

ORDINANCE NO. 5146

TITLE: AN ORDINANCE AMENDING THE ALBANY MUNICIPAL CODE, TITLE 20, KNOWN AS THE "CITY OF ALBANY DEVELOPMENT CODE," RELATIVE TO FLOODPLAIN REGULATIONS, ADOPTING FINDINGS, AND DECLARING AN EMERGENCY.

WHEREAS, the Federal Emergency Management Agency (FEMA) directed the City of Albany to revise its floodplain regulations; and

WHEREAS, the proposed amendments (Case No. DC-02-94) are in response to that direction; and

WHEREAS, the Albany Planning Commission, following a public hearing on August 29, 1994, recommended approval of the proposed revisions to the Development Code (File No. DC-02-94), relative to floodplain regulations; and

WHEREAS, notice of the City Council public hearing has been published and posted and announcements of the public hearings have been sent to individuals and organization on the Planning Division mailing list; and

WHEREAS, the Albany City Council held a public hearing on September 14, 1994 and members of the public were given an opportunity to be heard;

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1: The Albany Municipal Code, Title 20, known as the "City of Albany Development Code," Article 6 relative to Floodplain regulations, is revised as shown on attached Exhibit "A."

Section 2: The Findings attached as Exhibit "B" are hereby adopted in support of this decision.

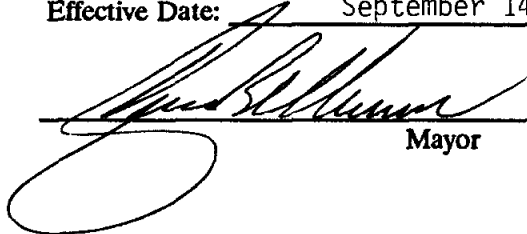
Section 3: A copy of this ordinance will be forwarded to the Department of Land Conservation and Development.

Section 4: Inasmuch as this ordinance is necessary for the immediate preservation of the peace, health, and safety of the citizens of this city of Albany, Oregon, an emergency is hereby declared to exist; and this ordinance shall be in full force and effect immediately upon its passage by the Council.

Passed by the Council: September 14, 1994

Approved by the Mayor: September 14, 1994

Effective Date: September 14, 1994



Mayor

ATTEST:



Deputy City Recorder

FLOODPLAIN

- 6.070 Purpose. It is the purpose of these regulations to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas.
- 6.071 Development to Which These Regulations Apply. "Development", as defined in Article 22, includes, but is not limited to, excavation and fill, residential and non-residential construction, manufactured housing, and land divisions.
- 6.080 Lands to Which These Regulations Apply. These regulations shall apply to all areas within the City of Albany that are subject to inundation from a 100-year flood. These areas are depicted on federal Flood Insurance Rate Maps (FIRMs) and Floodway Maps by the letter A, AE, or AO.

These areas have been identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study for Albany (March 16, 1989), for Benton County (August 5, 1986), and for Linn County (September 29, 1986). In addition, the City Council may adopt by resolution more current studies or boundary information approved by the Federal Emergency Management Agency (FEMA).

Precise floodplain district boundaries may be difficult to determine from the maps referred to above due to their large scale and lack of site specific studies. In such instances, the Director may apply FEMA base flood elevations to topographic maps or site surveys in order to determine actual boundaries. In the absence of FEMA base flood elevations, the Director may shall reasonably utilize other available sources of floodplain and floodway data to determine base flood elevations and boundaries. However, when elevation data is not available through FEMA or another authoritative source and the development consists of 4 or more lots, 4 or more structures, or 4 or more acres, the applicant shall generate and have certified by a registered engineer the base flood elevation. Any decision of the Director regarding a determination of a base flood elevation or interpretation of a district boundary may be appealed in accordance with Section 1.520 of this Code.

- 6.081 Variances. Variances from the terms of this section shall be granted only, when because of special circumstances applicable to the property, including size, shape, topography, location or surroundings, the strict application of this section deprives such property of privileges enjoyed by other property in vicinity and under identical zoning classifications. There will be no variance given to the standards for development in the floodway. Variances from the floodplain management regulations of this section shall be reviewed as a Type II procedure and shall be approved if the review body finds that all of the following criteria have been met:

- (1) The applicant can show good and sufficient cause; and
- (2) Failure to grant the variance would result in exceptional, non-financial hardship to the applicant; and
- (3) Issuance of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances; and
- (4) The variance is the minimum necessary, considering the flood hazard, to afford relief; and

In addition, variances from the required lowest floor elevation may be granted if the review body find that the request meets the following criterion as well as those criteria listed above:

- (1) The parcel is one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level.

