



Oregon

Theodore R. Kubongoski, Governor

Department of Land Conservation and Development

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Salem, OR 97301-2540

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NOTICE OF ADOPTED AMENDMENT

9/2/2010

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

FROM: Plan Amendment Program Specialist

SUBJECT: City of Milton-Freewater Plan Amendment
DLCD File Number 001-10

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. 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, September 14, 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 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: Gina Hartzheim, City of Milton-Freewater
Gloria Gardiner, DLCD Urban Planning Specialist
Chris Shirley, FEMA Specialist
Grant Young, DLCD Regional Representative

<paa> YA

D L C D 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

(See reverse side for submittal requirements)

DEPT OF

AUG 26 2010

LAND CONSERVATION AND DEVELOPMENT

Jurisdiction: Milton-Freewater Local File No.: (If no number, use none)

Date of Adoption: 8/23/10 (Must be filled in) Date Mailed: 8/24/10 (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 6/24/10

- Comprehensive Plan Text Amendment
Comprehensive Plan Map Amendment
Land Use Regulation Amendment
Zoning Map Amendment
New Land Use Regulation
Other: (Please Specify Type of Action)

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

Amend Zoning Code to add new floodplain development ordinance

Describe how the adopted amendment differs from the proposed amendment. If it is the same, write "Same." If you did not give notice for the proposed amendment, write "N/A."

Same except for formatting

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: [checked]

DLCD File No.:

Did the Department of Land Conservation and Development receive a notice of Proposed

Amendment **FORTY FIVE (45) days prior to the first evidentiary hearing.** Yes: No:

If no, do the Statewide Planning Goals apply. Yes: No:

If no, did The Emergency Circumstances Require immediate adoption. Yes: No:

Affected State or Federal Agencies, Local Governments or Special Districts: DLCD

Local Contact: Gina Hartzheim Area Code + Phone Number: 541-938-8234

Address: P.O. Box 6

City: Milton-Freewater Zip Code+4: OR

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 (2) Copies 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. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
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 of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will 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 copy this form on to 8-1/2x11 green paper only ; or 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 - ATTENTION: PLAN AMENDMENT SPECIALIST.

City of Milton-Freewater
ORDINANCE NO. 956

AN ORDINANCE AMENDING TITLE 10 OF THE MILTON-FREEWATER CITY
CODE TO ADD FLOOD DAMAGE PREVENTION REGULATIONS

WHEREAS, the levee protecting the city from the Walla Walla River was decertified by the Army Corp. of Engineers in 2006 with a rating of "unacceptable",

WHEREAS, as a result of this levee decertification, the Federal Emergency Management Agency re-mapped the City of Milton-Freewater's flood insurance risk map, placing the majority of the city in a flood risk zone,

WHEREAS, the City is being mandated by the Federal government to adopt the map by September 3, 2010, or suffer dire consequences to the City's economic well being,

WHEREAS, the Milton-Freewater Planning Commission held a public hearing on this proposed ordinance on August 9, 2010, and the Planning Commission voted to recommend to the City Council that the municipal Zoning Code be amended, and

WHEREAS, a public hearing was held before the City Council on August 9, 2010 on the proposed amendment,

NOW, THEREFORE, THE CITY OF MILTON-FREEWATER ORDAINS AS FOLLOWS:

Section 1. There is hereby added to Title 10 of the Milton-Freewater City Code Chapter 15, which shall read as follows:

Chapter 15 Flood Damage Prevention Ordinance

10-15-1 **STATEMENT OF PURPOSE:** The objectives of this ordinance are to:

- A. Protect human life, health and property;
- B. Minimize damage to public facilities and utilities such as water purification and sewage treatment plants, water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- C. Help maintain a stable tax base by providing for the sound use and development of flood prone areas;
- D. Minimize expenditure of public money for costly flood control projects;
- E. Minimize the need for rescue and emergency services associated with flooding and generally undertaken at the expense of the general public;
- F. Minimize unnecessary disruption of commerce, access and public service during times of flood;
- G. Ensure that potential buyers are notified that property is in an area of special flood hazard;
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions, and;
- I. 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.

10-15-2: **METHODS OF REDUCING FLOOD LOSSES:** This ordinance includes methods and provisions to:

- A. 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;
- B. 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;
- C. Control filling, grading, dredging and other development which may increase flood damage or erosion;

- D. Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or that may increase flood hazards to other lands;
- E. Preserve and restore natural floodplains, stream channels, and natural protective barriers which carry and store flood waters, and;
- F. Coordinate with and supplement provisions of Oregon building codes.

10-15-3: **DEFINITIONS**

Unless specifically defined in Article II, words or phrases used in this ordinance shall be interpreted according to the meaning they have in common usage.

“Accessory Structure” means 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.

“Appeal” means a request for review of the Floodplain Administrator's interpretation of provisions of this ordinance or request for a variance.

“Area of Shallow Flooding” means 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.

“Area of Special Flood Hazard” means 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.

“Base Flood” means the flood having a one percent chance of being equaled or exceeded in any given year. (*Note: Base Flood Depth = Design Flood Depth: The NFIP uses the term Base Flood Depth for the depth in relation to highest adjacent grade of the 1% annual flood. Oregon building codes use the term Design Flood Depth. The terms are equivalent. The building-code-required one foot of freeboard is added to Design Flood Depth to establish the required elevation of the lowest floor.*)

“Basement” means the portion of a structure with its floor sub grade (below ground level) on all sides.

“Below-grade Crawlspace” means 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” means a building or structure subject to building codes.

“Building Codes” means 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” means 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.

“Development” means 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. Development also means initiation or conversion of use of any structure; or the initiation, extension, or conversion of the use of land. Development does not include:

1. Signs, markers, aids, etc. placed by a public agency to serve the public
2. Driveways, parking lots, or other open space use areas where no alteration of topography occurs;
3. Minor repairs or improvements to existing structures provided that the alterations do not increase the size or intensity of use, and do not constitute repair of substantial damage, or substantial improvement as defined in this section;
4. Customary dredging associated with routine channel maintenance consistent with State or Federal laws and permits;
5. Replacement of utility facilities necessary to serve established and permitted uses;
6. Storage of equipment and material associated with residential uses.
7. Fences

“Digital FIRM (DFIRM),” means 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.

“Elevated Building” means 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 Building or Structure” means a structure for which the “start of construction” commenced before September 12, 1978.

“Federal Emergency Management Agency (FEMA)” means the agency with the overall responsibility for administering the National Flood Insurance Program.

“Flood” or “flooding” means 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)” means 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)” means 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.

“Highest Adjacent Grade (HAG)” means 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 more information.

“Historic Structure” means a structure that is:

1. 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;
2. 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;
3. Individually listed on a state inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior, or ;
4. Individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:
 - (a) By an approved state program as determined by the Secretary of the Interior, or;
 - (b) Directly by the Secretary of the Interior in states without approved programs.

“Lateral Addition” means an addition that requires a foundation to be built outside of the foundation footprint of the existing building.

“Letter of Map Change (LOMC)” means 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 category:

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;

“Lowest Adjacent Grade (LAG)” means the lowest 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 more information.

“Lowest Floor” means 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 Home/Dwelling” means a structure, transportable in one or more sections, built on a permanent chassis and designed to be used for residential purposes, with or without a permanent foundation when connected to the required utilities, and that was constructed in accordance with federal manufactured housing construction and safety standards regulations in effect at the time of construction (HUD, public law 93-383). The term “Manufactured Dwelling” does not include a “Recreational Vehicle.”

“Natural Elevation” means the elevation of natural grade, or the grade in existence before September 12, 1978.

“Post FIRM Construction” means a structure for which the “start of construction” commenced after September 12, 1978, and includes subsequent substantial improvements to the structure.

“Recreational Vehicle” means a vehicle that is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towed by a light duty truck, and;
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

“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” means a walled and roofed building, a manufactured dwelling, a modular or temporary building, or a gas or liquid storage tank that is principally above ground.

“Substantial Damage” means 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” means 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:

1. The appraised real market value of the structure prior to the start of the initial repair or improvement, or
2. In the case of damage, the appraised real market value of the structure prior to the damage occurring. The term does not include either:
 - (a) 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
 - (b) Alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a Historic Structure.

“Variance” means a grant of relief by the governing body from a requirement of this ordinance.

“Vertical Addition” means the addition of a room or rooms on top of an existing building.

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

10-15-4: **GENERAL PROVISIONS**

A. Lands to Which This Ordinance Applies

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction of the City of Milton-Freewater. Nothing in this Ordinance is intended to allow uses or structures that are otherwise prohibited by the zoning ordinance or building codes.

B. Basis for Area of Special Flood Hazard

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, dated September 3, 2010, with accompanying Flood Insurance Rate Maps (FIRM) or Digital Flood Insurance Rate Maps (DFIRM), and other supporting data, are adopted by reference and declared a part of this ordinance. The FIS and the FIRM are on file at the Planning Department of the City of Milton-Freewater, 772 S. Main Street, Milton-Freewater, OR 97862.

C. Coordination with Building Codes

The City of Milton-Freewater of Umatilla County does hereby acknowledge 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.

D. 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 Section 10-15-4(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 an opportunity for a quasi-judicial land use hearing.

E. 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.

F. 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 Milton-Freewater or by any officer or employee thereof for flood damages that result from reliance on this ordinance or an administrative decision lawfully made hereunder.

10-15-5: **ADMINISTRATION**

A. Designation of Floodplain Ordinance Administrator

The City Planner is hereby appointed as the Floodplain Administrator who is responsible for administering and implementing the provisions of this ordinance. 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;
- (2) Review applications for modifications of any existing development in Areas of Special Flood Hazard for compliance with the requirements of this ordinance;
- (3) Interpret flood hazard area boundaries, provide available flood hazard information, and provide base flood depth, where they exist;
- (4) Applicant will be responsible for obtaining all necessary permits 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 Division of State Lands regulations.
- (5) Where interpretation is needed of the exact location of boundaries of the Areas of Special Flood Hazard the Floodplain Administrator shall make the interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 10-15-7(D).
- (6) Issue floodplain development permits when the provisions of this ordinance have been met, or disapprove the same in the event of noncompliance;
- (7) Coordinate with the Building Official to assure that applications for building permits comply with the requirements of this ordinance;
- (8) Obtain, verify and record the actual height in relation highest adjacent grade of the lowest floor, including basement, of all new construction or substantially improved buildings and structures.

