



**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**

12/29/2009

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

**FROM:** Plan Amendment Program Specialist

**SUBJECT:** City of Myrtle Creek Plan Amendment  
DLCD File Number 002-09

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:** Tuesday, January 12, 2010

This amendment was submitted to DLCD for review prior to adoption 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 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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

**Cc:** John K. Lazur, City of Myrtle Creek  
Gloria Gardiner, DLCD Urban Planning Specialist  
Chris Shirley, FEMA Specialist  
John Renz, DLCD Regional Representative

<paa> YA

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DLCD

# Notice of Adoption

**THIS FORM MUST BE MAILED TO DLCD  
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION  
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18**

DEPT OF

DEC 22 2009

LAND CONSERVATION  
AND DEVELOPMENT

Jurisdiction: **City of Myrtle Creek**

Local file number: **n/a**

Date of Adoption: **12/15/2009**

Date Mailed: **12/21/09**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: **9/10/09**

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".

**Amending Myrtle Creek Zoning Ordinance to update floodplain development standards based on recommended changes from DLCD and FEMA and amending the process for a Zoning map alteration.**

Does the Adoption differ from proposal? **No**, no explanation is necessary

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

to: **N/A**

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

to: **N/A**

Location: **City of Myrtle Creek**

Acres Involved: **0**

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. 002-09 (17823) [15922]

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

**City of Myrtle Creek Water & Sewer, South Umpqua School District, Myrtle Creek Rural Fire District, Douglas County Planning Department, Myrtle Creek Fire Department, ODOT, Douglas County Building Department, Douglas County Public Works, Umpqua Transit.**

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Local Contact: John Lazur, Planner

Phone: (541) 863-3171 Extension:

Address: PO Box 940

Fax Number: 541-863-6851

City: Myrtle Creek

Zip: 97457

E-mail Address: [ijklazur@co.douglas.or.us](mailto:ijklazur@co.douglas.or.us)

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### **ADOPTION SUBMITTAL REQUIREMENTS**

This form **must be mailed** to DLCD **within 5 working days after the final decision**  
per ORS 197.610, OAR Chapter 660 - Division 18.

1. Send this Form and TWO Complete Copies (documents and maps) 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**
2. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, or by emailing [larry.french@state.or.us](mailto:larry.french@state.or.us).
3. Please Note: Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **twenty-one (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to [larry.french@state.or.us](mailto:larry.french@state.or.us) - **Attention: Plan Amendment Specialist.**

Updated March 17, 2009

**CITY OF MYRTLE CREEK  
ORDINANCE NO. ORD-09-007**

**AN ORDINANCE AMENDING ORDINANCE NO. 508, THE MYRTLE CREEK ZONING ORDINANCE; IMMEDIATE ENACTMENT OF THE ORDINANCE IS NECESSARY TO PRESERVE THE HEALTH, SAFETY AND GENERAL WELFARE OF THE CITY OF MYRTLE CREEK.**

**WHEREAS**, the City of Myrtle Creek initiated an amendment to the Myrtle Creek Zoning Ordinance; and

**WHEREAS**, the proposed legislative amendments enhance the land use application process in an efficient and effective manner; and

**WHEREAS**, the Myrtle Creek Planning Commission conducted a public hearing on the question of amending the Zoning Ordinance on October 27, 2009, and provided an opportunity of public participation in the matter; and

**WHEREAS**, the Planning Commission subsequently forwarded to the City Council a recommendation that the proposed amendments to the Zoning Ordinance be adopted by the City Council; and

**WHEREAS**, the City of Myrtle Creek mailed a Ballot Measure 56 Notice of the proposed legislative amendments to owners of property located within the city limits and Area 1 of the Myrtle Creek Urban Growth Boundary on October 19, 2009, in accordance with ORS 227.18; and

**WHEREAS**, the City Council conducted a public hearing on the amendments to the Zoning Ordinance on November 17, 2009, and provided an opportunity for public participation in the matter and hereby adopts the proposed legislative amendments; and