Upon issuance of the variance, the Community Development Director will notify the applicant in writing that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and such construction below the base flood level increases risks to life and property.

6.085 **Definitions.** As used in this code the following words and phrases shall have the following meanings:

Base Flood or 100 Year Flood: The flood having a one percent chance of being equalled or exceeded in any given year. Map designation always includes the letter "A" (e.g. A, AE, AO).

Federal Emergency Management Agency (FEMA): The federal agency charged with implementing the National Flood Insurance Program. FEMA provides floodplain maps to the City of Albany.

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

- (a) the overflow of inland or tidal waters; and/or
- (b) the unusual and rapid accumulation of runoff of surface waters from any source.

Flood Fringe: Those areas outside the floodway but within the 100-year floodplain. Zone designations on Flood Insurance Rate Maps include A, AE, and AO. Note Floodway Relationships diagram Fig. 6-3.

Flood Insurance Rate Map (FIRM): The official map on which FEMA has delineated both the areas of special flood hazards and the insurance risk premium zones.

Floodplain: The combined area of the floodway and the flood fringe.

Floodproofing: Any combination of structural or nonstructural provisions, changes or adjustments to structures, land or waterway for the reduction or elimination of flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents during a 100-year flood.

Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation more than one foot. These areas are identified on the Floodway maps issued by FEMA. Note Floodway Relationships diagram Fig. 6-3.

Lowest Floor: The lowest floor of the lowest enclosed habitable area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking vehicles, building access or storage, in any area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable design requirements of this ordinance found in Section 6.134(1).

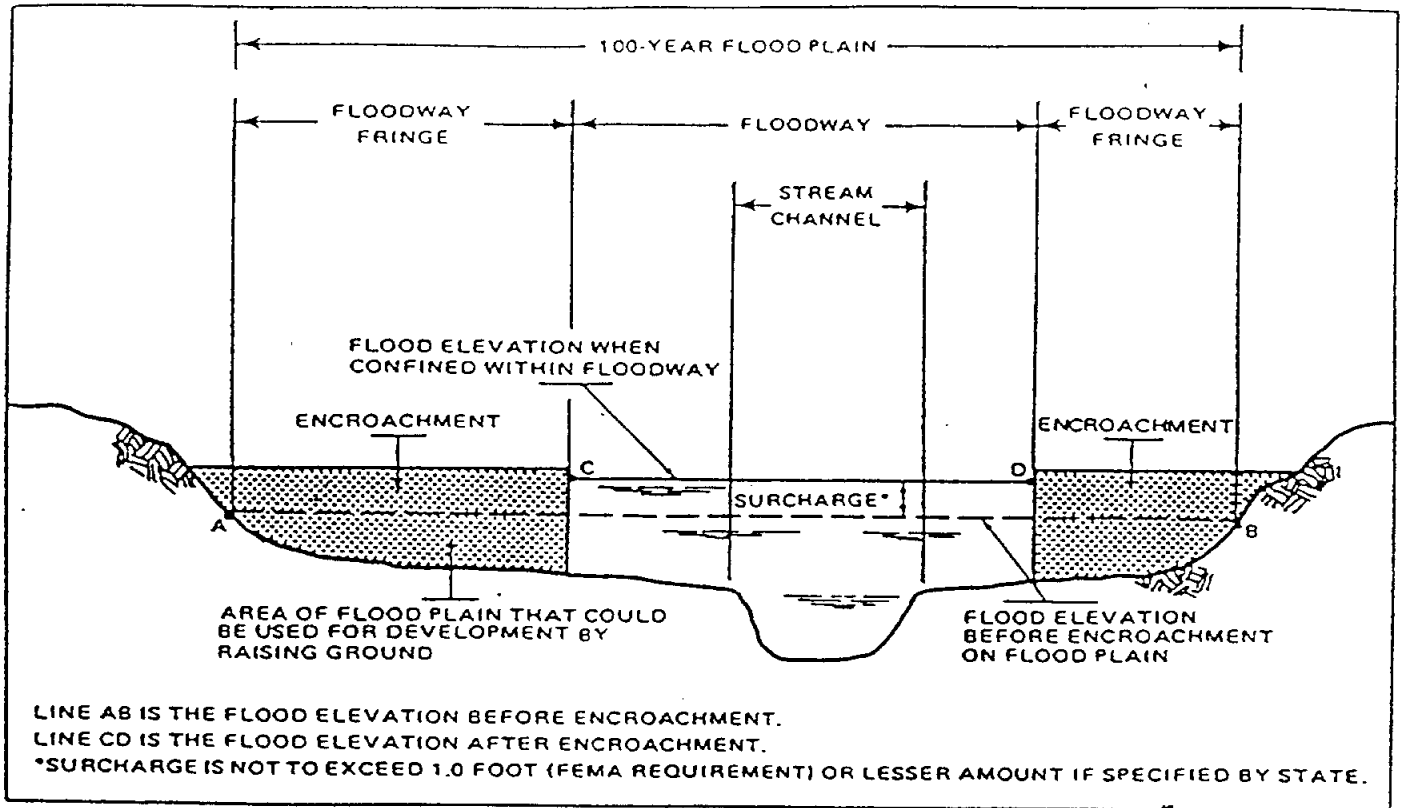
Permanent Foundation: A natural or manufactured support system to which a structure is anchored or attached. A permanent foundation is capable of resisting flood forces and may include posts, piles, poured concrete or reinforced block walls, properly compacted fill, or other systems of comparable flood resistivity and strength.