(9) Obtain, verify and record the actual height, in relation to highest adjacent grade 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;

(10) Ensure that all records pertaining to the provisions of this ordinance are permanently maintained in the office of the City Planner or his/her designee and shall be open for public inspection.

(11) 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;

(12) 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;

(13) Make Substantial Improvement or Substantial Damage determinations based on criteria set forth in Article IV, Section D of this ordinance.

C. 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. 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;

(b) Delineation of flood hazard areas and flood depth in AO zones.

(c) For all proposed structures, height in relation to the highest adjacent grade of the:

(i) lowest enclosed area, including crawlspace or basement floor;

(ii) top of the proposed garage slab, if any, and;

(iii) next highest floor

(d) Locations and sizes of all flood openings in any proposed building;

(e) Height in relation to highest adjacent grade to which any non-residential structure will be flood-proofed;

(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;

(g) Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development;

(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 height in relation to highest adjacent grade of the floor or flood-proofed level immediately after the lowest floor or flood-proofing is placed and prior to further vertical construction;

(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.

(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

i. For elevated buildings and structures the as-built height in relation to highest adjacent grade of the lowest floor, including basement;

ii. For buildings and structures that have been floodproofed, the as-built height in relation to highest adjacent grade to which the building or structure was floodproofed that has been prepared and sealed by a registered engineer.

(b) Failure to submit certification or failure to correct violations shall be cause for the Floodplain Administrator to request withholding 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.

(b) Commencement of work includes start of construction, when the permitted work requires a building permit.

D. Substantial Damage and Substantial Improvement Determination

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, federal or other regulation 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:

(i) The preparation and approval of all required plans, calculations, certifications, and specifications;

(ii) The performance of surveys or other geotechnical or engineering studies and resulting reports;

(iii) Permit and review fees, and;

(iv) 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) The City of Milton-Freewater staff shall make the final determination of whether the proposed improvement and/or repair constitutes a substantial improvement or substantial damage.

(4) The City of Milton-Freewater staff shall notify the applicant of the results of the determination by letter.

(5) Applicant has the right to appeal the determination pursuant to Section 10-3-12.

10-15-6: **PROVISIONS FOR FLOOD HAZARD REDUCTION**

A. 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.

(2) New development proposals and subdivision development plans shall include the mapped flood hazard zones from the effective FIRM

(3) 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.

(4) On-site waste disposal systems shall be located and constructed to avoid functional impairment, or contamination from them, during flooding.

(5) Subdivisions shall have adequate drainage paths provided to guide floodwater around and away from all proposed and existing structures.

D. Zones Without Base Flood Elevations or Flood Depths

Development is prohibited in riverine areas of special flood hazard where no base flood elevation or flood depths have been provided by FEMA (approximate A Zones).

E. 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.

F. 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.

G. Below Grade Crawlspace

Below-grade crawlspace foundations are allowed, unless no base flood depths 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.

H. Recreational Vehicles

In Areas of Special Flood Hazard, Recreational Vehicles that are an allowed use or structure under the zoning ordinance must either:

- (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 Article V, Section F: Manufactured Dwellings, including the anchoring and elevation requirements.

I. 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 the depth number in AO zones. Access routes elevated to or above the level of the base flood depth shall be provided to all critical facilities to the extent possible.

J. Tanks

- (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.
- (2) Above-ground tanks in flood hazard areas shall be:
 - (a) Attached to and elevated to or above the depth number (in the AO zone) on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the base 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.

K. Other Development in Areas of Special Flood Hazard

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;

Accessory structures no greater than 200 square feet and all other development in the AO zone for which specific provisions are not specified in this ordinance or building codes, shall:

- (1) Be located and constructed to minimize flood damage;
- (2) Be designed so as not to impede flow of flood waters under base flood conditions;
- (3) Be anchored to prevent flotation or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;
- (4) Be constructed of flood damage-resistant materials; and
- (5) Have electric service and or mechanical equipment elevated above the depth number, except for minimum electric service required to address life safety and electric code requirements.
- (6) 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;
- (7) Toxic material, oil or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality shall not be stored below two feet above highest adjacent grade unless confined in a tank installed in compliance with this ordinance;
- (8) 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.

L. 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) 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 Emergency Management Agency.

(2) 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.

M. Periodic Floodplain Inspections and Enforcement Actions

Within 30 days of discovery of a violation of this ordinance, the Floodplain Administrator shall submit a report to the City Council 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 City Council shall:

(1) Take any necessary action to effect the abatement of such violation; or

(2) Issue a variance to this ordinance in accordance with the provisions of Section 10-15-7 (Variance Procedures) herein; or

(3) 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 Floodplain Administrator within 30 days of such order, and he shall submit an amended report to the City Council within 20 days. At their next regularly scheduled public meeting, the governing body shall either order the abatement of said violation or they shall grant a variance in accordance with the provisions of Section 10-15-7 (Variance and Appeal Procedures) herein.

10-15-7: **VARIANCE AND APPEAL PROCEDURES**

A. Variance

(1) An application for a variance must be submitted to the City of Milton-Freewater Planning Department on the form provided by the City and include at a minimum the same information required for a development permit and an explanation for the basis for the variance request.

(2) Upon receipt of a completed application for a variance, the variance request will be set for public hearing at the next City Council meeting in which time is available for the matter to be heard.

(3) Prior to the public hearing, Notice of the hearing will be published in the official newspaper of the City at least 15 days prior to the hearing. In addition to the newspaper publication, written notice shall be provided to all adjoining property owners.

(4) The burden to show that the variance is warranted and meets the criteria set out herein is on the applicant.

(5) In passing upon such applications, the City Council 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) the 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.

(6) Upon consideration of the above factors of and the purposes of this ordinance, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

(7) The floodplain administrator shall maintain a permanent record of all variances and report any variances to the Federal Emergency Management Agency upon request.

B. Criteria for Variances

(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-k) in Section 7(A)(5) have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.

(2) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

- (3) 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 depths, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(4) 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 flood and create no additional threats to public safety.

(5) 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.

(6) 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.

C. 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 depth and that the cost of flood insurance likely will be commensurate with the increased flood damage risk.

D. Appeals

Appeals shall be administered in accordance with Chapter 10-3-12 of this Title.

Section 2. Section 10-2-2, "Flood Hazard Boundary Map" is hereby deleted.

Section 3. **SEVERABILITY**

The ordinance is hereby declared to be 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.

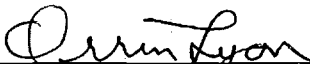
Section 4. **ABROGATION AND GREATER RESTRICTIONS**

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.


Section 5. **EFFECTIVE DATE OF ORDINANCE**

Because the federal government has mandated the purchase of flood insurance policies by many property owners within the boundaries of the FIRM map by September 1, 2010, and in the interest of allowing the full amount of grace period for citizens required to purchase flood insurance policies, this ordinance is declared to be effective on September 1, 2010.

Passed by the Council and approved by the Mayor this 23rd day of August, 2010.


~~Lewis S. Key, Mayor~~
Council President, Orrin Lyon

ATTEST:


Leanne Steadman, City Recorder
Date: August 23, 2010

MILTON-FREEWATER CITY COUNCIL
FINDINGS OF FACT

ISSUE: Adoption of zoning code amendment to add flood plain management regulations.

HEARING DATE: August 9, 2010

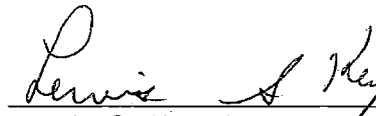
COMMENTS RECEIVED:

Any correspondence or documents received are attached hereto and incorporated herein.

WE FIND THAT THE STAFF REPORT, A COPY OF WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN, ADEQUATELY ADDRESSES THE RELEVANT ISSUES AND WE AGREE WITH THE FINDINGS AND CONCLUSIONS CONTAINED THEREIN. WE HEREBY APPROVE THE ZONING CODE AMENDMENT, WITH THE COUNCIL VOTING AS FOLLOWS:

	Yes	No
Lewis Key	<u>N/A</u>	<u>N/A</u>
Orrin Lyon	<u>X</u>	<u> </u>
Brad Humbert	<u>X</u>	<u> </u>
Sam Hopkins-Hubbard	<u>X</u>	<u> </u>
Steve Irving	<u>X</u>	<u> </u>
Jeff Anliker	<u>X</u>	<u> </u>
Ed Chesnut	<u>X</u>	<u> </u>

Dated this 9th day of August, 2010.



Lewis S. Key, Mayor

STAFF REPORT
August 2, 2010

APPLICANT: City of Milton-Freewater

ISSUE: Public Hearing regarding proposed amendment to the Zoning Code to add Chapter 15, Flood Damage Prevention

HEARING DATE: August 9, 2010

I. BACKGROUND

The City was advised by FEMA in January of 2010 that based on a new Flood Insurance Study, a new Flood Insurance Rate Map had been produced and floodplain management measures, including a floodplain management ordinance, would be required in order for the City to remain in the National Flood Insurance Program. City filed an appeal with FEMA protecting the validity of the new flood zone, but the appeal was denied. As a result, the new Flood Insurance Rate Map will go into effect on September 3, 2010 and the City must adopt the ordinance prior to that date.

This amendment was reviewed by the Oregon State Department of Land Conservation and the National Flood Insurance Program Coordinator for compliance with federal statutes and state floodplain regulations. The City has been advised that the draft ordinance will satisfy these regulations.

II. COMPREHENSIVE PLAN/CODE PROVISIONS

City Code Title 10, Chapter 12: Amendments
10-12-1 through 10-12-3

10-12-1: An amendment to the text of this Ordinance or to the Zoning Map may be initiated by the City Council, Planning Commission, or by application of a citizen.

Findings: The amendments have been initiated to satisfy FEMA's requirements to adopt floodplain measures to allow continued participation in the National Flood Insurance Program

10-12-2: Amendments to the text of this Ordinance or to the Zoning Map shall be processed under terms of the Level IV procedure in Section 10-3-10.

Findings: The amendments are being processed as a Level IV procedure, meeting this requirement.

