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191477

Ordinance

Amend Title 33, Planning and Zoning, and the Zoning Map to reduce the impacts of future flooding on the city and prevent the degradation of floodplain habitat for endangered and threatened fish species (amend Code Title 33 and the Zoning Map)

Passed

Amended by Council

The City of Portland ordains:

Section 1. The Council finds:

General Findings

1. The Federal Emergency Management Agency (FEMA) administers the National Flood Insurance Program (NFIP), a nationwide program that reduces future flood damage by requiring minimum floodplain management standards and provides protection for property owners against potential flood losses through insurance.
2. Participation in the NFIP is voluntary but necessary for communities to obtain access to NFIP flood insurance and to be eligible for disaster relief funds following a flooding event. Participating communities are responsible for adoption and enforcement of the floodplain management standards. The City of Portland is a participating community.
3. Under Section 7 of the Endangered Species Act (ESA), FEMA is required to consult with the US Fish and Wildlife Service and/or the National Marine Fisheries Service (NMFS) when any action the agency carries out, funds, or authorizes may affect a listed endangered or threatened species or adversely modify the habitat of such species.
4. A lawsuit brought against FEMA in 2009 by Portland Audubon Society and others sought to highlight FEMA's failure to consult with the US Fish and Wildlife Service or NMFS on the impacts of implementing the NFIP in Oregon on listed species present in the state's watersheds.
5. A settlement agreement was reached in 2010, and FEMA initiated formal consultation with NMFS in July 2011 with the submittal of a

Introduced by

[Commissioner Carmen Rubio](#)

Bureau

[Planning and Sustainability \(BPS\)](#)

Contact

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Date and Time Information

Requested Council Date

October 11, 2023

Changes City Code

- Programmatic Biological Assessment on the NFIP for Oregon state listed species and critical habitat.
6. On April 4, 2016, NMFS completed their analysis of the effects of the NFIP on species listed as threatened or endangered under the ESA and issued a Biological Opinion (BiOp).
 7. The BiOp concluded that the current implementation of the NFIP in Oregon is likely to jeopardize the continued existence of 16 anadromous fish species and the Southern Resident Killer Whale, all of which are listed as threatened or endangered under the ESA, and result in the destruction or adverse modification of designated or proposed critical habitat for the 16 anadromous fish species.
 8. In the BiOp, NMFS directed FEMA to make changes to the NFIP in Oregon to ensure FEMA's flood insurance program complies with the ESA and does not result in harm to protected salmon and steelhead, or their critical habitat. The BiOp included a Reasonable and Prudent Alternative (RPA) to NFIP performance standards that, when implemented, would avoid continued jeopardy for the listed species and habitat described in the opinion.
 9. In October 2021, FEMA published an implementation plan for Oregon, titled *Oregon Implementation Plan for NFIP-ESA Integration*, that outlines changes to the NFIP program based on the BiOp and recommendations made in the RPA.
 10. Local compliance with FEMA's updated NFIP program is required in Portland to maintain access to FEMA's federally backed flood insurance and disaster relief funds for Portland residents and businesses.
 11. It is anticipated that FEMA will require jurisdictions to achieve compliance with the updated NFIP program 18 to 24 months after its National Environmental Policy Act (NEPA) review is completed in March of 2025).

Floodplain Management Update Work Plan and Floodplain Resilience Plan

12. In October 2019, the City of Portland published a multi-year, multi-bureau work plan to implement a City of Portland ESA floodplain compliance program that will meet FEMA's requirements to maintain access to the NFIP, address ESA compliance generally, and advance critical City policy goals.
13. The City's work plan to achieve compliance with the updated NFIP program includes 4 tasks: 1) Regulations; 2) Restoration; 3) Supporting Analysis and Programs; and 4) Management.
14. The City worked with FEMA while developing the work plan and began the work before the final FEMA implementation plan was released because (a), existing policies support the work; and (b), completing the breadth of regulatory and programmatic changes needed to achieve compliance with the updated NFIP will take a significant amount of time.