Special Flood Hazard Area: Areas subject to inundation during the occurrence of the 100-year flood.

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

Substantial Improvement: For the purposes of this section, and notwithstanding the provisions for nonconforming use and development pursuant to section 2.300 through 2.400, any repair, reconstruction,

Figure 6-3



FLOODWAY RELATIONSHIPS

or 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 term does not, however, include either:

- (a) Any 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) Any alteration of a structure identified on the City's adopted Historic Inventory, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Watercourse: Any natural or artificial stream, river, creek, ditch, channel, canal, conduit, culvert, drain, waterway, gully, ravine or wash in which water flows in a definite direction or course, either continuously or intermittently, and has a definite channel, bed and banks, and includes any area adjacent thereto subject to inundation by reason of overflow or flood water. This also includes any topographic feature not meeting the above definition which is identified in the Storm Water Drainage Master Plan for North Albany as needing preservation.

6.090 **State and Federal Approval.** City approval of any development within the floodplain is conditioned upon receipt of any required state or federal permits. Required state and federal permits include but are not limited to:

- (1) Permits and associated wetland development regulations administered by the Oregon Division of State Lands.
- (2) Permits administered by the U.S. Army Corps of Engineers.
- (3) All discharge permits covered by the U.S. Environmental Protection Agency and Oregon Department of Environmental Quality.

6.100 **Floodway Restrictions.** No development is allowed in any floodway except where the review body finds that the development will not result in any increase in flood levels during the occurrence of the 100-year flood). Such finding shall be based upon applicant-supplied evidence certified by a registered professional engineer and upon documentation that one of the following three criteria have been met:

- (1) The development does not involve the construction of permanent or habitable structures.
- (2) The development is a public or private park or recreational use or municipal utility use.
- (3) The development is a water-dependent structure such as a dock, pier, bridge, or floating marina.

If a floodway boundary is not designated on an official FEMA map available to the City, the floodway boundary can be estimated from available data. Proposed development along such estimated floodway boundary shall not result in an increase of the base flood level greater than one foot as certified by a registered professional engineer.

6.110 **Alteration of the flood carrying capacity of a Watercourse prohibited.** No development shall diminish the flood carrying capacity of a watercourse. Subject to the foregoing regulation, no person shall alter or relocate a watercourse, without having first provided 30 day prior written notice to the City, any adjacent community, and the Natural Hazards Mitigation Office of Department of Land Conservation and Development.

6.120 **General Information Requirements.** In addition to the information required in other sections of this code, the application for any development proposed in the floodplain district must include the following information:

- (1) Elevations of the original contours.
- (2) Final elevations of proposed fills and excavations.
- (3) Base flood (100-year flood) elevations of the site.
- (4) Location of any designated floodway and base flood boundary.
- (5) Location of any designated wetlands and/or wildlife habitat (if applicable).
- (6) Proposed elevation in relation to mean sea level of the lowest floor (including basement) of all structures (if applicable).
- (7) Description of the extent to which a watercourse will be altered or relocated as a result of proposed development (if applicable).
- (8) If floodproofing is required, the proposed description and elevation of floodproofing.