10-12-3: In the Planning Commission report to the City Council, and in the City Council's action after review of the Planning Commission's report, the following standards shall be addressed:

(A) The proposal is in conformance with all applicable provisions of the Comprehensive Plan text and map of land use designations.

Findings: The proposal conforms with applicable provisions of the Comprehensive Plan, as outlined below.

Goal 1 Citizen Involvement

City Policy 1-A-1: The City will continue to employ its adopted Citizen Involvement Program. Items used will be selected for their applicability to the action and issues being considered.

Findings: The following outreach has occurred: The proposed Flood Insurance Rate Map was posted on the City's web site with information regarding the map and its effect on citizens. The City's newsletter, mailed individually to all utility customers and posted on the web site, described the new maps and the requirement for adoption by the City. Radio ads were broadcast on two different radio stations. Individual letters to property owners included in the new flood zone, as required by Measure 56, were mailed to property owners advising them of the proposed map adoption. The City has also provided several opportunities for citizen comments and involvement over the course of development of the proposed revision, including hosting two different open houses at the Community Building, and the opportunity to testify at two public hearings.

Goal 7 Areas Subject to Natural Hazards

The City's Comprehensive Plan contains no applicable policies relating to potential flooding from the Walla Walla River because of the existence of the levee. The only reference is in City Finding 7-A which states that "Flooding of the Walla Walla River was a reasonably common natural disaster in the past. There has been no flooding since construction of the dike system by the Corps of Engineers..." Statewide Planning Goal 7 states, in part, "Local Governments will be deemed to comply with Goal 7 for coastal and riverine flood hazards by adopting and implementing local floodplain regulations that meet the minimum National Flood Insurance Program requirements.

Findings: As new flood zones will be applied to the City, the new regulations are required. These new regulations meet the NFIP requirements and therefore this section is met.

(B) The proposal addresses a need which was improperly or inadequately addressed by the present ordinance text or map.

Findings: This section is met because there are no Floodplain Management regulations presently existing in the Zoning Code, and by adoption of the addition, the City will continue to be in compliance with federal regulations and continue to be eligible to participate in the National Flood Insurance Program.

IV. GENERAL COMMENT

If the proposed amendments are not adopted and the ordinance passed the new flood insurance rate map will still go into effect and as a result the City will be suspended from the Nation Flood Insurance Program and no flood insurance will be available to property owners with in the flood hazard boundary. Since no flood insurance will be available those property will not be eligible for loans using federal funds. It would also impact the City's ability to retain or obtain any federally regulated grant dollars. There does not appear to be an option at this point.

V. STAFF RECOMMENDATION

Staff recommends the Planning Commission recommend to the City Council approval of the proposed amendment to the Zoning Code, and, in turn, recommends the City Council adopt the amendment.

I. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE, AND OBJECTIVES

A. Statutory Authority

The State of Oregon has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the city, does ordain as follows:

B. Findings of Fact

(1) The flood hazard areas of the city 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.

(2) 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.

(3) The city has the primary responsibility for planning, adoption and enforcement of land use regulations to accomplish proper floodplain management.[44 CFR 59.22]

August 9, 2010

**City of Milton-Freewater
City Council Minutes**

The Council of the City of Milton-Freewater met Monday, August 9, 2010 at 7:00 p.m. in the Albee Room of the Library.

The following members were present: Mayor Lewis Key, Councilors Ed Chesnut, Orrin Lyon, Sam Hopkins-Hubbard, Jeff Anliker, Brad Humbert and Steve Irving.

Staff members present were: City Manager Linda Hall, City Recorder Leanne Steadman, Fire Chief Shane Garner, Community Development Supervisor Mike Watkins, City Planner Gina Hartzheim, Police Chief Doug Boedigheimer, Conservation Specialist Pat Didion and Corporal Robert Guerrero.

Citizens present were: Merle Sherman, Steve Patten, Tara Patten, Pat Thomson, Mike Onstot, William Saager, Janalee Saager, Dave Saager, Mark Forster, Manny Ramirez, Greg Olsen, Brian Steadman, Chris Zacharias, Christine Boedigheimer, Roger Cosner, Manford Anliker, Tim Pilch, Jim Burns, Ole Donsen and Planning Commissioner Bob White. Chris Shirley and Grant Young from Department of Land Conservation Department were also present.

Press member Melanie Hall of the Valley Herald was present.

CONSENT CALENDAR ITEMS:

The consent calendar items consisted of council minutes from the July 12, 2010 meeting, accounts payable from July 22, 2010 through August 4, 2010, Resolution No. 2182 authorizing signature to the Special Transportation Fund Service Grant Agreement for the Senior and Disabled Transportation Program and bid award to US Bank for the line truck loan agreement.

Councilor Chesnut motioned to approve the consent calendar items. Councilor Hopkins-Hubbard seconded the motion which passed unanimously.

PRESENTATION:

RECOGNITION – TO VOLUNTEER FIREFIGHTER FOR THEIR HEROISM

Fire Chief Shane Garner recognized Captain Faron Reynolds for his heroic actions during a very serious fire on Davis Street on April 30, 2010. Captain Reynolds administered CPR for a substantial amount of time until the ambulance could arrive, ultimately saving the victims life. Chief Garner presented Captain Reynolds with an appreciation plaque for his outstanding performance.

RECOGNITION – TO CORPORAL ROBERT GUERRERO FOR SERVING ON THE BLUE MOUNTAIN ENFORCEMENT NARCOTICS TEAM (BENT)

Sergeant Rick Jackson and Sergeant Tom Spicknall of the Blue Mountain Enforcement Narcotics Team (BENT) of Umatilla County expressed their gratitude of working with Corporal Robert Guerrero for the past three and a half years. Sergeant Jackson said Corporal Guerrero displayed leadership on the drug task force team and he was one of the best partners he has worked with. Corporal Guerrero was presented an award for his dedication and commitment to BENT.

BUSINESS ITEMS:

PUBLIC HEARING AND ORDINANCE NO. 956, AN ORDINANCE AMENDING THE ZONING CODE BY ADDING CHAPTER 15, FLOOD DAMAGE PREVENTION

Mayor Lewis Key opened and summarized the rules for a public hearing held for the purpose of amending the Zoning Code by adding Flood Damage Prevention Regulations. He then explained that the testimony given in the hearing should be centered around the criteria for amending the zoning code.

No member of the Council declared ex parte contact and no audience member challenged any Councilor's right to participate in the hearing.

City Recorder Leanne Steadman reported notice of the hearing had been published according to law and no written comments had been received in her office.

The Mayor then asked City Planner Gina Hartzheim to please present the staff report. The report is as follows:

STAFF REPORT August 2, 2010

APPLICANT: City of Milton-Freewater

ISSUE: Public Hearing regarding proposed amendment to the Zoning Code to add Chapter 15, Flood Damage Prevention

HEARING DATE: August 9, 2010

I. BACKGROUND

The City was advised by FEMA in January of 2010 that based on a new Flood Insurance Study, a new Flood Insurance Rate Map had been produced and floodplain management measures, including a floodplain management ordinance, would be required in order for the City to remain in the National Flood Insurance Program. City filed an appeal with FEMA protecting the validity of the new flood zone, but the appeal was denied. As a result, the new Flood Insurance Rate Map will go into effect on September 3, 2010 and the City must adopt the ordinance prior to that date.

This amendment was reviewed by the Oregon State Department of Land Conservation and the National Flood Insurance Program Coordinator for compliance with federal statutes and state floodplain regulations. The City has been advised that the draft ordinance will satisfy these regulations.

II. COMPREHENSIVE PLAN/CODE PROVISIONS

City Code Title 10, Chapter 12: Amendments

10-12-1 through 10-12-3

10-12-1: An amendment to the text of this Ordinance or to the Zoning Map may be initiated by the City Council, Planning Commission, or by application of a citizen.

Findings: The amendments have been initiated to satisfy FEMA's requirements to adopt floodplain measures to allow continued participation in the National Flood Insurance Program

10-12-2: Amendments to the text of this Ordinance or to the Zoning Map shall be processed under terms of the Level IV procedure in Section 10-3-10.

Findings: The amendments are being processed as a Level IV procedure, meeting this requirement.

10-12-3: In the Planning Commission report to the City Council, and in the City Council's action after review of the Planning Commission's report, the following standards shall be addressed:

(A) The proposal is in conformance with all applicable provisions of the Comprehensive Plan text and map of land use designations.

Findings: The proposal conforms with applicable provisions of the Comprehensive Plan, as outlined below.

Goal 1 Citizen Involvement

City Policy 1-A-1: The City will continue to employ its adopted Citizen Involvement Program. Items used will be selected for their applicability to the action and issues being considered.

Findings: The following outreach has occurred: The proposed Flood Insurance Rate Map was posted on the City's web site with information regarding the map and its effect on citizens. The City's newsletter, mailed individually to all utility customers and posted on the web site, described the new maps and the requirement for adoption by the City. Radio ads were broadcast on two different radio stations. Individual letters to property owners included in the new flood zone, as required by Measure 56, were mailed to property owners advising them of the proposed map adoption. The City has also provided several opportunities for citizen comments and involvement over the course of development of the proposed revision, including hosting two different open houses at the Community Building, and the opportunity to testify at two public hearings.

Goal 7 Areas Subject to Natural Hazards

The City's Comprehensive Plan contains no applicable policies relating to potential flooding from the Walla Walla River because of the existence of the levee. The only reference is in City Finding 7-A which states that "Flooding of the Walla Walla River was a reasonably common natural disaster in the past. There has been no flooding since construction of the dike system by the Corps of Engineers..." Statewide Planning Goal 7 states, in part, "Local Governments will be deemed to comply with Goal 7 for coastal and riverine flood hazards by adopting and implementing local floodplain regulations that meet the minimum National Flood Insurance Program requirements.

Findings: As new flood zones will be applied to the City, the new regulations are required. These new regulations meet the NFIP requirements and therefore this section is met.

(B) The proposal addresses a need which was improperly or inadequately addressed by the present ordinance text or map.

Findings: This section is met because there are no Floodplain Management regulations presently existing in the Zoning Code, and by adoption of the addition, the City will continue to be in compliance with federal regulations and continue to be eligible to participate in the National Flood Insurance Program.

