NOTICE OF ADOPTED AMENDMENT  
07/16/2012  
TO: Subscribers to Notice of Adopted Plan or Land Use Regulation Amendments  
FROM: Plan Amendment Program Specialist  
SUBJECT: City of Salem Plan Amendment  
DLCD File Number 009-12  
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: Friday, July 27, 2012  
This amendment was submitted to DLCD for review prior to adoption with less than the required 35-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.
Jurisdiction: City of Salem
Date of Adoption: 6/25/2012
Local file number: CA12-04
Date Mailed: 6/29/2012

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes
Date: 4/25/2012

Comprehensive Plan Text Amendment
Comprehensive Plan Map Amendment
New Land Use Regulation
Zoning Map Amendment
Other:

Summarize the adopted amendment. Do not use technical terms. Do not write “See Attached”.
Amendment to Salem Revised Code Chapter 140 - Floodplain Overlay Zones. Purpose of the amendment is to reduce the 3-foot minimum clearance of new bridges above the base flood elevation. The proposed amendment requires 1-foot minimum clearance for new vehicular bridges and requires bridge replacements for new pedestrian bridges to be constructed in a manner that does not cause a rise in base flood levels.

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

Plan Map Changed from: to:
Zone Map Changed from: to:
Location: Acres Involved:
Specify Density: Previous: New:
Applicable statewide planning goals:

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment... 35-days prior to first evidentiary hearing?
If no, do the statewide planning goals apply?
If no, did Emergency Circumstances require immediate adoption?

DLCD File No. 009-12 (19312) [17102]
ADOPITION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working 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 the adopted amendment, please print a completed copy of Form 2 on light green
paper if available.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the
address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s),
exhibit(s) and any other supplementary information (ORS 197.615 ).
5. Deadline to appeals to LUBA is calculated twenty-one (21) days from the receipt (postmark date) by DLCD
of the adoption (ORS 197.830 to 197.845 ).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who
participated in the local hearing and requested notice of the final decision. (ORS 197.615 ).
7. Submit one complete paper copy via United States Postal Service, Common Carrier or Hand
Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

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

9. Need More Copies? Please print forms on 8½ -1/2x11 green paper only if available. If you have any
questions or would like assistance, please contact your DLCD regional representative or contact the DLCD
Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

http://www.oregon.gov/LCD/forms.shtml

Updated December 30, 2011
TO: MAYOR AND CITY COUNCIL
THROUGH: LINDA NORRIS, CITY MANAGER
FROM: ROBERT CHANDLER, PH.D., P.E.
INTERIM PUBLIC WORKS DIRECTOR
SUBJECT: AMENDMENTS TO SALEM REVISED CODE CHAPTER 140 TO REDUCE MINIMUM BRIDGE CLEARANCE OVER THE BASE FLOOD ELEVATION

ISSUE:
Should Council direct staff to schedule a public hearing on Ordinance Bill No. 14-12, amending Salem Revised Code Chapter 140 to reduce minimum bridge clearance over the base flood elevation?

RECOMMENDATION:
Staff recommends Council direct staff to schedule a public hearing on Ordinance Bill No. 14-12, amending Salem Revised Code Chapter 140 to reduce minimum bridge clearance over the base flood elevation.

BACKGROUND:
Salem Revised Code Chapter 140 (Floodplain Overlay Zones) is the local ordinance that ensures development within Salem complies with the National Flood Insurance Program. Provisions of the existing Code require that bridges be constructed a minimum of three feet above the base flood elevation. The base flood elevation is the water surface elevation for the flood that has a one percent chance of being equaled or exceeded in any given year.