**WHEREAS**, the City of Myrtle Creek declares an emergency to ensure adoption within the FEMA regulated timeline.

**NOW, THEREFORE THE CITY OF MYRTLE CREEK ORDAINS AS FOLLOWS:**

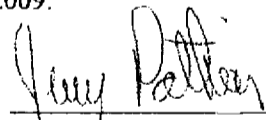
**Section 1. Zoning Ordinance, Subdivision Ordinance and Comprehensive Plan Amendments.**

The official City of Myrtle Creek Zoning Ordinance is hereby amended to the extent described in attached Exhibit A [2009 Legislative Amendments to the City of Myrtle Creek Zoning Ordinance, Adoption Draft dated November 17, 2009].


**PASSED BY CITY COUNCIL UPON ITS FIRST READING** this 15<sup>th</sup> day of December, 2009.

**APPROVED BY CITY COUNCIL UPON ITS SECOND READING** this 15<sup>th</sup> day of December, 2009.

**APPROVED BY THE MAYOR** this 15<sup>th</sup> day of December, 2009.

  
\_\_\_\_\_  
Jerry Pothier, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Carolyn D. Shields, City Recorder

**EXHIBIT A**  
**2009 LEGISLATIVE  
AMENDMENTS TO THE**

**CITY OF MYRTLE CREEK  
ZONING ORDINANCE**

**ADOPTION DRAFT  
November 17, 2009**

**PLANNING COMMISSION**

Workshop	August 25, 2009
Workshop	September 22, 2009
Hearing	October 27, 2009

**CITY COUNCIL**

Workshop	November 5, 2009
Hearing and First Reading	November 17, 2009
Second Reading	December 15, 2009

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**LEGEND**

Deletion	<del>Deletion</del> is marked with strike out function
Addition	<b><u>Addition</u></b> is marked with bold and underline
Comments	<i>Comments</i> are provided in italics

**ZONING  
ORDINANCE  
AMENDMENTS**

**SECTION 1.06.1 ALTERATIONS TO ZONING MAP.**

- (1) A change in district boundaries and the addition of further district classifications may be made by the amendment procedure set forth in Article VIII. Legislative action to correct errors or omissions in the Zoning Map may be made by ~~Resolution~~ **Ordinance** of the City Council.
  - (2) Whenever alterations to the district boundaries or other matter portrayed on the Zoning Map have been approved by the City Council in accordance with the provisions of this Ordinance, such alterations shall be entered on the map within ten (10) days of the effective date of action and shall indicate the Ordinance or Resolution number and date of change. It shall be the responsibility of the City Recorder to keep the Official Zoning Map up-to-date and current. A copy of the Map as it existed on the effective date of this Ordinance shall be retained for reference.
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**SECTION 2.03.0 DEFINITIONS.**

When used in this Ordinance, the following terms shall have the meanings herein ascribed to them:

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

**BELOW-GRADE CRAWL SPACE – 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.**

**CRITICAL FACILITY: A facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.**

**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. Also includes the dividing of land for the purpose of development.**

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

**EXISTING MANUFACTURED HOME PARK OR SUBDIVISION: A manufactured home park subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation**



of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted floodplain management regulations.

**EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION:**  
**The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).**

**FLOOD INSURANCE RATE MAP (FIRM): Means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.**

~~MANUFACTURED HOME OR MOBILE HOME:~~ A pre-manufactured structure designed to be transported in one or more sections ~~upon the highways~~ **and**; is capable of being used for human habitation or for business, commercial or office purposes,; and is designed for use with or without a permanent foundation. ~~For floodplain management purposes, the terms "manufactured home" and "mobile home" also include park trailers, travel trailers and other similar vehicles placed on a site for more than 180 consecutive days.~~ **The term "manufactured home" does not include a "recreational vehicle".** For other purposes of this Ordinance, the terms "manufactured home" and "mobile home" do not include park trailers, travel trailers, **and** tent trailers, ~~modular and prefabricated homes.~~ A manufactured home may be used as a permanent dwelling only when placed in accordance with the standards established for manufactured homes as set forth in Article 5 of this Ordinance, or if the manufactured home has been certified as meeting standards specified for site built structures contained in the Uniform Building Code.