IV. GENERAL COMMENT

If the proposed amendments are not adopted and the ordinance passed the new flood insurance rate map will still go into effect and as a result the City will be suspended from the Nation Flood Insurance Program and no flood insurance will be available to property owners within the flood hazard boundary. Since no flood insurance will be available those property will not be eligible for loans using federal funds. It would also impact the City's ability to retain or obtain any federally regulated grant dollars. There does not appear to be an option at this point.

V. STAFF RECOMMENDATION

Staff recommends the Planning Commission recommend to the City Council approval of the proposed amendment to the Zoning Code, and, in turn, recommends the City Council adopt the amendment.

I. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE, AND OBJECTIVES

A. Statutory Authority

The State of Oregon has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the city, does ordain as follows:

B. Findings of Fact

(1) The flood hazard areas of the city 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.

(2) 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.

(3) The city has the primary responsibility for planning, adoption and enforcement of land use regulations to accomplish proper floodplain management.[44 CFR 59.22]

After Ms. Hartzheim presented the staff report she reviewed some minor changes that were made to the ordinance since the ordinance was given to the city council in their packet. There were two changes on page 4 under the "Development does not include" section. The first was a typographical error on number 3 which should have read, "Minor repairs or improvements to existing structures provided that the alterations do not increase...." instead of "do no increase". The other item was number 6 that had to do with "accessory residential or noncommercial structures less than 200 square feet in area" this was completely stricken since it was addressed in another location within the ordinance. The final change was on the last page of the ordinance. The effective date was changed from September 3, 2010 to September 1, 2010. The city council was provided new copies of the ordinance with the revisions at the meeting.

The Planning Commission held their public hearing prior to the City Council meeting at 6:00 p.m. on August 9, 2010. Ms. Hartzheim reported there was one testimony at the hearing which was from Betty Ransom of 812 Parallel Street. Ms. Ransom's question to the Planning Commission was whether or not elevations were taken into account when FEMA developed the floodplain map. City Manager Hall replied to Ms. Ransom that the base map study used twenty foot contours and FEMA did not utilize a more accurate study that was available. Had FEMA used a more accurate study there could have been more properties that would have been impacted with a more stringent flood zone designation. The proposed AO zone is the most benign floodplain zone and it carries a lower insurance rate than other zones. The Planning Commission did recommend to the City Council to approve the proposed amendment to the zoning code by adding the flood damage prevention regulations. Staff's recommendation is to adopt the findings of fact and follow the adoption procedures.

Councilor Hopkins-Hubbard asked why the city's appeal, which disputed the map and floodplain designation, was denied by FEMA.

Manager Hall stated that FEMA did not give a finite answer as to why the appeal was denied. FEMA Region 10 Director Mark Carey had verbally explained to Manager Hall that if the city chose to advance the appeal to a higher level of circuit court, that ultimate decision could result in some properties being taken out of the floodplain, but other properties would almost certainly be placed into a more stringent floodplain zone with a much higher flood insurance cost. She explained that one of the obvious discrepancies with the map is that it looks like a blanket was placed over the city limits of Milton-Freewater and no individual elevations or contours were taken into consideration.

Councilor Hopkins-Hubbard said he understood that the engineering firm that provided the maps was fired from FEMA.

Manager Hall said she didn't know if they were "fired". She understood the contract with the engineering firm that did Milton-Freewater's map was not renewed.

Councilor Hopkins-Hubbard asked what the Planning Commission based their approval of the proposed amendment on.

Ms. Hartzheim responded that the Planning Commission based their recommendation on what they felt was a lesser of two evils and it was in the best interest for the city as a whole. Their

recommendation to adopt the flood damage prevention ordinance was the best way to go due to the consequences of not adopting it.

Manager Hall explained that the new floodplain maps were going to go into effect no matter how the city council voted on the ordinance. The maps have an effective date of September 3, 2010 and they were going to be put into place by FEMA no matter what and it was out of our control. She explained council was being asked to vote on an ordinance which gave the city the ability to manage the new maps once they were put into place. Without the ordinance, citizens would still be in the floodplain but have no way to protect their properties. They would not be able to purchase flood insurance and there would be absolutely no building of any kind in the designated flood zones, as there would be no construction standards.

Councilor Hopkins-Hubbard said if the maps were going to be put into place no matter what, then what was the reason for voting on the ordinance. He asked if it was legal if council did not vote for the ordinance.

Manager Hall explained that council was not voting on the map per se but it was referenced in the ordinance. What was being voted on was the regulations to manage the map and to allow citizens to participate in the National Flood Insurance Program (NFIP).

Councilor Chesnut felt failure to act on the ordinance would be saying that the City of Milton-Freewater would be liable for any flood damage opposed to the NFIP being responsible. He expressed he was not willing to put the city or its citizens in that position of liability.

Councilor Anliker agreed with Manager Hall in that no one liked making this decision. He felt it came down to protecting the citizens and businesses in the community and doing what was right for them. The goal is to correct the problem by fixing the levee and have the floodplain designation removed to where citizens no longer needed to buy flood insurance.

Councilor Hopkins-Hubbard said he understood all that had been discussed. He said they were not asked to vote on whether the levee was intact or asked to vote on the liability. He felt they were being asked to vote on a map that was inaccurate. Citizens were going to be impacted no matter how the council voted. He then quoted a paragraph from a letter received from Sandra Knight who is a Deputy Federal Insurance and Mitigation Administrator for FEMA. The paragraph basically said that if an ordinance was not adopted then the community would be suspended from the NFIP. This would prohibit any mortgage loans guaranteed by the Department of Veterans Affairs, insured by the Federal Housing Administration, or secured by the Rural Economic and Community Development Services.

Councilor Chesnut felt a good question to keep in mind is, "Why are there so many hammers built into the regulatory structure?" He felt they were needed to keep some sort of handle on flood control across the nation. He understood that flood insurance can only be purchased from the Federal Government. The private providers who once sold flood insurance were going broke due to property owners filing claims of loss and then rebuilding back in the location only to be damaged again by a flood. As a result, Congress took action. There was a need for a change in the system so property owners don't continue to build in areas that they know will be destroyed. He stated that was an overstatement for the situation in Milton-Freewater. Citizens here know if we have good levees we are at very low risk of having significant portions of the community destroyed by a flood. There is a problem with the levees that need to be fixed. He explained the community failed to take advantage of opportunities prior to this hammer coming down from the Federal Government.

Mayor Key offered those in favor of the amendment to speak. No one spoke.

He then offered those in opposition to speak.

Jim Burns – 78381 Hodgen Rd., Weston, Oregon – explained he has invested in property in Milton-Freewater. He purchased a home approximately four months ago and there were two houses for sale on the street, now that the flood zone issue has come up there are eight for sale. He purchased the home to fix up and re-sell. He felt there would be no buying of homes or building. His flood insurance premium is \$1,000 per year with no guarantee that it wouldn't rise to more next year and more the year after that. He said if the council were to buy into FEMA's threats they would never get out of the floodplain designation. January 1, 2010 FEMA was \$19

billion dollars in debt. Since that time FEMA has \$75 billion more in damages throughout the United States. He stated in 1964 the levee was breached, it was then widened, deepened and raised. In 1996 he felt there was an equivalent of a 100 year flood that ran down the levee. The levee did not breach. The only way water can breach a dike is if there is enough kinetic energy built up by speed to start whipping to beat the dike down and it did that in 1964 in seven places below Milton-Freewater. He said in 1996 it had the same damages as it has right now, not any worse but the same and it withstood a 100 year flood. He felt even if the levee was not repaired there wouldn't ever be a flood in the valley. Mr. Burns said the levee was very well built and it's just because they say the gravel by the toe is washed away but the toe is 10 feet into the ground. He does not see a time where that would go bad. He then explained his time on the Milton-Freewater Control Board. He felt he was lied to and tricked and was voted out. He didn't know he was supposed to re-file for the board seat. He said there are a lot of things the new board hasn't done. They have no stock pile of rock anywhere on the levee in case of a flood. They also haven't cleaned the river bed. He then explained when his property was flooded in 1996 due to the Water Control District failing to clean out the river and the gate for the old power house overflowed. The gate could not close because it was lying on top of brush and rocks which was washed away when it flooded. He felt when FEMA lists the danger of the flood it's not there. He looks at this as an opportunity to stand up as a city and community and say no. He said he sold flood insurance in Milton-Freewater for 30 years and didn't sell very many policies because he didn't feel there was a need for it. There is no flood that could ever wipe out the entire levee. He told the council to, "suck it up, get some guts and tell them to go to hell". He felt they were being forced and bullied by another government agency. The city council has an option to say no and said citizens of Milton-Freewater were still going to leave town because they can't afford the insurance.

Councilor Anliker thanked Mr. Burns for his comments.

Mike Onstot – 112 NE 2nd, he also has property he is selling in Milton-Freewater. He felt at the rate that Milton-Freewater was losing stores like the Dollar Store there would be more to follow. He said he will do just fine because he will be able to continue to buy property cheap just like he always has. He said for council to think about the people in the community who are on fixed incomes and social security who it's going to hurt. He encouraged council to vote no on the amendment.

Mayor Key asked for those to speak in rebuttal to the testimony.

Manager Hall said she opposed Mr. Burns' statement that council "didn't have guts". She explained that the city council didn't have to appeal FEMA's maps which they chose to do on behalf of Milton-Freewater citizens. There are very few cities or counties that ever put up any kind of fight at all and left it to the private property owners to do their own battles with

FEMA, at their own cost. The city council chose to fund the appeal which cost thousands of dollars along with sponsoring a public education process that was also very expensive. She said she was very proud of the city council for doing this. They have also partnered with the new Water Control Board who she said she was very proud of and they too are working hard.

Mr. Burns said he knew the board and respected them. He felt Milton-Freewater could be a model town for the rest of the country on this issue by saying no.

Councilor Anliker explained if property owners don't hold a mortgage then flood insurance is not mandatory. For those who don't own their own homes and choose not to get flood insurance then their lending institution will force placement of insurance on them which is at a much

higher rate than if they take advantage of the grandfathering option. He said he would rather pay for the flood insurance at a reduced rate and help fix the levee to get out of the floodplain designation altogether.