National Flood Insurance Program (NFIP) regulations require a community to "Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge" (44 CFR 60.3(d)(3)). The requirement for 3 feet of vertical clearance above the base flood elevation exceeds the standards of the National Flood Insurance Program (NFIP) and the Oregon Department of Transportation (ODOT) bridge construction standards. The amended Code language is consistent with NFIP and ODOT requirements.
The current ordinance language related to bridge clearance has been in place since the City's initial involvement in the National Flood Insurance Program. City staff has not found any positive benefits of the requirement. For construction of most bridges, the 3-foot clearance requirement has several negative impacts: (a) costs are increased substantially because of a taller structure and increased fill; (b) vehicular access is restricted because of increased vertical separation between the bridge access road and surrounding properties; and (3) flooding risks can increase because increased fill needed in the vertical approaches to the bridge structure can block overland flow of flood waters.

This 3-foot clearance provision has required the City to apply for variances in conjunction with a number of recent bridge replacements. Without a variance, those bridge replacements would have required downtown streets to be elevated over 5 feet surrounding the bridge. Amending the ordinance language is recommended in order to reduce the need to issue variances.

FACTS AND FINDINGS:

1. SRC 300.1110(a)(3) permits City staff to initiate a legislative land use proceeding by preparing an ordinance bill and placing it on the Council agenda for first reading. Council may schedule a public hearing to consider the proposal, refer the matter to the appropriate review authority for hearing, refer the matter to a Council subcommittee for further review, or decline to advance the ordinance to second reading. Staff recommends Council direct staff to schedule a public hearing before Council to consider the proposal.

2. SRC 300.1110(c)(1) requires the City to send notice to Department of Land Conservation and Development 45 days prior to conducting a hearing to consider an amendment to the Salem Area Comprehensive Plan or the City's land use regulations. Notice was hand-delivered to DLCD on April 26, 2012.

3. SRC 300.1110(c)(2)(A)(vii) requires the City to send notice to the Federal Insurance Administration, U.S. Department of Housing and Urban Development not more than 40 and not less than 20 days prior to the first evidentiary hearing.

4. SRC 300 requires a public hearing prior to adopting any change to the City's land use regulations.
5. The proposed Code change reduces the existing requirement to elevate bridges 3 feet above the base flood elevation. New vehicular bridges require a 1-foot minimum vertical clearance above the base flood elevation. Vehicular bridge replacements and new pedestrian bridges shall not increase the water surface elevation of the base flood discharge.

Prepared by: Glenn Davis, P.E., Chief Development Services Engineer

Wards All
May 4, 2012
ORDINANCE BILL NO. 14-12

AN ORDINANCE RELATING TO FLOODPLAIN DEVELOPMENT; AMENDING SRC
CHAPTER 140; AND CREATING NEW PROVISIONS

The City of Salem ordains as follows:

Section 1. SRC 140.020 is amended to read as follows:

140.020. Definitions. Unless specifically defined in this section, words or phrases used in this Chapter shall be interpreted so as to give them the meaning they have in common usage and to give this Chapter its most reasonable application.

(a) "Appeal" means a request for review of the interpretation of any provision of this Chapter or a request for a variance.

(b) "Area of shallow flooding" means an area designated as an "AO" or "AH" zone on the Flood Insurance Rate Map (FIRM). In an area of shallow flooding, the base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate, and velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

(c) "Area of special flood hazard" means the land in the floodplain subject to a one percent or greater chance of flooding in any given year, as designated by the most recent version of the FIRM. Designation on maps always includes the letters A or V.

(d) "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year. Base flood also referred to as the "100-year flood."

(e) "Bridge" means means a structure, including supports, erected over a depression or an obstruction such as a waterway, highway, or railway, and having a deck or passageway for transporting pedestrians, vehicles, or other moving loads, and having an opening measured along the center of the deck or passageway of more than twenty feet between undercroppings of abutments, or spring lines of arches, or extreme ends of openings for multiple boxes, and which includes multiple pipes where the clear distance between openings is less than half of the smallest contiguous opening.

(f) "Change of use" means making different use of the land or water than that which existed on June 15, 1979. "Change of use" includes a change that requires
construction; or alterations of the land, water or other areas outside of existing
buildings or structures which significantly alters or affects the land or water. For
the purposes of this definition, an existing open storage area shall be considered a
building. "Change of use" does not include:

(1) A change of use of a building or other structure which does not
significantly alter or affect the land or water upon which it is situated.