~~MANUFACTURED (MOBILE) HOME PARK OR SUBDIVISION:~~ A parcel (or contiguous parcels) of land **divided into two under one ownership, where four or more manufactured home lots for rent or sale.** ~~dwelling are located within 500 feet of one another, the primary purpose of which is to rent or lease space for placement of mobile homes.~~ (See Article V for approval procedure and park design standards.)

**NEW MANUFACTURED HOME PARK OR SUBDIVISION: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of adopted floodplain management regulations.**

**START OF CONSTRUCTION:** Includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundation 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 that alteration affects the external dimensions of the building.**

**STATE BUILDING CODE: The combined specialty codes.**

**STRUCTURE:** That which is built or constructed. An edifice or building of any kind or any piece or work artificially built up or composed of parts joined together in some manner and which require location on the ground or which is attached to something having a location on the ground **including a gas or liquid storage tank that is principally above ground.** (see Building)

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

**SUBSTANTIAL IMPROVEMENT:** Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the assessed market value of the structure either:

- (a) Before the improvement or repair is started, or,
- (b) If the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

- (a) Any project for improvement of a structure to ~~comply with~~ **correct** existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or,
- (b) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

**VARIANCE:** Means a grant of relief from the requirements of this Ordinance which permits construction **in** a manner that would otherwise be prohibited by this Ordinance. (See Article VII)

**WATER DEPENDENT: A structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.**

**SD/FHA**

**SPECIAL DISTRICT - FLOOD HAZARD AREA**

**SECTION 3.40.1 INTENT.**

To serve as an overlay district intended to provide notification to property owners that they should have their property elevations surveyed for compliance with flood criteria based on the following findings of fact:

- (1) The flood hazard areas of the City of Myrtle Creek are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base; all of which adversely affect the public health, safety and general welfare.
- (2) These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards, which increase flood heights and velocities, and, when inadequately anchored, damage uses in other areas. Uses that are inadequately flood proofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.

**SECTION 3.40.2 STATEMENT OF PURPOSE.**

To promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- (1) To protect human life and health;
- (2) To minimize expenditure of public money and costly flood control projects;
- (3) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) To minimize prolonged business interruptions;
- (5) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
- (6) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- (7) To ensure that potential buyers are notified that property is in an area of special flood hazard; and
- (8) To ensure that those who occupy the areas of special flood hazard assume responsibility

for their actions.

### **SECTION 3.40.3 PERMITTED USES AND DIMENSIONAL STANDARDS**

All uses and structures within the Special District/Flood Hazard Area shall conform to the regulations of both the Special (overlay) District and underlying general District. In the event of a conflict in regulations, the more restrictive shall govern.

### **SECTION 3.40.4 METHODS OF REDUCING FLOOD LOSSES**

In order to accomplish its purposes, this district provides methods and provisions for:

- (1) Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural floodplains, stream channels and natural protection barriers, which help accommodate or channel flood waters;
- (4) Controlling filling, grading, dredging and other development which may increase flood damage;
- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas;
- ~~(6) Controlling the unnecessary removal of streambank vegetation needed to maintain surface water temperature for fish and wildlife habitat.~~
- (6) Coordinating and supplementing the provisions of the state building code with local land use and development ordinances.**

### **SECTION 3.40.5 DESIGNATION OF FLOOD HAZARD AREA.**

This overlay district shall apply to all areas of special flood hazards within the jurisdiction of the City of Myrtle Creek, as follows:

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for the ~~City of Myrtle Creek~~ **The County of Douglas**", dated **February 17, 2010**, ~~February 15, 1978~~ with accompanying Flood Insurance Rate Maps (FIRM) and Floodway Map as revised on December 28, 1982, ~~is~~ **are** hereby adopted by reference and declared to be a part of this ordinance. The Flood