Councilor Humbert announced that a FEMA representative was asked to be at the meeting but refused to come. He felt by not passing the ordinance it would not allow citizens the chance to purchase flood insurance. Which in turn, could result in the insurance not being available and mortgage notes being called from the banks and citizens losing their home.

Mr. Burns felt even if the ordinance was passed that Milton-Freewater would become a ghost town and his properties would be worthless.

Councilor Humbert said if there is no opportunity to purchase flood insurance then there would be no opportunity to help fix the levee either.

Councilor Irving explained that flood insurance policies can be transferred from one property owner to another if the property changes owners. Insurance policies can also be purchased at a reduce coverage amount and they don't have to be for the full coverage.

Roger Cosner – 910 NE 1st, stated as a point of information, there was an inspection completed by Anderson Perry of the levee on March 30, 2010 and the report had not been received yet. His opinion is that the levee is not as damaged as previously told. He spoke to the previous owner of his property who owned it prior to there ever being a levee. He asked him if he ever had any flooding on his property and he said no. He lived there until 1953 or 1954. Mr. Cosner reported that he worked on the levee, under the Corp of Engineers supervision, in 1964 and 1965 and there was more financial damage done to land than buildings.

Manford Anliker said the report is available from the last inspection of the levee. It's available in four volumes.

Steven Patten – 102 SE 16th Ave., felt regardless of peoples' view on whether the Federal Government is trying to make money - the real problem is the levees were not taken care of and are not up to the standard that they should be at. He was in favor of voting for the ordinance for land owners since it would allow property owners to be able to purchase flood insurance at a reduced rate. He stated he loved Milton-Freewater and didn't want to move out of town. He encouraged council to pass the ordinance.

Councilor Chesnut expressed that one should not accept personal opinion as fact. He listed four items he was convinced were personal opinion and documentation would be needed to establish them as fact. The statement that the levee has been widened, deepened and raised implies,

and it may not have been the intent of the speaker, but it implies that there is more room between the levee walls for water, that the channel has been deepened given more room for water and the tops have been raised. He said the levees have not been set back to his knowledge and there may have been some areas where the inside faces of the levee have been moved wider but he is unaware of that happening and would like to see documentation of that. The only deepening that he was aware of was rip-rap may have been placed deeper in the ground but that doesn't deepen the river channel to handle the water. It does help protect the toe of the levee from erosion in that the bed of the river can erode farther before the levee becomes a problem. He stated that Mr. Burns and the Water Control Board know that at below the Nursery Bridge and in the Couse Creek Bridge area there has been significant down cutting to the point that the toe of the levee is in fact at risk. He also said that damage is worse now than it was in 1996. He said he had no

documentation of that and it was only his opinion. As he addressed the statement from Mr. Burns that the levee had been raised, he felt that was true. After the flood of 1965 the levees were raised a foot to two foot.

Manford Anliker said according to Herb Bessey of the Corp of Engineers the levee was not raised.

Councilor Chesnut said it sounded like there was a question on whether or not the levee was raised but it seems pretty well established that some rising of the levee did take place. He addressed the statement by Mr. Burns that the damage to the levee now is the exact same as it was after the 1996 flood is a virtual impossibility.

Councilor Hopkins-Hubbard said he was under the impression that if council did not adopt the ordinance then citizens would not be required to purchase the flood insurance.

Manager Hall said the flood insurance mandate would still be required if the ordinance was not adopted but there would be no way to comply with the mandate. By not adopting the ordinance it would strip citizens of the choice to purchase the insurance even if they wanted to. Citizens would not have an option at that point because the city would be suspended from the National Flood Insurance Program which is the only flood insurance underwriter in the United States. The banks would not have any way to comply with the mandate and in some cases would call the loan note and people would lose their homes.

Councilor Hopkins-Hubbard disagreed that FEMA would make the banks call the loan note because people could not comply. He referred to a statement by Councilor Humbert that if the ordinance was not adopted then the levee could not be repaired. He felt either way the levee could be repaired and the ordinance had nothing to do with it.

Councilor Chesnut said how he understood Councilor Humbert's comment was that if the ordinance was not passed and he lost his house and moved out of town he would not care whether or not the levee was repaired. It would not long impact him.

Councilor Hopkins-Hubbard said he understood.

Mayor Key then asked if there were any more citizens or council members who wished to speak. No one spoke, at which time he declared the hearing to be closed.

Councilor Chesnut then motioned to adopt the Findings of Fact and Conclusions of Law supporting the amendment to the Zoning Code by adding Flood Damage Prevention Regulations. Councilor Anliker seconded the motion which passed unanimously.

Councilor Chesnut motioned that Ordinance No. 956 be introduced by title only and full reading waived. Councilor Lyon seconded the motion. Roll call vote was taken with the following comments from councilors.

Councilor Lyon voted yes, with the understanding that this was only the first reading and not the adoption of the ordinance.

Councilor Chesnut voted yes.

Councilor Hopkins-Hubbard voted yes.

Councilor Anliker voted yes, with the understanding that he disagrees with FEMA's floodplain maps and with their method of doing business with the city in its quest to serve those living within areas zoned as a floodplain by FEMA. It is because of his statement he voted yes in acceptance of FEMA's floodplain map, and in doing so, he is providing those within the zoned areas, FEMA's lowest level of floodplain classification in order to provide the citizens and businesses of the community the ability to have less restrictions for new construction as well as the ability for them to obtain the National Flood Insurance Program (NFIP) preferred policy rates for flood insurance at a much lower cost. He said it would not end here. He would strive to correct the levee issues and remove Milton-Freewater from FEMA's floodplain as quickly as possible so that no one will have to pay for flood insurance unless they choose to do so of their own free will.

Councilor Irving voted yes, with the following statement: He felt he was manipulated with the promise of grant funding and property loans becoming unattainable. He was lied to, by the map being inaccurate, falsehood and a bald face lie. He felt coerced by the promise of tougher zoning and higher insurance premiums if the flood map were to be rewritten and no flood insurance available if he were to say no to the ordinance.

Councilor Humbert voted yes, with the following statement: He felt it was legalized extortion and encouraged everyone to call their congressional representative. He said he wanted to vote no, but due to the situation council had been put in he voted yes.

The Mayor announced the first reading of the ordinance passed. The City Manager then read the ordinance by title. Mayor Key announced that council had introduced the first reading of Ordinance #956, Ordinance Amending Title 10 of the Milton-Freewater City Code to add Flood Damage Prevention Regulations. The second reading will be held at the next regular council meeting on Monday, August 23, 2010.

Mayor Key thanked all those who spoke for their input.

Manager Hall announced that there is a house bill, HR5114, it has been passed by the house of representatives but now it needs a senate sponsor and it needs to be voted on by the senate. The bill would put a five year moratorium on the mandate of the purchase of flood insurance. After the five years then it would gradually increase by 20% a year for five years. She encouraged the audience members to contact the federal senators and ask them to act on that bill. It would also allow the Water Control Board time to get the levee repaired.

Councilor Hopkins-Hubbard asked if Senator David Nelson could sponsor the bill.

Manager Hall said no, that he was a State Senator and the bill needed either Federal

Senator Ron Wyden or Federal Senator Jeff Merkley.

Councilor Lyon said credit was due to Representative Greg Walden since he got the vote through the house.

Manford Anliker said Representative Walden also came to town and took an assessment of the levee along with the Corp of Engineers and a FEMA representative.

AUTHORIZATION TO ACCEPT GRANT FUNDS FROM THE OREGON STATE DEPARTMENT OF FORESTRY IN THE AMOUNT OF \$17,919 FOR THE PURCHASE OF PERSONAL PROTECTIVE EQUIPMENT FOR THE FIRE DEPARTMENT

Fire Chief Shane Garner reported he had applied for a grant with the Oregon State Department of Forestry for the purchase of personal protective equipment for the fire department. The city received notification of a grant award in the amount of \$19,910. The grant does require a 10% match. The proposed grant funds that would be received from the Department of Forestry would be \$17,919. The matching fund amount would be \$1,991 for a total project cost of \$19,910. The grant was written for the purchase of fire shelter, portable radios, mobile radios, nomex pants, nomex shirts, hard hats, gloves, goggles and fire line packs.

Councilor Hopkins-Hubbard motioned to authorize the acceptance of grant funds from Oregon Department of Forestry in the amount of \$17,919. Councilor Lyon seconded the motion which passed unanimously.

OPPORTUNITY FOR CITIZENS TO APPROACH THE COUNCIL WITH ITEMS NOT ON THE AGENDA

Bob White – 904 S. Mill, felt the 4th of July was very expensive for families. He suggested there be empty parking lots designated for neighborhood launching of fireworks. He proposed there being a fire truck along with two or three firefighters on site in case there were to be a fire. He said this past year there was only one fire on the 4th of July which he credited to a very wet spring.

Merle Sherman – 716 Pierce, complimented Parks Lead Craig Rouse and his crew on how nice the golf course looked for the Senior Blues Golf Tournament that was held Monday, August 9, 2010. He announced there were 88 golfers that participated in the event. He said the golf course receives \$10.00 for each person that played.

MANAGER'S REPORT

Manager Hall reported the City of Milton-Freewater was a major sponsor for the Muddy Frogwater Festival and the sponsor packet was here. She passed the packet to the Mayor for council to divide amongst them.

COUNCIL ANNOUNCEMENTS

Councilor Irving felt the Water Control Board (WCB) has done a marvelous job so far. He announced they were holding a meeting in the Court Room on Tuesday, August 10, 2010 at 7:00 p.m.

Councilor Humbert reported the WCB has acquired the assistance of Ernie Schroeder. He was a former Corp of Engineer employee and an expert in repairing levees. Mr. Schroeder will be

giving a presentation at the WCB meeting on Tuesday.

Manford Anliker asked who owned Marie Dorian and who gave the Corp of Engineers permission to remove the dam.

Manager Hall said she would have to research that.

Councilor Hopkins-Hubbard said there was a lot of respect among the city council. He felt the citizens of Milton-Freewater were going to be harmed either way in regards to the flood zone and that it was flat out extortion.

Mr. Burns said Milton-Freewater had a very good city council and he was very proud of them.

Mr. Anliker added that the city also had an outstanding City Manager.