(2) The completion of a structure for which a valid permit has been issued and
under which permit substantial construction was undertaken by June 15, 1979.

(3) The sale of property.

(4) Minor landscaping which does not have an appreciable effect on flow
characteristics of a waterway.

(5) Construction of driveways which do not involve significant earthwork or
supporting structures that affect flow characteristics of a waterway.

(6) Minor modifications of existing structures for which no building permit is
required.

(7) The construction or placement of such minor subsidiary structures or
facilities that are usual and necessary for the use and enjoyment of existing
improvements, except such structures or facilities specifically prohibited
or regulated by this Chapter.

"Develop" means to bring about growth or availability; to construct, alter, or
place a structure; to conduct a mining, filling, grading, paving, drilling,
dredging or excavation operation; to make a physical change in the use or
appearance of land; to partition or divide land into parcels; or to create or
terminate rights of access.

"Existing manufactured home park or subdivision" means a manufactured
home park for which the construction of facilities to service the lot on or
which the manufactured homes are to be affixed (including, at a minimum, the
installation of utilities, either final site grading or the pouring of concrete pads,
and the construction of streets) was completed prior to July 27, 1987.
(hi) "Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities to service the lots on which the manufactured homes are to be affixed (including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets).

(ij) "Fish habitat enhancement" means the addition or modification of aquatic habitat components whose absence, scarcity, or condition has been determined by the Director of Public Works to limit fish presence or abundance in the immediate project area, specific stream corridor, or watershed.

(ik) "Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters or from the unusual and rapid accumulation of runoff of surface waters from any source.

(jl) "Flood Insurance Rate Map" (FIRM) means the official map, in paper or digital form, on which the Federal Insurance Administration, Federal Emergency Management Agency (FEMA) has delineated both the areas of special flood hazards and the risk premium zones applicable to the City of Salem, and includes the accompanying floodway and floodway fringe boundary maps accompanying the FIRM as a part of the flood insurance study. The FIRM and all amendments thereto are adopted as a part of this Chapter, and a copy thereof shall be kept on file in the office of the Director of Public Works.

(km) "Flood insurance study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary - Floodway Map, and the water surface elevation of the base flood. The flood insurance study, and all subsequent amendments thereto or supplements thereof, is hereby adopted as a part of this Chapter, and a copy thereof shall be kept on file in the office of the Director of Public Works.

(sn) "Floodplain" means any land or water area which is subject to one percent flood probability along any waterway. "Floodplain" includes the officially designated floodway, floodway fringe, areas of shallow flooding or special flood hazard, as delineated on the FIRM, and interim flood hazard areas.
"Floodway" means the channel of a river or other waterway and the adjacent land areas that must be reserved in order to discharge the waters of a base flood without cumulatively increasing the water surface elevation by more than one foot. Once the floodway is established, nothing can be placed in the floodway which will increase base flood elevation. The floodway limits are as delineated on the FIRM, or located within interim flood hazard areas and designated as floodway by the director of public works pursuant to SRC 140.110.

"Floodway fringe" means the area of the 100-year floodplain lying outside of the floodway within interim flood hazard areas, and designated as floodway fringe by the director of public works pursuant to SRC 140.110.

"Floodproofing" means any combination of structural or nonstructural provisions, changes or adjustments to structures, land or a waterway for the reduction or elimination of flood damage to real property or any improvements thereon, water and sanitary facilities, structures, and their contents during a base flood.

"Intensification" means any additions which increase or expand the area, level or activity, or amount of an existing use; or any remodeling of the exterior of a structure that will substantially alter the appearance of the structure. As used in this definition, "intensification" does not include:

1. Completion of a structure for which a valid permit has been issued and under which permit substantial construction was undertaken prior to June 15, 1979.
2. Maintenance and repair usual and necessary for the continuance of an existing use.
3. Reasonable emergency procedures necessary for the safety and protection of property.
4. Seasonal increases in gravel mining operations.