15. In 2020, the Bureau of Planning and Sustainability began working on the Floodplain Resilience Plan (FRP). The FRP will update the zoning code and zoning map to avoid or minimize the impacts of development on floodplain habitat and require mitigation of any unavoidable impacts within and near rivers and streams.
16. The FRP is Phase 2 of Task 1 of the ESA floodplain compliance program. Phase 1 of Task 1 was completed in December of 2020 with the adoption of the River Plan / South Reach, which applied floodplain management regulations in the southern portion of the Willamette River in the City of Portland and areas of unincorporated Multnomah County where the City has jurisdiction.
17. The *Floodplain Resilience Plan Proposed Draft* was released on August 30, 2022.
18. On August 23, 2022, notice of the Proposed Draft was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by OAR [660-18-0020](#).
19. On August 22, 2022, notice of the proposed draft was mailed to all property owners potentially affected by proposed zoning map and code changes as required by ORS 227.186.
20. On August 23, 2022, notice of the September 27, 2022, public hearing on the Proposed Draft was mailed in accordance with Code Section 33.740.020.B, Public notice for the hearing.
21. On September 27, 2022, the Planning and Sustainability Commission (renamed the Planning Commission in March 2023) held a public hearing on the Proposed Draft.
22. On November 22, 2022, the Planning and Sustainability Commission voted to forward the FRP to City Council.
23. On August 15, 2023, notice of the August 30, 2023, public hearing on the recommended draft was mailed in accordance with Code Section 33.740.030.B, Notice.
24. On August 16, 2023, the *Floodplain Resilience Plan Recommended Draft* was released for public review.
25. The Findings of Fact Report, attached as Exhibit A, includes additional findings demonstrating consistency with the Statewide Planning Goals, Metro Urban Growth Management Functional Plan, and the City of Portland 2035 Comprehensive Plan.

NOW, THEREFORE, the Council directs:

- A. Adopt Exhibit A, Findings of Fact Report As Amended, as additional findings.
- B. Adopt the commentary in Exhibit B, Floodplain Resilience Plan Recommended Draft As Amended, dated October 2023, as legislative intent and further findings.
- C. Amend Title 33, Planning and Zoning, of the Municipal Code of the City of Portland, as shown in Exhibit B, Floodplain Resilience Plan

Recommended Draft As Amended, dated October 2023, but excluding the amendments to Map 475-6 in 33.475 (River Overlay Zones).

D. Amend Map 475-6 in Chapter 33.475 (River Overlay Zones) as shown in Exhibit B, Floodplain Resilience Plan Recommended Draft As Amended, dated October 2023.

E. Amend the official Zoning Map as shown in Exhibit B, Floodplain Resilience Plan Recommended Draft As Amended, dated October 2023, but excluding the zoning map amendments shown on quarter sections 2828, 2829, 2929, 2930, 3030, 3130, 3229, 3230, 3330 and 3331.

F. Amend the official Zoning Map as shown in Exhibit B, Floodplain Resilience Plan Recommended Draft As Amended, dated October 2023, on quarter sections 2828, 2829, 2929, 2930, 3030, 3130, 3229, 3230, 3330 and 3331.

Section 2. Directives A, B, C and E shall be in full force and effect on March 1, 2024. Directives D and F shall be in full force and effect on October 1, 2024.

Section 3. If any section, subsection, sentence, clause, phrase, diagram, or drawing contained in this ordinance, or the map, report, inventory, analysis, or document it adopts or amends, is held to be deficient, invalid, or unconstitutional, that shall not affect the validity of the remaining portions. The Council declares that it would have adopted the map, report, inventory, analysis, or document each section, subsection, sentence, clause, phrase, diagram, and drawing thereof, regardless of if any one or more sections, subsections, sentences, clauses, phrases, diagrams, or drawings contained in this Ordinance, may be found to be deficient, invalid, or unconstitutional.

Documents and Exhibits

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| <p> Exhibit A - Findings of Fact Report - As Amended
(https://www.portland.gov/sites/default/files/council-documents/2023/exhibit_a_leg_findings_floodplain_resilience_plan_final.pdf)</p> | 1.31 MB |
| <p> Exhibit B - Floodplain Resilience Plan Recommended Draft - As Amended
(https://www.portland.gov/sites/default/files/council-documents/2023/exhibit_b_floodplain_resilience_plan_rec_draft_as_amended_final.pdf)</p> | 22.49 MB |
| <p> Ordinance As Amended - strikethrough / underline version
(https://www.portland.gov/sites/default/files/council-documents/2023/777-ordinance-strikethrough-underline-version.pdf)</p> | 42.86 KB |
| <p> Approved Amendments
(https://www.portland.gov/sites/default/files/council-documents/2023/items-777-and-778-proposed-amendments_2.pdf)</p> | 26.83 KB |

 [Approved Amendments Memorandum](#)

10.21 MB

(https://www.portland.gov/sites/default/files/council-documents/2023/2023_aug_floodplain_resilience-plan_cc_amendment_package_final-reduced-file-size.pdf)

An ordinance when passed by the Council shall be signed by the Auditor. It shall be carefully filed and preserved in the custody of the Auditor (City Charter Chapter 2 Article 1 Section 2-122)