Christine Boedigheimer expressed how impressed she was of the city council. She has been to other cities council meetings and felt Milton-Freewater's council was prepared for the business they were being asked to make decisions on. She could tell they had all read their meeting packets and she appreciates how professionally they conduct themselves during the meeting.

Councilor Chesnut said he attended the city picnic, which he felt was very well attended. He had a good time and the food was very good. He announced there was going to be a meeting regarding wind energy. The meeting is Thursday, August 12, 2010 at 6:30 p.m. at the Community Building. Umatilla County Planning Department has some draft zoning codes regarding wind energy.

Councilor Lyon shared an old utility bill that he found which dated back to the early 1950's.

Councilor Hopkins-Hubbard recently made a trip to New York. He said visiting ground zero where the twin towers once stood touched his heart. The St. Thomas Church which is a block away from ground zero was untouched. He said the patriotism shown at the church was amazing.

There being no further business the meeting was adjourned at 8:30 p.m.

Lewis S. Key, Mayor

MILTON-FREEWATER PLANNING COMMISSION
FINDINGS OF FACT

ISSUE: Recommendation regarding Zoning Code amendment to add Chapter 15, Flood Damage Prevention Regulations

HEARING DATE: August 9, 2010

COMMENTS RECEIVED:

Any correspondence or documents received are attached hereto and incorporated herein.

WE FIND THAT THE STAFF REPORT, A COPY OF WHICH IS ATTACHED HERETO AND INCORPORATED HEREIN, ADEQUATELY ADDRESSES THE RELEVANT ISSUES AND WE AGREE WITH THE FINDINGS AND CONCLUSIONS CONTAINED THEREIN. WE HEREBY RECOMMEND APPROVAL OF THE ZONING CODE AMENDMENT, WITH THE COMMISSION VOTING AS FOLLOWS:

	Yes	No
Charlie Good	<u>C.G.</u>	_____
Myra Sherwin	<u>MS</u>	_____
Carlotta Richardson	<u>CR</u>	_____
Ben Silva	<u>B.S.</u>	_____
Bob White	<u>BW</u>	_____
Nathan Lyon	<u>NL</u>	_____
Scott Gilmore	_____	_____

Dated this 9th day of August, 2010



Charlie Good, Chair

STAFF REPORT
August 2, 2010

APPLICANT: City of Milton-Freewater

ISSUE: Public Hearing regarding proposed amendment to the Zoning Code to add Chapter 15, Flood Damage Prevention

HEARING DATE: August 9, 2010

I. BACKGROUND

The City was advised by FEMA in January of 2010 that based on a new Flood Insurance Study, a new Flood Insurance Rate Map had been produced and floodplain management measures, including a floodplain management ordinance, would be required in order for the City to remain in the National Flood Insurance Program. City filed an appeal with FEMA protecting the validity of the new flood zone, but the appeal was denied. As a result, the new Flood Insurance Rate Map will go into effect on September 3, 2010 and the City must adopt the ordinance prior to that date.

This amendment was reviewed by the Oregon State Department of Land Conservation and the National Flood Insurance Program Coordinator for compliance with federal statutes and state floodplain regulations. The City has been advised that the draft ordinance will satisfy these regulations.

II. COMPREHENSIVE PLAN/CODE PROVISIONS

City Code Title 10, Chapter 12: Amendments
10-12-1 through 10-12-3

10-12-1: An amendment to the text of this Ordinance or to the Zoning Map may be initiated by the City Council, Planning Commission, or by application of a citizen.

Findings: The amendments have been initiated to satisfy FEMA's requirements to adopt floodplain measures to allow continued participation in the National Flood Insurance Program

10-12-2: Amendments to the text of this Ordinance or to the Zoning Map shall be processed under terms of the Level IV procedure in Section 10-3-10.

Findings: The amendments are being processed as a Level IV procedure, meeting this requirement.

10-12-3: In the Planning Commission report to the City Council, and in the City Council's action after review of the Planning Commission's report, the following standards shall be addressed:

(A) The proposal is in conformance with all applicable provisions of the Comprehensive Plan text and map of land use designations.

Findings: The proposal conforms with applicable provisions of the Comprehensive Plan, as outlined below.

Goal 1 Citizen Involvement

City Policy 1-A-1: The City will continue to employ its adopted Citizen Involvement Program. Items used will be selected for their applicability to the action and issues being considered.

Findings: The following outreach has occurred: The proposed Flood Insurance Rate Map was posted on the City's web site with information regarding the map and its effect on citizens. The City's newsletter, mailed individually to all utility customers and posted on the web site, described the new maps and the requirement for adoption by the City. Radio ads were broadcast on two different radio stations. Individual letters to property owners included in the new flood zone, as required by Measure 56, were mailed to property owners advising them of the proposed map adoption. The City has also provided several opportunities for citizen comments and involvement over the course of development of the proposed revision, including hosting two different open houses at the Community Building, and the opportunity to testify at two public hearings.

Goal 7 Areas Subject to Natural Hazards

The City's Comprehensive Plan contains no applicable policies relating to potential flooding from the Walla Walla River because of the existence of the levee. The only reference is in City Finding 7-A which states that "Flooding of the Walla Walla River was a reasonably common natural disaster in the past. There has been no flooding since construction of the dike system by the Corps of Engineers..." Statewide Planning Goal 7 states, in part, "Local Governments will be deemed to comply with Goal 7 for coastal and riverine flood hazards by adopting and implementing local floodplain regulations that meet the minimum National Flood Insurance Program requirements.

Findings: As new flood zones will be applied to the City, the new regulations are required. These new regulations meet the NFIP requirements and therefore this section is met.

(B) The proposal addresses a need which was improperly or inadequately addressed by the present ordinance text or map.

Findings: This section is met because there are no Floodplain Management regulations presently existing in the Zoning Code, and by adoption of the addition, the City will continue to be in compliance with federal regulations and continue to be eligible to participate in the National Flood Insurance Program.

IV. GENERAL COMMENT

If the proposed amendments are not adopted and the ordinance passed the new flood insurance rate map will still go into effect and as a result the City will be suspended from the Nation Flood Insurance Program and no flood insurance will be available to property owners with in the flood hazard boundary. Since no flood insurance will be available those property will not be eligible for loans using federal funds. ~~It would also impact the City's ability to retain or obtain any federally regulated grant dollars.~~ There does not appear to be an option at this point.

V. STAFF RECOMMENDATION

Staff recommends the Planning Commission recommend to the City Council approval of the proposed amendment to the Zoning Code, and, in turn, recommends the City Council adopt the amendment.

I. STATUTORY AUTHORIZATION, FINDINGS OF FACT, PURPOSE, AND OBJECTIVES

A. Statutory Authority

The State of Oregon has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the city, does ordain as follows:

B. Findings of Fact

(1) The flood hazard areas of the city 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.

(2) 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.

(3) The city has the primary responsibility for planning, adoption and enforcement of land use regulations to accomplish proper floodplain management.[44 CFR 59.22]

City of Milton-Freewater

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 10 OF THE MILTON-FREEWATER CITY
CODE TO ADD FLOOD DAMAGE PREVENTION REGULATIONS

WHEREAS, the levee protecting the city from the Walla Walla River was decertified by the Army Corp. of Engineers in 2006 with a rating of “unacceptable”,

WHEREAS, as a result of this levee decertification, the Federal Emergency Management Agency re-mapped the City of Milton-Freewater’s flood insurance risk map, placing the majority of the city in a flood risk zone,

WHEREAS, the City is being mandated by the Federal government to adopt the map by September 3, 2010, or suffer dire consequences to the City’s economic well being,

WHEREAS, the Milton-Freewater Planning Commission held a public hearing on this proposed ordinance on August 9, 2010, and the Planning Commission voted to recommend to the City Council that the municipal Zoning Code be amended, and

WHEREAS, a public hearing was held before the City Council on August 9, 2010 on the proposed amendment,

NOW, THEREFORE, THE CITY OF MILTON-FREEWATER ORDAINS AS
FOLLOWS:

Section 1. There is hereby added to Title 10 of the Milton-Freewater City Code Chapter 15, which shall read as follows:

Chapter 15 Flood Damage Prevention Ordinance

10-15-1 **STATEMENT OF PURPOSE:** The objectives of this ordinance are to:

- A. Protect human life, health and property;
- B. Minimize damage to public facilities and utilities such as water purification and sewage treatment plants, water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- C. Help maintain a stable tax base by providing for the sound use and development of flood prone areas;
- D. Minimize expenditure of public money for costly flood control projects;
- E. Minimize the need for rescue and emergency services associated with flooding and generally undertaken at the expense of the general public;
- F. Minimize unnecessary disruption of commerce, access and public service during times of flood;
- G. Ensure that potential buyers are notified that property is in an area of special flood hazard;
- H. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions, and;
- I. 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.

10-15-2: **METHODS OF REDUCING FLOOD LOSSES:** This ordinance includes methods and provisions to:

- A. 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;
- B. 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;
- C. Control filling, grading, dredging and other development which may increase flood damage or erosion;

- D. Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or that may increase flood hazards to other lands;
- E. Preserve and restore natural floodplains, stream channels, and natural protective barriers which carry and store flood waters, and;
- F. Coordinate with and supplement provisions of Oregon building codes.

10-15-3: **DEFINITIONS**

Unless specifically defined in Article II, words or phrases used in this ordinance shall be interpreted according to the meaning they have in common usage.

“Accessory Structure” means 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.

“Appeal” means a request for review of the Floodplain Administrator's interpretation of provisions of this ordinance or request for a variance.

“Area of Shallow Flooding” means 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.

“Area of Special Flood Hazard” means 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.

“Base Flood” means the flood having a one percent chance of being equaled or exceeded in any given year. (*Note: Base Flood Depth = Design Flood Depth: The NFIP uses the term Base Flood Depth for the depth in relation to highest adjacent grade of the 1% annual flood. Oregon building codes use the term Design Flood Depth. The terms are equivalent. The building-code-required one foot of freeboard is added to Design Flood Depth to establish the required elevation of the lowest floor.*)

“Basement” means the portion of a structure with its floor sub grade (below ground level) on all sides.

“Below-grade Crawlspace” means 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” means a building or structure subject to building codes.

“Building Codes” means 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” means 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.