6.130 **Land Division and Planned Development Standards.** Land divisions and planned developments in the floodplain district shall be reviewed by the Planning Division as a part of the land use planning process. Notwithstanding other provisions of this code, all land division and planned development applications which contain land within the floodplain district shall be processed under the Type III process. In addition to the general review criteria for land divisions and planned developments in Article 11, applications within the floodplain district shall also be subject to the following standards:

- (1) All land division proposals shall be consistent with the need to minimize flood damage.
- (2) All land division proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (3) All land division proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (4) Any lot created for development purposes must have adequate area created outside of the floodway to maintain a buildable site area meeting the minimum requirements of this Code.
- (5) Any new public or private street providing access to a residential development shall have a roadway crown elevation not lower than one foot below the 100-year flood elevation.
- (6) All land divisions or planned developments in the floodplain district shall show the location of the 100-year flood contour line followed by the date the flood elevation was established. Where elevation data is not available, either through the Flood Insurance Study or from another authoritative source, and the development is four or more acres or results in four or more lots or structures, the elevation shall be determined and certified by a registered engineer. In addition, a statement located on or attached to the recorded map or plat shall read as follows: "Development of property within the 100-year floodplain as most currently established by the Federal Emergency Management Agency or City of Albany may be restricted and subject to special regulations by the City."

6.131 **Manufactured Home Parks and Manufactured Home Subdivision Standards.** Manufactured home parks and manufactured home subdivisions proposed in the floodplain district shall be reviewed by the Planning Division. Notwithstanding other provisions of this code, all manufactured home park and subdivision

applications which contain land within the floodplain district shall be processed under a Type III process. In addition to the general review criteria applicable to manufactured home parks and subdivisions in Article 10, application for such within the floodplain district shall include an evacuation plan indicating alternate vehicular access and escape routes.

6.132 Fill Standards. Application for fill permits in the floodplain district shall be reviewed by the Building Official using Uniform Building Code Appendix 70. In addition to those standards set forth in UBC Appendix 70, all fill in the floodplain district shall be subject to the following standards:

- (1) No fill shall be permitted in the floodway, except that which is allowed in Section 6.100 Floodway Restrictions.
- (2) Fill in the flood fringe shall not be subject to additional regulation beyond those applicable outside of the floodplain district unless such fill is specifically precluded by Title 18 (Building and Construction) and other sections of this code.

6.133 Building Standards. Applications for building permits in the floodplain district shall be reviewed by the Building Official pursuant to locally adopted state building codes. In addition to building code criteria, all development in the floodplain district shall be subject to the following building standards:

- (1) The lowest floor, including basement, of any proposed structure (including manufactured homes, non-residential structures and substantial improvements to existing structures) shall be placed at least one (1) foot above the 100-year flood as determined by the latest Federal Insurance Study.
- (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (3) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (4) Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- (5) All manufactured homes shall be on an adequately anchored, permanent foundation and be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, the use of over-the-top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional details).
- (6) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement and shall be installed or constructed using materials, methods, and practices that minimize flood damage.
- (7) All new ~~construction and substantial improvements shall~~ replacement public or provide new water supply ~~and systems to~~ shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (8) All new ~~construction shall have~~ and replacement public sanitary sewer systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood water. On site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

- (9) Property owners or developers shall file with the City a certificate whose format is acceptable to FEMA. This certificate must be approved by the Building Official, and prepared by a registered surveyor or professional engineer, architect or surveyor and maintained for public inspection. The certificate must contain: 1) the actual elevation (in relation to mean sea level) of the lowest floor including basement of all new or substantially improved structures; 2) the elevation of any floodproofing; and 3) whether or not the structure contains a basement.
- (10) If floodproofing ~~hazard reduction~~ methods are required as per Section 6.140(2), the property owners or developers shall file with the City certification by a registered professional engineer or architect that the floodproofing ~~hazard reduction~~ methods meet or exceed FEMA standards.

