certification by a registered professional engineer that the bankfull flood carrying capacity of the water course will not be diminished.
2. Adjacent communities, the U.S. Army Corps of Engineers, Oregon Department of State Lands, and Oregon Department of Land Conservation and Development must be notified prior to any alteration or relocation of a water source. Evidence of notification must be submitted to the floodplain administrator and to the Federal

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<sup>66</sup> Note: the building codes allow temporary structures for no more than 180 days.

<sup>67</sup> The permit should stipulate the days and dates the structure or other development will be on site. If a longer period is required, a new permit should be issued.

A flood warning system for the project should be in place to allow equipment to be evacuated from the site and placed outside the floodplain.

Placement of equipment in the floodway should be restricted to only that equipment which is absolutely necessary for the purposes of the project. All other accessory equipment and temporary structures (i.e. construction trailers) should be restricted from the floodway. Structures should be placed on site so that flood damages are minimized. The community may want to consider such things as anchoring construction trailers in case evacuation isn't practical.

The following conditions should be included in the permit:

- Identification of the temporary changes to the floodplain under a 1% chance flood event (100-year flood)
- Identification of all insurable structures affected by any increase in BFE during a 1% chance flood event (100-year flood)
- Written notification to the applicant that they may be liable for any flood damages resulting from the temporary structure
- The length of time the structure or encroachment will be allowed.

<sup>68</sup> No CLOMR/LOMR will be required because there is no need to modify the FIRM due to the temporary condition of the encroachment, but the community should disclose to all owners of insurable structures and all applicants for permits in the affected area that there is an increased risk of flooding for the duration of the temporary encroachment.

<sup>69</sup> 44 CFR Part 65.3



Emergency Management Agency.<sup>70</sup>

3. The applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of the water course so that the flood carrying capacity will not be diminished.<sup>71</sup>
4. The applicant shall meet the requirements to submit technical data in Subsections (1) and (2) of Section 45 of this Ordinance when an alteration of a watercourse, including the placement of culverts, results in the relocation or elimination of the special flood hazard area.

#### **Section 48. Non-Conversion of Enclosed Areas below the Lowest Floor**

To ensure that the areas below the BFE continue to be used solely for parking vehicles, limited storage, or access to the building and not be finished for use as human habitation without first becoming fully compliant with the floodplain management ordinance in effect at the time of conversion, the Floodplain Administrator shall:

1. Determine which applicants for new construction and/or substantial improvements have fully enclosed areas below the lowest floor that are 5 feet or higher;
2. Enter into a "NON-CONVERSION AGREEMENT FOR CONSTRUCTION WITHIN FLOOD HAZARD AREAS" or equivalent agreement with the City of Pendleton. The agreement shall be recorded with Umatilla County as a deed restriction. The non-conversion agreement shall be in a form acceptable to the Floodplain Administrator and City Attorney.

#### **Section 49. Periodic Floodplain Inspections and Enforcement Actions**<sup>72</sup>

1. The Floodplain Administrator or the administrator's designee shall make periodic inspections of floodplain areas to establish that development activities within the floodplain are being performed in compliance with an approved floodplain development permit. The Floodplain Administrator or the administrator's designee shall prepare a field report listing non-complying conditions to be delivered to the City Manager, or the manager's designee. Upon receipt of the report, the City Manager, or the manager's designee shall proceed with enforcement actions including, but not limited to the issuance of a Stop Work Order, the issuance of a citation, or the commencement of civil legal proceedings.
2. Within 30 days of discovery of a violation of this ordinance, the Floodplain Administrator shall submit a report to the Planning Commission which shall include all information available to the Floodplain Administrator which is pertinent to said violation. Within 30 days of receipt of this report, the Planning Commission shall:
  - a. Take any necessary action to effect the abatement of such violation; or
  - b. Issue a variance to this ordinance in accordance with the provisions of Section 6.0 (Variance Procedures) herein; or
  - c. Order the owner of the property upon which the violation exists to provide whatever additional information may be required for their determination. Such information must be provided to the Planning Commission within 28 days of such order, and he shall submit an amended report to the Floodplain board with 21 days. At their next regularly scheduled public meeting, the Planning Commission shall either order the abatement of said violation or they shall grant a variance in accordance with the provisions of Section VI (Variance and Appeal Procedures) herein.
3. If a Variance cannot be granted according to Section VI, submit to the Administrator of Federal Insurance Administration a declaration for denial of insurance, stating that the property is in violation of a cited statute or local law, regulation or ordinance, pursuant to section 1316 of the National Flood Insurance Act of 1968 as amended.

### **Part V VARIANCE AND APPEAL PROCEDURES**

#### **Section 51 Variance**

1. An application for a variance shall be processed according to the standards and criteria for approval of a variance contained herein and in Article XX of the City of Pendleton Zoning Ordinance (No. 3250, as

<sup>70</sup> 44 CFR 60.3(b)(6)

<sup>71</sup> 44 CFR 60.3(b)(7)

<sup>72</sup> This section is derived from enforcement requirements in 44 CFR Part 59.24(b)

amended).