Insurance Study is on file at Myrtle Creek City Hall, 207 NW Pleasant Street, Myrtle Creek, Oregon. **The best available information for flood hazard area identification as outlined in 3.41.5(2) shall be the basis for regulation until a new FIRM is issued which incorporates the data utilized under section 3.41.5(2).**

#### **SECTION 3.40.6 PENALTIES FOR NONCOMPLIANCE**

**No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations.**

#### **SECTION 3.40.67 ABROGATION AND GREATER RESTRICTIONS.**

~~The provisions of this district are~~ **This ordinance is** not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ~~article~~ **ordinance** and another **ordinance, state building code, article, ordinance, easement, covenant or deed restriction** conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

#### **SECTION 3.40.8 SEVERABILITY.**

**If any section clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.**

#### **SECTION 3.40.9 INTERPRETATION.**

**In the interpretation and application of this ordinance, all provisions shall be held to be minimum requirements and shall be liberally construed in favor of the governing body, and shall not be deemed to limit or repeal any other powers granted under State statutes and rules including the state building code.**

#### **SECTION 3.40.7 10 WARNING AND DISCLAIMER OF LIABILITY.**

The degree of flood protection required by this district is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Ordinance does not imply that land outside the areas of special flood hazards 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 Myrtle Creek, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this Ordinance or any administrative decision lawfully made hereunder.

#### **SECTION 3.41.1 DEVELOPMENT PERMIT & SITE REVIEW REQUIRED.**

A development permit (Plan Check Certificate, Building Permit or Placement Permit) shall be obtained before construction or development begins within any area of special flood hazard established in Section 3.40.5. The permit shall be for all structures, including manufactured homes and for all development including fill, removal of vegetation along stream banks and other activities as set forth in Article II (Definitions) under "Development". A site review in accordance with the procedures pertaining to the underlying general District shall be conducted before construction or development begins. The Planned Development concept is encouraged within the flood hazard area and may be required as a condition of approval where the imposition of supplemental standards is authorized by this Ordinance or the Subdivision Ordinance of the City of Myrtle Creek.

#### **SECTION 3.41.2 APPLICATION FOR DEVELOPMENT PERMIT.**

Application for a development permit shall be made on forms furnished by the City and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities and the location of the foregoing. Specifically, the following information is required:

- (1) Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;
- (2) Elevation in relation to mean sea level to which any structure has been floodproofed of floodproofing in any structure;
- (3) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 3.42.2(2);
- (4) Description of the extent to which a watercourse will be altered or relocated as a result of the proposed development; and,
- (5) Description of the extent to which any streambank vegetation proposed to be removed and steps to be taken to mitigate the impact of any such removal.

#### **SECTION 3.41.3 SUBMISSION OF ADDITIONAL INFORMATION.**

~~An application for development in the Flood Hazard Area shall take into account the best available information affecting the land. If the applicant has access to additional information and can establish its reliability, the Building Official may permit its use providing the information is not in conflict with data provided by the Federal Insurance Administration.~~

#### **SECTION 3.41.4 5 DESIGNATION OF THE BUILDING OFFICIAL LOCAL ADMINISTRATOR.**

The City Administrator of the City of Myrtle Creek shall ~~appoint a Building Official to~~ **is hereby appointed to** administer and implement ~~the provisions of this ordinance~~ **district** by granting or denying development permit applications in accordance with its provisions.

**SECTION 3.41.5 DUTIES AND RESPONSIBILITIES OF THE BUILDING OFFICIAL LOCAL ADMINISTRATOR.**

Duties of the ~~Building Official~~ **Local Administrator** shall include, but not be limited to:

(1) Permit Review

- (a) Review all development permits to determine that the permit requirements **and conditions** of this Ordinance have been satisfied;
- (b) Review all development permits to determine that all necessary permits have been obtained from those Federal, State, or local governmental agencies from which prior approval is required; and,
- (c) Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Section 3.42.3(1) are met.