“Development” means 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. Development also means initiation or conversion of use of any structure; or the initiation, extension, or conversion of the use of land. Development does not include:

1. Signs, markers, aids, etc. placed by a public agency to serve the public
2. Driveways, parking lots, or other open space use areas where no alteration of topography occurs;
3. 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;
4. Customary dredging associated with routine channel maintenance consistent with State or Federal laws and permits;
5. Replacement of utility facilities necessary to serve established and permitted uses;
6. Accessory residential or noncommercial structures less than 200 square feet in area;
7. Storage of equipment and material associated with residential uses.
8. Fences

“Digital FIRM (DFIRM),” means 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.

“Elevated Building” means 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 Building or Structure” means a structure for which the “start of construction” commenced before September 12, 1978.

“Federal Emergency Management Agency (FEMA)” means the agency with the overall responsibility for administering the National Flood Insurance Program.

“Flood” or “flooding” means 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)” means 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)” means 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.

“Highest Adjacent Grade (HAG)” means 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 more information.

“Historic Structure” means a structure that is:

1. 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;
2. 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;
3. Individually listed on a state inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior, or ;
4. Individually listed on a local inventory of historic places and determined as eligible by communities with historic preservation programs that have been certified either:
 - (a) By an approved state program as determined by the Secretary of the Interior, or;
 - (b) Directly by the Secretary of the Interior in states without approved programs.

“Lateral Addition” means an addition that requires a foundation to be built outside of the foundation footprint of the existing building.

“Letter of Map Change (LOMC)” means 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 category:

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;

“Lowest Adjacent Grade (LAG)” means the lowest 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 more information.

“Lowest Floor” means 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 Home/Dwelling” means a structure, transportable in one or more sections, built on a permanent chassis and designed to be used for residential purposes, with or without a permanent foundation when connected to the required utilities, and that was constructed in accordance with federal manufactured housing construction and safety standards regulations in effect at the time of construction (HUD, public law 93-383). The term “Manufactured Dwelling” does not include a “Recreational Vehicle.”

“Natural Elevation” means the elevation of natural grade, or the grade in existence before September 12, 1978.

“Post FIRM Construction” means a structure for which the “start of construction” commenced after September 12, 1978, and includes subsequent substantial improvements to the structure.

“Recreational Vehicle” means a vehicle that is:

1. Built on a single chassis;
2. 400 square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towed by a light duty truck, and;
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

“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” means a walled and roofed building, a manufactured dwelling, a modular or temporary building, or a gas or liquid storage tank that is principally above ground.

“Substantial Damage” means 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” means 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:

1. The appraised real market value of the structure prior to the start of the initial repair or improvement, or
2. In the case of damage, the appraised real market value of the structure prior to the damage occurring. The term does not include either:
 - (a) 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
 - (b) Alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a Historic Structure.

“Variance” means a grant of relief by the governing body from a requirement of this ordinance.

“Vertical Addition” means the addition of a room or rooms on top of an existing building.

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

10-15-4: **GENERAL PROVISIONS**

A. Lands to Which This Ordinance Applies

This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction of the City of Milton-Freewater. Nothing in this Ordinance is intended to allow uses or structures that are otherwise prohibited by the zoning ordinance or building codes.

B. Basis for Area of Special Flood Hazard

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, dated September 3, 2010, with accompanying Flood Insurance Rate Maps (FIRM) or Digital Flood Insurance Rate Maps (DFIRM), and other supporting data, are adopted by reference and declared a part of this ordinance. The FIS and the FIRM are on file at the Planning Department of the City of Milton-Freewater, 772 S. Main Street, Milton-Freewater, OR 97862.

C. Coordination with Building Codes

The City of Milton-Freewater of Umatilla County does hereby acknowledge 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.

D. 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 Section 10-15-4(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 an opportunity for a quasi-judicial land use hearing.

E. 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.

F. 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 Milton-Freewater or by any officer or employee thereof for flood damages that result from reliance on this ordinance or an administrative decision lawfully made hereunder.

10-15-5: **ADMINISTRATION**

A. Designation of Floodplain Ordinance Administrator

The City Planner is hereby appointed as the Floodplain Administrator who is responsible for administering and implementing the provisions of this ordinance. 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;
- (2) Review applications for modifications of any existing development in Areas of Special Flood Hazard for compliance with the requirements of this ordinance;
- (3) Interpret flood hazard area boundaries, provide available flood hazard information, and provide base flood depth, where they exist;
- (4) Applicant will be responsible for obtaining all necessary permits 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 Division of State Lands regulations.
- (5) Where interpretation is needed of the exact location of boundaries of the Areas of Special Flood Hazard the Floodplain Administrator shall make the interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 10-15-7(D).
- (6) Issue floodplain development permits when the provisions of this ordinance have been met, or disapprove the same in the event of noncompliance;
- (7) Coordinate with the Building Official to assure that applications for building permits comply with the requirements of this ordinance;
- (8) Obtain, verify and record the actual height in relation highest adjacent grade of the lowest floor, including basement, of all new construction or substantially improved buildings and structures.

(9) Obtain, verify and record the actual height, in relation to highest adjacent grade 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;

(10) Ensure that all records pertaining to the provisions of this ordinance are permanently maintained in the office of the City Planner or his/her designee and shall be open for public inspection.

(11) 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;

(12) 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;

(13) Make Substantial Improvement or Substantial Damage determinations based on criteria set forth in Article IV, Section D of this ordinance.

C. 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. 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;
- (b) Delineation of flood hazard areas and flood depth in AO zones.
- (c) For all proposed structures, height in relation to the highest adjacent grade of the:
 - (i) lowest enclosed area, including crawlspace or basement floor;
 - (ii) top of the proposed garage slab, if any, and;
 - (iii) next highest floor
- (d) Locations and sizes of all flood openings in any proposed building;
- (e) Height in relation to highest adjacent grade to which any non-residential structure will be flood-proofed;

- (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;
- (g) Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development;

(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 height in relation to highest adjacent grade of the floor or flood-proofed level immediately after the lowest floor or flood-proofing is placed and prior to further vertical construction;
- (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.

(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
 - i. For elevated buildings and structures the as-built height in relation to highest adjacent grade of the lowest floor, including basement;
 - ii. For buildings and structures that have been floodproofed, the as-built height in relation to highest adjacent grade to which the building or structure was floodproofed that has been prepared and sealed by a registered engineer.
- (b) Failure to submit certification or failure to correct violations shall be cause for the Floodplain Administrator to request withholding 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.
- (b) Commencement of work includes start of construction, when the permitted work requires a building permit.

D. Substantial Damage and Substantial Improvement Determination

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, federal or other regulation 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:

(i) The preparation and approval of all required plans, calculations, certifications, and specifications;

(ii) The performance of surveys or other geotechnical or engineering studies and resulting reports;

(iii) Permit and review fees, and;

(iv) 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) The City of Milton-Freewater staff shall make the final determination of whether the proposed improvement and/or repair constitutes a substantial improvement or substantial damage.

(4) The City of Milton-Freewater staff shall notify the applicant of the results of the determination by letter.

(5) Applicant has the right to appeal the determination pursuant to Section 10-3-12.

10-15-6: **PROVISIONS FOR FLOOD HAZARD REDUCTION**

A. 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.

(2) New development proposals and subdivision development plans shall include the mapped flood hazard zones from the effective FIRM

(3) 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.

(4) On-site waste disposal systems shall be located and constructed to avoid functional impairment, or contamination from them, during flooding.

(5) Subdivisions shall have adequate drainage paths provided to guide floodwater around and away from all proposed and existing structures.

D. Zones Without Base Flood Elevations or Flood Depths

Development is prohibited in riverine areas of special flood hazard where no base flood elevation or flood depths have been provided by FEMA (approximate A Zones).

E. 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.

F. 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.

G. Below Grade Crawlspace

Below-grade crawlspace foundations are allowed, unless no base flood depths 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.

H. Recreational Vehicles

In Areas of Special Flood Hazard, Recreational Vehicles that are an allowed use or structure under the zoning ordinance must either:

- (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 Article V, Section F: Manufactured Dwellings, including the anchoring and elevation requirements.

I. 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 the depth number in AO zones. Access routes elevated to or above the level of the base flood depth shall be provided to all critical facilities to the extent possible.

J. Tanks

- (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.
- (2) Above-ground tanks in flood hazard areas shall be:
 - (a) Attached to and elevated to or above the depth number (in the AO zone) on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the base 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.

K. Other Development in Areas of Special Flood Hazard

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;

Accessory structures no greater than 200 square feet and all other development in the AO zone for which specific provisions are not specified in this ordinance or building codes, shall:

(1) Be located and constructed to minimize flood damage;

(2) Be designed so as not to impede flow of flood waters under base flood conditions;

(3) Be anchored to prevent flotation or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;

(4) Be constructed of flood damage-resistant materials; and

(5) Have electric service and or mechanical equipment elevated above the depth number, except for minimum electric service required to address life safety and electric code requirements.

(6) 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;

(7) Toxic material, oil or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality shall not be stored below two feet above highest adjacent grade unless confined in a tank installed in compliance with this ordinance;

(8) 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.

L. 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) 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 Emergency Management Agency.

(2) 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.

M. Periodic Floodplain Inspections and Enforcement Actions

Within 30 days of discovery of a violation of this ordinance, the Floodplain Administrator shall submit a report to the City Council 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 City Council shall:

(1) Take any necessary action to effect the abatement of such violation; or

(2) Issue a variance to this ordinance in accordance with the provisions of Section 10-15-7 (Variance Procedures) herein; or

(3) 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 Floodplain Administrator within 30 days of such order, and he shall submit an amended report to the City Council within 20 days. At their next regularly scheduled public meeting, the governing body shall either order the abatement of said violation or they shall grant a variance in accordance with the provisions of Section 10-15-7 (Variance and Appeal Procedures) herein.

10-15-7: **VARIANCE AND APPEAL PROCEDURES**

A. Variance

(1) An application for a variance must be submitted to the City of Milton-Freewater Planning Department on the form provided by the City and include at a minimum the same information required for a development permit and an explanation for the basis for the variance request.

(2) Upon receipt of a completed application for a variance, the variance request will be set for public hearing at the next City Council meeting in which time is available for the matter to be heard.