2. In addition to the criteria that must be satisfied for a standard variance, the Planning Commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and the:
  - a. danger that materials may be swept onto other lands to the injury of others;
  - b. danger to life and property due to flooding or erosion damage;
  - c. susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  - d. importance of the services provided by the proposed facility to the community;
  - e. necessity to the facility of a waterfront location, where applicable;
  - f. availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
  - g. compatibility of the proposed use with existing and anticipated development;
  - h. relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
  - i. safety of access to the property in times of flood for ordinary and emergency vehicles;
  - j. expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,
  - k. costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
3. Upon consideration of the factors of Section 4.4-1(4) and the purposes of this ordinance, the Planning Commission may attach such conditions to the granting of variances as it deems necessary to ensure the health, safety and welfare of the citizens of Pendleton and to further the purposes of this ordinance.
4. The floodplain administrator shall maintain a permanent record of all variances and report any variances to the Federal Emergency Management Agency upon request.<sup>73</sup>

#### Section 52. Criteria for Variances

1. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.<sup>74</sup>
2. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items Section 51 (2) of this Ordinance have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.<sup>75</sup>
3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.<sup>76</sup>
4. Variances shall only be issued upon a:
  - a. showing of good and sufficient cause;
  - b. determination that failure to grant the variance would result in exceptional hardship to the applicant, and;
  - c. determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in Section 4.1-4(4), or conflict with existing local laws or ordinances.<sup>77</sup>
5. Variances may be issued for a water dependent use provided that the
  - a. criteria of paragraphs (a)(1) through (a)(4) of this section are met, and;
  - b. structure or other development is protected by methods that minimize flood damages during the base

<sup>73</sup> 44 CFR 60.6(a)(6)

<sup>74</sup> 44 CFR 60.6(a)(1)

<sup>75</sup> 44 CFR 60.6(a)(2)

<sup>76</sup> 44 CFR 60.6(a)(4)

<sup>77</sup> 44 CFR 60.6(a)(3)

flood and create no additional threats to public safety.<sup>78</sup>

6. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the Statewide Inventory of Historic Properties, without regard to the procedures set forth in this section.<sup>79</sup>
7. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece or property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.<sup>80</sup>
8. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria and otherwise complies with building codes.<sup>81</sup>

### **Section 53. Variance Decision**

The decision to either grant or deny a variance shall be in writing and shall set forth the reasons for such approval and denial. If the variance is granted, the property owner shall be put on notice along with the written decision that the permitted building will have its lowest floor below the base flood elevation and that the cost of flood insurance likely will be commensurate with the increased flood damage risk.<sup>82</sup>

### **Section 54. Appeals**

The Planning Commission shall hear and decide appeals from the interpretations of the Administrator.

1. An appeal must be filed with the City of Pendleton Community Development Department within 12 of days of the date of any permit denial or interpretation of the Administrator. Failure to timely file an appeal shall be considered a failure to exhaust the administrative remedies. The appeal must set out the interpretation of the Administrator and a narrative setting forth the facts relied upon by the appellant and the appellants claim regarding the error in the interpretation.
2. Upon receipt of a completed appeal, the appeal will be scheduled for the next available Planning Commission meeting. The Planning Commission shall consider criteria set forth in Article VI, Section B of this Chapter in evaluating the appeal.

**Section 55. Decision.** The Planning Commission decision on appeal shall be in writing and set out the facts, technical information and the legal basis for the decision.

**Section 56. Appeals from the Planning Commission.** Decision of the Planning Commission pursuant to this Ordinance may be appealed to the City Council if the property is within the city limits or the Board of County Commissioners if outside the city limits within 21 days after the Planning Commission has mailed its decision. The applicant who initiated the action before the Planning Commission or any persons who appeared before the Planning Commission orally or in writing may appeal the decision of the Planning Commission. Written notice of the appeal shall be filed with the Floodplain Administrator. If an appeal is filed, the City Council or Board of County Commissioners shall receive a copy of the Planning Commission decision and shall hold a public hearing on the appeal and shall review the matter de novo.

## **Part VI. PENALTIES FOR VIOLATION**

**Section 61.** No structure or land shall hereafter be located, extended, converted or altered unless in full compliance with the terms of this ordinance and other applicable regulations.

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<sup>78</sup> 44 CFR 60.6(a)(7)

<sup>79</sup> 44 CFR 60.6(a)

<sup>80</sup> 44 CFR 60.6

<sup>81</sup> 44 CFR 60.6

<sup>82</sup> 44 CFR 60.6(a)(5)


**Section 62.** Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$1000.00. Each day the violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Pendleton from taking such other lawful actions as is necessary to prevent or remedy any violation.

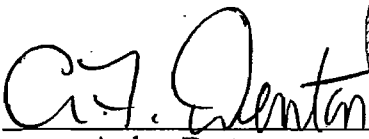
**Part VII.**


**Section 71.** This ordinance is severable. Should any portion of this ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and shall be read to carry out the purpose(s) of the ordinance before the declaration of partial invalidity.

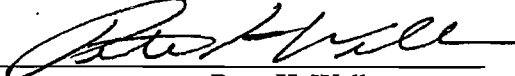
**Section 72.** This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, building codes, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

PASSED by the City Council and approved by the Mayor August 6, 2010.

APPROVED:   
Phillip W. Houk  
Mayor

ATTEST:   
Andrea Denton  
City Recorder



APPROVED AS TO FORM:  
  
Peter H. Wells  
City Attorney

J:\DATA\PLANNING\Floodplain ordinance\ORD3791 Flood PlainPW2.doc



City of Pendleton  
Planning Dept  
500 SW Dorion  
Pendleton, OR 97801



DLCD - Plan Amendment Specialist  
635 Capitol St NE, Suite 150  
Salem, OR 97301-2540

DEPT OF

AUG 12 2010

LAND CONSERVATION  
AND DEVELOPMENT