(2) Use of Other Base Flood Data (In A Zones).

When base flood elevation data has not been provided (**A Zones**) in accordance with Section 3.40.5, "Designation of Flood Hazard Area", the ~~Building Official~~ **local administrator** shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source in order to administer Section 3.42.2, "Specific Standards", and Section 3.42.3, "Floodways".

(3) Information to be Obtained and Maintained

- (a) Where base flood elevation data is provided through the Flood Insurance Study, **FIRM, or** ~~of~~ required as in Section 3.41.5(2), obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basements **and below-grade crawl spaces**) of all new or substantially improved structures, and whether or not the structure contains a basement.
- (b) For all new or substantially improved **floodproofed** structures **where base flood elevation data is provided through the Flood Insurance Study, FIRM, or as required in 3.41.5(2):**
  - (i) Verify and record the actual elevation **to which the structure has been floodproofed** (in relation to mean sea level); and

- (ii) The City shall obtain and maintain the FEMA floodproofing certifications required in Section 3.41.2 (3).
- (c) Maintain for public inspection all records pertaining to the provisions of this district.
- (4) Alteration of Watercourses
  - (a) Notify adjacent communities, the Department of Land Conservation and Development and the other appropriate State and Federal agencies prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Insurance Administration.
  - (b) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
- (5) Interpretation of FIRM Boundaries

Make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 3.41.86.

**SECTION 3.41.6 VARIANCE AND APPEAL PROCEDURE FOR FLOOD HAZARD AREA.**

- (1) The Planning Commission shall hear and decide appeals and requests for variances from the requirements of this ordinance district.
- (2) ~~In passing upon such applications, the~~ The Planning Commission shall consider hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the City in the enforcement or administration ~~all technical evaluations, all relevant factors, standards specified in other sections and paragraphs of this Ordinance, and:~~
- (3) Those aggrieved by the decision of the City, or any taxpayer, may appeal such decision as provided in Section 9.05.0.



**(4) In passing upon such applications, the Planning Commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:**

- (a) The danger that materials may be swept onto other lands to the injury of others;
- (b) The danger to life and property due to flooding or erosion damage;
- (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (d) The importance of the services provided by the proposed facility to the community;
- (e) The necessity to the facility of a waterfront location, where applicable;
- (f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (g) The compatibility of the proposed use with existing and anticipated development;
- (h) The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;
- (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (j) The 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) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems and streets and bridges.

**(3 5)** Upon consideration of the factors of Section 3.41.6(~~2~~ **4**) and the purposes of this **ordinance district**, the Planning Commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this **ordinance district**.

**(4 6)** The ~~Myrtle Creek Planning Department~~ **local floodplain administrator** shall maintain the records and report any variances to the Federal Insurance Administration upon request.

**SECTION 3.41.7 CONDITIONS FOR VARIANCES/FLOOD HAZARD AREA.**

(1) 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 (a) through (k) in Section 3.41.6(2 4) have been fully considered. As the lot size increases, the technical justification required for issuing the variance increases.

- (2) 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 Places Properties, without regard to the procedures set forth in this Section.
- (3) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
- (4) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (5) Variances shall only be issued upon:
  - (a) A showing of good and sufficient cause;
  - (b) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and,
  - (c) A 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 3.41.7(4)~~ or conflict with existing local laws or ordinances.
- (6) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principal that they pertain to a physical piece of 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.
- (7) 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 except 3.41.7(1) and otherwise complies with Section 3.42.1(1) and 3.42.1(2) of the General Standards.
- (8) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

**SECTION 3.41.8 APPEALS.**

~~When it is alleged there is an error in any requirement, decision or determination made in the enforcement or administration of these regulations, those aggrieved by the decision may appeal such decision as provided in Section 9.05.0.~~

**SECTION 3.42.0 PROVISIONS FOR FLOOD HAZARDS REDUCTION.**

In areas of flood hazard, the provisions of Sections 3.42.1 through 3.42.3 shall apply.