"Interim flood hazard area" means an area of special flood hazard designated by the Director of Public Works, but not designated as such on the FIRM. The Interim Flood Hazard Area is established on a waterway which does not have base flood water surface elevations and floodway and floodway fringe boundaries.
established through a Flood Insurance Study. An interim flood hazard area is an approximation of the floodplain. Minimally the Interim Flood Hazard Area shall include the area which would be designated as the floodway and floodway fringe if a Flood Insurance Study were done.

"Lowest floor" means the lowest habitable floor of the lowest enclosed area, including the basement. For the purposes of floodplain management, "habitable" shall mean the floor of the building which is used by persons for living or working. For example, a restroom (living area) or a janitor's storage space (working area) on a floor of the structure would constitute that floor as being habitable. An unfinished or flood resistant enclosure usable solely for parking of vehicles, building access, or storage in an area other than a basement is not considered the lowest floor.

"Manufactured Home" means a building or structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

"Manufactured Home Park" means a lot or parcel (or contiguous lots or parcels) of land divided into two or more manufactured home lots for sale or rent.

"Obstruction" means any dam, wall, wharf, embankment, levee, dike, pile, abutment, projection, excavation, channel rectification, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, or matter in, along, across, or projecting into any channel, waterway, or floodplain which may impede, retard, or change the direction of the flow of water, either in itself or by catching or collecting debris carried by such water, or that is placed where the flow of water might carry the debris downstream and endanger life or damage property.

"Start of Construction" means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was commenced within 180 days of the permit date. The actual start
of construction means either the date of the first 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 excavation; or the date of the
placement of a manufactured home on a foundation.

"Stream enhancement" means the modification of stream channel width, length,
deepth, alignment, location, profile, bank shape, or in-stream structures, for the
purpose of improving ecological or habitat functions that have been determined
by the Director of Public Works to have been degraded or lost in the immediate
project area, specific stream corridor, or watershed.

"Structure" means any building; any gas or liquid storage tank that is principally
above ground.

"Substantial Damage" means damage sustained by a structure whereby the cost of
restoring the structure to its condition immediately prior to the damage would
equal or exceed fifty percent of the market value of the structure before the
damage occurred.

"Substantial Improvement" means, for the purposes of floodplain management only,
and notwithstanding the provisions for nonconforming use and development under
SRC Chapter 112, any repair, reconstruction, or improvement of a structure, the cost
of which equals or exceeds fifty percent of the market value of the structure either:
(1) before the improvement or repair is started, or
(2) 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, or floor,
or other structural part of the building commences, whether or not that
alteration affects the external dimensions of the structure. The cost of the
improvement, repair, or restoration shall be determined by the building
official. The term "substantial improvement" does not include either:
(A) Any project or improvement of a structure to comply with existing
state or local health, sanitary, or safety code specifications which
are solely necessary to assure safe living conditions, or
(B) Any alteration of the structure listed in the National Register of Historic Places or the State Inventory of Historic Places.

(bbcc) "Waterway" means any perennial river, stream, or creek within the City of Salem.

(eadd) "Waterway centerline" means a line one-half the distance between the edges of the low flow channel of the waterway.

Section 2. SRC 140.090 is amended to read as follows:

140.090. Uses in Floodway. Areas designated as floodways are located within floodplains. The floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and have the potential to cause erosion.

(a) Except as prohibited in subsection (b) of this section, all uses of land permitted in the underlying zone shall be permitted in the FW (Floodway) area in compliance with all applicable provisions of this Chapter. All permitted uses of land shall receive a floodplain development permit, except the following:

(1) The propagation or cutting of timber.

(2) Uses to protect, conserve, enhance, and maintain public recreational, scenic, and natural uses on public lands such as unenclosed picnic facilities, viewpoints, trails, and campsite facilities.

