

ORDINANCE No. 190329

*Authorize Directors of the Bureau of Environmental Services and Bureau of Development Services to apply to the Federal Emergency Management Agency for floodway and floodplain map revisions on behalf of the City (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The Bureau of Environmental Services, independently and in partnership, constructs projects in rivers and streams. These projects directly or indirectly enhance or protect habitat for fish and wildlife including Endangered Species Act (ESA) protected salmon and steelhead and culturally significant lamprey and eulachon.
2. The Bureau of Development Services employs the City's Certified Floodplain Manager and is responsible for local approval of all public and private alterations to the federally mapped floodplain and any map revisions that must be submitted to and approved by the Federal Emergency Management Agency (FEMA).
3. In 1998 and 2000, the City adopted Resolutions 35715 and 35894 directing all bureaus to work together to respond to the listing of salmon and steelhead as threatened under the ESA, to work with the National Marine Fisheries Services (NMFS) to develop a programmatic response to the threatened salmon and steelhead listings, and declaring that that the City will work proactively to the best of its ability, through regulatory compliance, creation of incentives, and otherwise to support the recovery of salmon and steelhead in Portland.
4. The City participates in the National Flood Insurance Program (NFIP), administered by FEMA to provide federally-backed flood insurance for all Portlanders who live in the regulated 100-year floodplain and for commercial and industrial businesses who require flood insurance as a condition of any federally-backed loans. The City of Portland's participation in the NFIP is required to qualify for federal emergency funds in the event of major flooding.
5. In 1999, FEMA Region X issued a policy that would allow alterations and encroachments in the regulated floodway and floodplain from fish enhancement structures that would otherwise be prohibited without an extensive analytical and expensive application process to FEMA. FEMA's policy acknowledged the need to balance the restoration of salmon and steelhead against the regulatory burden associated with those projects. The City has relied extensively on FEMA's 1999 fish enhancement policy and it has substantially reduced the cost and time associated with permitting projects.
6. In 2016, in response to litigation NMFS determined that FEMA's implementation of the NFIP in Oregon put ESA-listed salmon and steelhead at risk of extinction and improperly impacted their critical habitat. FEMA is currently revising the Oregon NFIP program to meet the ESA requirements. The City is working collaboratively with FEMA and NMFS to change its floodplain policies, regulations, and programs to ensure floodplains are safe and resilient for people, property, salmon and steelhead.
7. In 2020, FEMA Region X revoked its fish enhancement structures policy. The City will be required to do rigorous modeling for all river projects, including many river restoration projects, and some infrastructure projects that require habitat enhancements, and it will need to go through an extensive and expensive FEMA floodway and floodplain map revision process.

8. All floodway and floodplain map revisions must meet federal code, specifically 44 CFR Part 65. Throughout 44 CFR Part 65, the federal code requires the “community” to apply for the map revisions. “Community” is defined in 44 CFR §59.1 as a political subdivision “which has the authority to adopt and enforce flood plain management regulations for the areas within its jurisdictions.” This federal code requires many map revision applications to be approved by Council prior to submission, adding further time and process to an increasingly complex permitting process.

NOW, THEREFORE, the Council directs:

- a. The Directors of the Bureau of Environmental Services and Bureau of Development Services to expedite and support City habitat restoration projects or infrastructure projects that include habitat enhancements and to apply directly to FEMA for any required floodway or floodplain map revisions including, but not limited to, Conditional Letters of Map Revision and Letters of Map Revision on behalf of the “community” as defined in 44 CFR §59.1. The Bureau of Development Services is authorized to apply on behalf of any other City bureau that is impacted by FEMA’s policy change. All applications must first be reviewed and approved by the City’s certified floodplain manager, as evidenced by their signature on the Community Acknowledgement Form or equivalent in the application.
- b. The Directors of the Bureau of Environmental Services and Bureau of Development Services to request that FEMA pursue appropriate rulemaking or policy approval to reinstate the purpose and intent of the 1999 fish enhancement structures policy to minimize the time and expense for constructing river restoration or habitat enhancement projects.

Section 2. The Council declares that an emergency exists for the Bureau of Environmental Services Cedar Crossing Project, E07158, because FEMA revoked the 1999 fish enhancement structures policy as the project was preparing to submit permits, which resulted in an unexpected cost increase and project delay. In order to keep the project construction on schedule, this ordinance shall be in full force and effect for the Cedar Crossing Project from and after its passage by the Council.

Passed by the Council: March 24, 2021
Commissioners Mapps and Ryan

Prepared by: Kaitlin Lovell (BES) and
Jason Butler-Brown (BDS)
Date prepared: March 2, 2021
Cost object – ord: ESWS000011

Mary Hull Caballero
Auditor of the City of Portland

By *Megan Lehman*

Deputy

170
 Agenda No.
ORDINANCE NO. 190329
 Title

*Authorize Directors of the Bureau of Environmental Services and Bureau of Development Services to apply to the Federal Emergency Management Agency for floodway and floodplain map revisions on behalf of the City (Ordinance)

<p style="text-align: center;">INTRODUCED BY Commissioner/Auditor: Commissioners Mapps & Ryan</p>	CLERK USE: DATE FILED <u>March 16, 2021</u>
<p style="text-align: center;">COMMISSIONER APPROVAL</p>	Mary Hull Caballero Auditor of the City of Portland By: <u>Megan Lehman</u> Deputy ACTION TAKEN:
Mayor—Finance & Administration - Wheeler	
Position 1/Utilities - Rubio	
Position 2/Works - Ryan <small>Digitally signed by Yesenia L. Carrillo Date: 2021.03.17 10:20:51 -0700</small>	
Position 3/Affairs - Hardesty	
Position 4/Safety - Mapps <small>Digitally signed by Mingsu Mapps Date: 2021.03.16 08:25:34 -0700</small>	
<p style="text-align: center;">BUREAU APPROVAL</p>	
Bureau: BES & BDS Bureau Head: Michael Jordan <small>Digitally signed by Michael Jordan Date: 2021.03.11 16:46:27 -0800</small>	
Prepared by: Kaitlin Lovell Date Prepared: 3/3/2021	
Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
City Auditor Office Approval: required for Code Ordinances	
City Attorney Approval: Eric Shaffner <small>Digitally signed by Eric Shaffner Date: 2021.03.04 07:58:16 -0800</small> required for contract, code, easements, franchise, comp plan, charter	
Council Meeting Date March 24, 2021	

AGENDA
TIME CERTAIN <input type="checkbox"/> Start time: _____ Total amount of time needed: _____ (for presentation, testimony and discussion)
CONSENT <input checked="" type="checkbox"/>
REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Rubio	✓	
2. Ryan	✓	
3. Hardesty	✓	
4. Mapps	✓	
Wheeler	✓	