**SECTION 3.42.1 GENERAL STANDARDS.**

In all areas of special flood hazards, the following standards are required:

- (1) Anchoring
  - (a) All new construction and substantial improvement shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
  - (b) All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).
- (2) Construction Materials and Methods
  - (a) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
  - (b) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
  - (c) Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (3) Utilities
  - (a) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
  - (b) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,

- (c) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding **consistent with the Oregon Department of Environmental Quality.**

(4) **Subdivision Proposals**

- (a) All subdivision proposals shall be consistent with the need to minimize flood damage: **;**
- (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize **or eliminate** flood damage: **;**
- (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage: **and,**
- (d) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

(5) **Streambank Vegetation Removal**

Streambank vegetation within the flood hazard area shall, as much as feasible, be retained to protect the stability of the streambank ~~and maintain the wildlife habitat for fish and wildlife.~~ Such vegetation may be removed only if it is found that it will have no adverse impact on streambank stability ~~and fish and wildlife habitat~~ or will be replaced to mitigate the adverse impact.

(6) **Review of Building Permits**

Where elevation data is not available either through the Flood Insurance Study or from another authoritative source [Section 3.41.5(2)], applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate **the lowest floor** at least two feet above grade in these zones may result in higher insurance rates.

**SECTION 3.42.2 SPECIFIC STANDARDS.**

In all areas of special flood hazards where base flood elevation data has been provided (**Zones A-1-30, AH, AE**) as set forth in Section 3.40.5 "Designation of Flood Hazard Area" or Section 3.41.5(2) "Use of Other Base Flood Data (**in A Zones**)", the following provisions are required:

(1) Residential Construction

- (a) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated ~~no less than~~ **to a minimum of** one foot above the base flood elevation.
- (b) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
  - (i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
  - (ii) The bottom of all openings shall be no higher than one foot above grade; and,
  - (iii) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(2) Nonresidential Construction

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New construction and substantial improvement of any commercial, industrial or other non residential structure shall either have the lowest floor, including basement, elevated ~~to~~ **at or above** the level of the base flood elevation, or, together with attendant utility and sanitary facilities, shall:

- (a) Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
- (b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
- (c) Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications, and plans. Such certification shall be provided to the official as set forth in Section 3.41.5(3);

- (d) Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in 3.42.2(1)(b); and,
- (e) Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one foot below that level).

(3) Manufactured Homes.

~~All manufactured homes to be placed or substantially improved within Zones A1-30, AH and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is no less than one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of subsection 3.42.1(1)(b).~~

**(a) All manufactured homes to be placed or substantially improved on sites:**

- (i) Outside of a manufactured home park or subdivision,**
- (ii) In a new manufactured home park or subdivision,**
- (iii) In an expansion to an existing manufactured home park or subdivision, or**
- (iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood;**

**shall be elevated on a permanent foundation such that the finished floor of the manufactured home is elevated to a minimum 18 inches (46 cm)<sup>1</sup> above the base flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement.**

**(b) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH, and AE on the community's FIRM that are not subject to the above manufactured home provisions be elevated so that either:**

- (i) The finished floor of the manufactured home is elevated to a minimum of 18 inches (46 cm) above the base flood elevation, or**
- (ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no**

<sup>1</sup> See 2002 Oregon Manufactured Dwelling and Parks Specialty Code, Chapter 3. The code also requires that the top of the the dwelling stand be at least 12 inches above BFE.  
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**less than 36 inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.**

(4) **Recreational Vehicles**

Recreational vehicles placed on sites within **the Floodplain are required to either: Zones A1-30, AH and AE on the community's FIRM either:**

- (i) Be on the site for fewer than 180 consecutive days,
- (ii) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by a quick disconnect type utilities and security devices, and has no permanently attached additions; or
- (iii) Meet the requirements of Section 3.41.1 (Development Permits & Site Review Required) and the elevation and anchoring requirements for manufactured homes found in Section 3.42.2 (3).