(3) Prior to the public hearing, Notice of the hearing will be published in the official newspaper of the City at least 15 days prior to the hearing. In addition to the newspaper publication, written notice shall be provided to all adjoining property owners.

(4) The burden to show that the variance is warranted and meets the criteria set out herein is on the applicant.

(5) In passing upon such applications, the City Council 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) the 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.

(6) Upon consideration of the above factors of and the purposes of this ordinance, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

(7) The floodplain administrator shall maintain a permanent record of all variances and report any variances to the Federal Emergency Management Agency upon request.

B. Criteria for Variances

(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-k) in Section 7(A)(5) have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.

(2) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(3) 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 depths, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(4) 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 flood and create no additional threats to public safety.

(5) 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.

(6) 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.

C. 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 depth and that the cost of flood insurance likely will be commensurate with the increased flood damage risk.

D. Appeals

Appeals shall be administered in accordance with Chapter 10-3-12 of this Title.

Section 2. Section 10-2-2, "Flood Hazard Boundary Map" is hereby deleted.

Section 3. **SEVERABILITY**

The ordinance is hereby declared to be 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 4. **ABROGATION AND GREATER RESTRICTIONS**

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.

Section 5. **EFFECTIVE DATE OF ORDINANCE**

Because the federal government has mandated the purchase of flood insurance policies by many property owners within the boundaries of the FIRM map by September 1, 2010, and in the interest of allowing the full amount of grace period for citizens required to purchase flood insurance policies, this ordinance is declared to be effective on September 1, 2010.

Passed by the Council and approved by the Mayor this 23rd day of August,
2010.

Lewis Key, Mayor

ATTEST:

Leanne Steadman, City Recorder
Date: August _____, 2010



June 21, 2010

Dear Property Owner:

The Federal Emergency Management Agency (FEMA) has updated the Flood Insurance Study for Umatilla County, Oregon and Incorporated Areas, and has also revised the Flood Insurance Rate Maps (FIRMs). These new maps now include most of the City within a Special Flood Hazard Area. The new maps will become effective September 3, 2010. As a result, the City will be required to adopt a Flood Damage Prevention Ordinance and amend the Zoning Code to include new language. The Milton-Freewater Planning Commission will hold a public hearing on August 9, 2010 at 6:00 p.m. in the Council Chambers, Albee Room in the Public Library, 8 SW 8th Avenue, regarding the proposed amendment to the Zoning Code, with the City Council to hold a public hearing to consider the amendment at 7:00 p.m. on the same date and at the same location. Applicable criteria relating to this amendment can be found in the Zoning Code, Chapter 12. Failure to raise issues with sufficient detail prevents appeal to the state Land Use Board of Appeals based on those issues.

State law requires the City to include the following statement: "The City has determined this change will affect the permissible uses of your property and may reduce the value of your property." Although the law requires us to make the statement, the City cannot make the determination on whether the value of your property will be reduced by the proposed amendment to the Zoning Code.

You are being sent this letter as it appears your property will be located within the new flood hazard boundary. **Please see the enclosed notice for more information regarding the new maps and how your property may be affected.**

For more information, you may contact the Planning Department at (541) 938-8234. The location of the hearing is handicapped accessible. Please call the Planning Department Assistant, (541)938-8235 (TTD 938-5511), or write if you will need any special accommodations or an interpreter to attend or participate in the meeting.

Sincerely,

A handwritten signature in cursive script that reads "Gina Hartzheim".

Gina Hartzheim
City Planner

PUBLIC NOTICE
PUBLIC HEARING

Notice is hereby given that a public hearing will be conducted by the Milton-Freewater Planning Commission on August 9, 2010 at 6:00 p.m. in the Council Chambers, Albee Room in the City Library, 8 S.W. 8th Avenue to consider a recommendation on a proposed Zoning Code amendment to add Chapter 15, Flood Damage Prevention Ordinance. Immediately following, at 7:00 p.m., the Milton-Freewater City Council will hold a public hearing to consider adoption of the amendment.

Written testimony may be given prior to the hearing or written or oral testimony may be given at the time of the hearing relevant to this amendment. Please address all correspondence to City Planner, P. O. Box 6, Milton-Freewater, OR 97862.

The location of the hearing is handicapped accessible. Please call the Planning Department, 541-938-8235 (TTD 541-938-5511), or write to the Planning Department, P. O. Box 6, Milton-Freewater, OR 97862 if you will need any special accommodations to attend or participate in the meeting.

The staff report and other materials will be available for review at the Planning Department, City Hall, at least seven days prior to hearing. Copies will be provided at minimal cost.



FEMA

JUL 20 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

The Honorable Lewis Key
Mayor, City of Milton-Freewater
Post Office Box 6
Milton-Freewater, Oregon 97862

Dear Mayor Key:

I am writing this letter as an official reminder that the City of Milton-Freewater, Oregon, has until September 3, 2010, to adopt and have the Department of Homeland Security's Federal Emergency Management Agency (FEMA) Regional Office approve floodplain management measures that satisfy 44 Code of Federal Regulations (CFR) Section 60.3(c) of the National Flood Insurance Program (NFIP) regulations.

The City of Milton-Freewater must adopt floodplain management measures, such as a floodplain management ordinance, that meet or exceed the minimum NFIP requirements (copy enclosed) by September 3, 2010, to avoid suspension from the NFIP. If suspended, your community becomes ineligible for flood insurance through the NFIP, new insurance policies cannot be sold, and existing policies cannot be renewed.

The provisions of Section 202(a) of Public Law 93-234, as amended prohibits Federal officers or agencies from approving any form of loan, grant, guaranty, insurance, payment, rebate, subsidy, or disaster assistance loan or grant, for acquisition or construction purposes within Special Flood Hazard Areas (SFHAs), areas subject to inundation by the base (1-percent-annual-chance) flood. Your community's suspension from the NFIP would prohibit mortgage loans guaranteed by the Department of Veterans Affairs, insured by the Federal Housing Administration, or secured by the Rural Economic and Community Development Services. This prohibition also affects the disaster assistance in connection with a flood under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988, as amended.

Furthermore, Section 202(b) of Public Law 93-234, as amended, requires Federally regulated lending institutions to notify the purchaser or lessee of improved real property located in an SFHA, whether Federal disaster assistance will be available when the property is being used to secure a loan that is being made, increased, extended, or renewed.

Your NFIP State Coordinator and FEMA would like to assist the City of Milton-Freewater to ensure it remains in good standing with the NFIP and avoids suspension from the Program. If your community is suspended, it may regain its eligibility in the NFIP by enacting the floodplain management measures established in 44 CFR Section 60.3 of the NFIP regulations. As stated in my

The Honorable Lewis Key
JUL 20 2010

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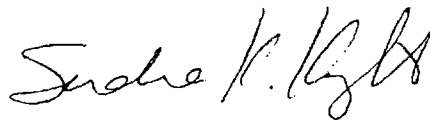
previous correspondence, I recommend you contact your NFIP State Coordinator or the FEMA Regional Office if the City of Milton-Freewater is encountering difficulties in enacting its measures.

I recognize that your community may be in the final adoption process or may have recently adopted the appropriate floodplain management measures. Please submit these measures to the Floodplain Management Program at the Oregon Department of Land Conservation and Development. Christine Shirley, CFM, the NFIP State Coordinator, is accessible by telephone at (503) 373-0050, extension 250, in writing at 635 Capitol Street, Northeast, Suite 150, Salem, Oregon 97301-2540 or by electronic mail at christine.shirley@state.or.us.

The FEMA Regional staff in Bothell, Washington, is also available to assist you with your floodplain management measures. The FEMA Regional Office may be contacted by telephone at (425) 487-4600 or in writing. Please send your written inquiries to the Director, Federal Insurance and Mitigation Division, FEMA Region X, at 130 228th Street, Southwest, Bothell, Washington 98021-9796.

In the event your community does not adopt and/or submit the necessary floodplain management measures that meet or exceed the minimum NFIP requirements, I must take the necessary steps to suspend your community from the NFIP. This letter is FEMA's final notification before your community is suspended from the Program.

Sincerely,



Sandra K. Knight, PhD, PE
Deputy Federal Insurance and
Mitigation Administrator, Mitigation

Enclosure

cc: Dennis Hunsinger, Acting Regional Administrator, FEMA Region X
Christine Shirley, CFM, NFIP State Coordinator, Department of Land Conservation and Development
Gina Hartzheim, Floodplain Administrator/City Planner, City of Milton-Freewater

FORM 1

DLCD NOTICE OF PROPOSED AMENDMENT

This form **must be received** by DLCD **at least 45 days prior to the first evidentiary hearing**

per ORS 197.610, OAR Chapter 660 - Division 18
and Senate Bill 543 and effective on June 30, 1999.

(See reverse side for submittal requirements)

Jurisdiction: City of Milton-Freewater

Local File No.: _____
(If no number, use none)

Date of First Evidentiary Hearing: 8/9/10
(Must be filled in)

Date of Final Hearing: 8/23/10
(Must be filled in)

Date this proposal was sent or mailed: 6/24/10
(Date mailed or sent to DLCD)

Has this proposal previously been submitted to DLCD? Yes: _____ No: x Date: _____

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

(Please Specify Type of Action)

Briefly summarize the proposal. Do not use technical terms. Do not write "See Attached."

Amend Zoning Code to add new floodplain development ordinance

Plan Map Changed from : _____ to _____

Zone Map Changed from: _____ to _____

Location: _____ Acres Involved: _____

Specified Change in Density: Current: _____ Proposed: _____

Applicable Statewide Planning Goals: 7

Is an Exception Proposed? Yes: _____ No: x

Affected State or Federal Agencies, Local Governments or Special Districts: _____

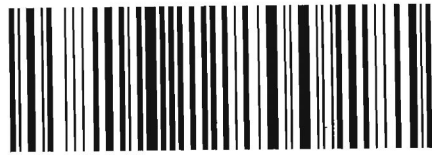
Local Contact: Gina Hartzheim Area Code + Phone Number: 541-938-8234

Address: P. O. Box 6

City: Milton-Freewater Zip Code + 4: 97862

DLCD No.: _____

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TO:

ATTN: PLAN AMENDMENT SPECIALIST

**DLCD
635 Capitol St NE, Suite 150
Salem, OR 97301-2540**