6.140 Flood Hazard Reduction Standards. All flood hazard reduction measures are required, as applicable, and must be certified as required in 6.133 (9) and (10) above to at least meet the following standards:

- (1) ~~For residential~~ All structures, fully enclosed areas below the lowest floor and lower than 1 foot above the 100-flood level must meet or exceed the following minimum criteria:
 - (a) A minimum of two openings, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding, shall be provided.
 - (b) The bottom of all openings shall be no higher than one foot above grade.
 - (c) Openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters.
- (2) Non-habitable construction ~~and substantial improvements~~ meeting the certification requirements of 6.133 (9) & (10) can have the lowest floor and attendant utility and sanitary facilities located lower than one foot above the 100-year flood elevation if:
 - (a) The structure is floodproofed so that ~~below areas lower than one foot above the 100-year flood level the structure is~~ are watertight with walls substantially impermeable to the passage of water.
 - (b) The structure has structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
 - (c) The applicant is notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level.
 - (d) The applicant files a certification by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certification shall be provided to the Building Official as set forth in 6.133(9).

6.150 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 on rare occasions. Flood heights may be increased as a result of failure of manmade structures and/or natural causes. This ordinance does not imply that the land outside the area of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance does not create liability on the part of the City of Albany or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

6.160 Storage of Material and Equipment. No storage of material or equipment is allowed within floodway areas, unless the storage can be approved upon determination that the following criteria have been satisfied:

- (1) **Site Plan approval has been received.**
- (2) **There is no storage or processing of material that is, in time of flooding, buoyant, flammable, toxic, explosive or otherwise could be injurious to human, animal, or plant life.**
- (3) **The material or equipment is not subject to major damage by floods and is firmly anchored to prevent flotation or is readily removable from the area within the time available after flood warning.**

FINDINGS IN SUPPORT OF ADOPTION OF REVISIONS TO
TITLE 20, CITY OF ALBANY DEVELOPMENT CODE,
ARTICLE 6

The approval standards relevant to review of the Development Code revisions are found in Section 2.290 of the Development Code. Section 2.290 lists the two review criteria which must be met for Development Code amendments to be approved. The following analysis supports a finding that the proposed revisions to the Development Code meet the approval criteria found in Section 2.290.

[CODE CRITERIA WILL BE WRITTEN IN BOLD ITALIC PRINT FOLLOWED BY FINDINGS]

- (1) *The proposed amendments better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language.*

Findings of Fact:

The proposed Development Code amendments better achieve the goals and policies of the Comprehensive Plan, particularly those under Goal 7: FLOOD HAZARDS & HILLSIDES. The following plan policies are particularly relevant:

Policy 2: "Restrict new development (including fill) from locating within floodways...."

Policy 5: "Ensure that development proposals in the flood fringe and adjacent to drainageways are consistent with FEMA and other applicable local regulations in order to minimize potential flood damage...."

Goal 1: CITIZEN INVOLVEMENT, Policy 2 requires public participation. This amendment process will involve two noticed, public hearings held before the Planning Commission and the City Council.

Conclusions:

This criterion is met. The proposed revisions have been found to better achieve the goals and policies of the Comprehensive Plan than the existing regulatory language because:

1A. They bring the current regulations into compliance with FEMA requirements.

- (2) *The proposed amendments are consistent with Development Code policies on purpose and with the purpose statement for the base zone, special purpose district, or development regulation where the amendment is proposed.*

Findings of Fact:

2A. Article I, Administration and Procedures, of the Development Code lists the following relevant purposes:

- (2) Satisfy relevant requirements of federal law, state law, statewide goals, and administrative rules.
(6) Establish procedures and standards requiring that the design of site improvements and building

improvements are consistent with applicable standards and flexible design guidelines.

- (8) Require that permitted uses and development designs provide reasonable protection from fire, flood, landslide, erosion, or other natural hazards as well as prevent the spread of blight, and aid in the prevention of crime.

Conclusions:

This criterion is met. The proposed amendments have been found to be consistent with Development Code policies on purpose and with the purpose statement for the base zone, special purpose district, or development regulation where the amendment is proposed because:

- 2A. The proposed changes satisfy the requirements of federal (FEMA) law.
- 2B. The proposed changes establish procedures which insure that development is in conformance with FEMA requirements.
- 2C. The proposed changes are part of regulations which are intended to provide protection from hazards resulting from flooding.