(5) **Below-Grade crawl spaces**

**Note: Floodplain insurance premiums are higher for a structure built with a below-grade crawlspace – even if the crawlspace meets the FEMA specifications (see FEMA Technical bulletin 11-01)- than for the same structure built with a crawlspace that has the inside grade of the crawlspace at the same level as the outside grade.**

**Below-grade crawlspaces are allowed subject to the following standards as found in FEMA Technical Bulletin 11-01, Crawlspace Construction for Buildings Located in Special Flood Hazard Areas:**

- (i) **The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in Section B below. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas.**
- (ii) **The crawlspace is an enclosed area below the base flood elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one (1) foot above the lowest adjacent exterior grade.**
- (iii) **Portlons of the building below the BFE must be constructed with materials**

**resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.**

- (iv) Any building utility systems within the crawlspace must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.**
- (v) The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.**
- (vi) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed four (4) feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.**
- (vii) There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles or gravel or crushed stone drainage by gravity or mechanical means.**
- (viii) The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawlspace. For velocities in excess of five (5) feet per second, other foundation types should be used.**

**For more detailed information refer to FEMA Technical Bulletin 11-01.**

### **SECTION 3.42.3 FLOODWAYS.**

Located within areas of special flood hazard established in Section 3.40.5 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and erosion potential, the following provisions apply:

- (1) ~~Encroachment Prohibited Unless Certified~~  
**Except as provided in paragraph 3, p**Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer ~~or architect~~ is provided demonstrating **through hydrologic and hydraulic analyses performed in accordance with standard engineering practice** that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.**



(2) Flood Hazard Reduction Provisions

If Section 3.42.3(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 3.42.0 "Provisions for Flood Hazard Reduction".

(3) Projects for stream habitat restoration may be permitted in the floodway provided:

(i) The project qualifies for a Department of the Army, Portland District Regional General Permit for Stream Habitat Restoration (NWP-2007-1023); and,

(ii) 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,

(iii) No structures would be impacted by a potential rise in flood elevation; and,

(iv) An agreement to monitor the project, correct problems, and ensure that flood carrying capacity remains unchanged is included as part of the local approval.

(4) New installation of manufactured dwellings are prohibited (2002 Oregon Manufactured Dwelling and Park Specialty Code). Manufactured dwellings may only be located in floodways according to one of the following conditions:

(i) If the manufactured dwelling already exists in the floodway, the placement was permitted at the time of the original installation, and the continued use is not a threat to life, health, property, or the general welfare of the public; or

(ii) A new manufactured dwelling is replacing an existing manufactured dwelling whose original placement was permitted at the time of installation and the replacement home will not be a threat to life, health, property, or the general welfare of the public and it meets the following criteria

a. As required by 44 CFR Chapter 1, Subpart 60.3(d)(3), it must be demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the manufactured dwelling and any accessory buildings, accessory structures, or any property improvements (encroachments) will not result in any increase in flood levels during the occurrence of the base flood discharge;

- b. The replacement manufactured dwelling and any accessory buildings or accessory structures (encroachments) shall have the finished floor elevated a minimum of 18 inches (46 cm) above the BFE as identified on the Flood Insurance Rate Map;
- c. The replacement manufactured dwelling is placed and secured to a foundation support system designed by an Oregon professional engineer or architect and approved by the authority having jurisdiction;
- d. The replacement manufactured dwelling, its foundation supports, and any accessory buildings, accessory structures, or property improvements (encroachments) do not displace water to the degree that it causes a rise in the water level or diverts water in a manner that causes erosion or damage to other properties;
- e. The location of a replacement manufactured dwelling is allowed by the local planning department's ordinances; and,
- f. Any other requirements deemed necessary by the authority having jurisdiction.

#### **SECTION 3.42.4 CRITICAL FACILITY**

**Construction of new critical facilities shall be, to the extent possible, located outside the limits of the Special Flood Hazard Area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet above BFE or to the height of the 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 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.**

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