(3) Maintenance authorized to scenic easements acquired under ORS 390.332-390.368.

(4) Addition or modification by public utilities of existing utility lines, wires, fixtures, equipment, circuits, appliances, and conductors.

(5) Flood emergency procedures.

(6) Signs, markers, aids, etc., placed by a public agency to serve the public.

(7) Residential accessory uses such as lawns, gardens, parking areas, driveways, and play areas.

(8) Landscaping, as defined at SRC 140.020(e)(4).

(9) Storage of material, equipment, or vehicles associated with uses permitted within residential zones, providing the storage is not subject to damage by floods and is firmly anchored to prevent flotation or can be readily
removed from the area within the limited time available after flood
warning.

(10) Driveways, parking lots, and other paved areas.

(11) Minor repairs or alterations to an existing structure for which no building
permit is required.

(12) Gravel extraction and storage of gravel as allowed under permits required
by state or federal law, and as permitted by the Salem Revised Code.

(13) Customary dredging and channel maintenance, excluding deposition of
spoils, as allowed by permits required by state or federal law.

(14) Agriculture.

(b) The following uses are prohibited in the FW (Floodway) area, and within fifteen
feet of the waterway centerline, or within ten feet of the top of a recognizable
bank, whichever is greater:

(1) Storage of toxic, flammable, or explosive materials.

(2) Sanitary landfill, disposal sites and junkyards.

(3) Construction or placement of fences.

(4) Cemeteries.

(5) Any encroachments, including fill, new construction, substantial
improvements, and other development unless analysis by approved
methods and certification by a registered professional engineer are
provided to the Director of Public Works demonstrating that
encroachments shall not result in any increase in flood levels during the
occurrence of the base flood discharge.

(6) Construction or placement of any permanent or temporary structures
including, but not limited to, homes, apartments, manufactured homes,
commercial buildings, and industrial buildings, and gas or liquid storage
tanks. Notwithstanding this paragraph, the following structures are
permitted within the FW (Floodway) area if the structure incorporates
floodproofing measures as approved in conjunction with a floodplain
development permit, meets all applicable standards for structures as
required in the floodway fringe, and does not raise the base flood elevation to any degree:

(A) Modification, alteration, or major repair to an existing structure.

(B) Docks and piers. The size and shape of a dock or pier shall be limited to that required for the intended use.

(C) Public recreational facilities on public land, including, but not limited to restrooms, raised seating, public performance stages, and temporary fences which are removed after October 1, and not erected before April 1 of each year.

(D) Bridges if that portion of the bridge span lying between the haunches or the vertical pier faces is three feet above the base flood elevation.

(E) Structures used for gravel sorting and crushing.

(F) Public utility or communication towers.

(G) Replacement of existing manufactured homes within existing manufactured home parks or manufactured home subdivisions that comply with SRC 140.100(b).

Section 3. SRC 140.135 is added to the Salem Revised Code as follows:

SRC 140.135 Bridges within the regulatory floodplain. Bridges within the regulatory floodplain shall comply with the following requirements:

(a) Construction of new vehicular bridges shall have the lowest structural member of the bridge at least one foot above the base flood elevation.

(b) Repair or replacement of existing vehicular bridges shall not increase the water surface elevation of the base flood discharge.

(c) Construction or repair of pedestrian bridges shall not increase the water surface elevation of the base flood discharge.

ORDERANCE – Page 9 COUNCIL OF THE CITY OF SALEM, OREGON
Section 4. Severability. Each section of this ordinance, and any part thereof, is severable, and
if any part of this ordinance is held invalid by a court of competent jurisdiction, the remainder of
this ordinance shall remain in full force and effect.

PASSED by the Council this 25th day of June, 2012.

ATTEST:

Kathy Hall
City Recorder

Approved by City Attorney:
ATTENTION: PLAN AMENDMENT SPECIALIST
DEPT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL ST:NE SUITE 150
SALEM OR 97301-2540