Passed as amended by Council
October 11, 2023

Auditor of the City of Portland
Simone Rede

Impact Statement

Purpose of Proposed Legislation and Background Information

The Floodplain Resilience Plan amends the zoning maps and portions of the Portland Zoning Code (Title 33) with the intent to reduce the impacts of flooding and prevent further degradation of floodplain habitat. The plan responds to the recommendations of a Biological Opinion (BiOp) issued in 2016 by the National Marine Fisheries Service (NMFS) in regard to the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP), and the Draft Implementation Plan FEMA released in October of 2021 in response to the 2016 BiOp. The Floodplain Resilience Plan also supports existing City goals, objectives and policies in the *2035 Comprehensive Plan*, which contains directives to reduce hazards, address environmental equity, enhance the natural environment and make Portland's urban environment more resilient.

Financial and Budgetary Impacts

The Floodplain Resilience Plan does not amend the budget, change staffing levels, reclassify staff, or authorize new spending or other financial obligations (IGAs, contracts, etc.) and, therefore, there are no expected long term financial or budgetary impacts to the City. As the Floodplain Resilience Plan contributes to more effective floodplain management throughout the city, the plan may reduce long-term costs by minimizing flood impacts to City infrastructure and other structures located in the floodplain.

In terms of staff time, this legislation is expected to have minimal impacts on city staffing resources, specifically staff in the Bureau of Development Services. The Floodplain Resilience Plan will change the location of floodplain-related overlay zones (River Environmental, Environmental Conservation, and Environmental Protection), adding overlay zoning to some properties, and deleting from others. In addition the plan amends zoning code regulations that apply to development in the floodplain. Bureau of Development Services (BDS) staff review permits and land use

review applications to determine if applicants are meeting environmental exemptions, standards, or approval criteria.

Training for some staff in the Bureau of Development Services (BDS) will be required prior to implementation of the code amendments in October 2025, . There also might be the need for staff to update handouts or webpages to explain the amendment regulations to the public.

Long term impacts on staff time are not expected to be significant. There may be an increase in the number of Environmental or River Environmental plan checks or land use reviews as a result of the additional overlay zoning, which may result in increased staff time reviewing projects. However, this potential increase will not have a financial impact to the City as the current fee system provides cost recovery for these types of reviews.

In summary, the Floodplain Resilience Plan is not expected to result in any significant financial or budgetary impacts to the City.

Community Impacts and Community Involvement

The Floodplain Resilience Plan will result in additional environmental and river environmental overlay zoning on several lots and parcels. This will impact property owners, including business. The additional zoning may increase the cost of development, however, over the long-term, the regulations will reduce costs because they will result in greater protection from the negative impacts of flooding.

It is anticipated that implementation of the plan will have a positive impact on communities and City livability. The plan builds resilience to climate change by reducing the impacts of flooding and preventing further degradation of natural resources and habitat. Reducing the impacts of flooding and preserving habitat provides benefits to human physical and mental health, protects private property and public infrastructure, and supports the intrinsic value of natural ecosystems and biodiversity, which all contribute to a healthy and equitable Portland.

Community engagement activities for this project are summarized in the Recommend Draft report. Public engagement efforts for the plan have been guided by the City of Portland Public Involvement Principles adopted by the Portland City Council in August 2010.

The Planning and Sustainability Commission (PSC) held a public hearing on the Floodplain Resilience Plan on September 27, 2022, and the Commission voted to recommended the plan to City Council on November 22, 2022. There were no significant objections in testimony submitted to the PSC to the zoning map and zoning code amendments in the plan. The large majority of testimony submitted to the PSC expressed concerns related to the timing of implementation of related floodplain management updates to the City's building regulations (Title 24) and future zoning map and zoning code projects expected for the Columbia Corridor, Willamette River North Reach and Johnson Creek floodplains. The PSC made minor amendments to

the plan that were focused on clarify requirements and improving implementation and updating zoning maps to address site-specific conditions.

The following groups are expected to testify at City Council:

- Property owners subject to proposed changes
- Environmental stakeholders

100% Renewable Goal

n/a

Agenda Items

731 Time Certain in [August 30-31, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/8/30) (<https://www.portland.gov/council/agenda/2023/8/30>)

Continued

Motion to amend the Title 33 Ordinance package with substantive and technical changes: Moved by Rubio and seconded by Ryan. Vote not called.

Oral record closed. Written record closed September 1, 2023 at 5:00 p.m.
Continued to September 13, 2023 at 2:00 p.m. Time Certain

777 Time Certain in [September 13-14, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/9/13) (<https://www.portland.gov/council/agenda/2023/9/13>)

Continued As Amended

Motion to amend the Title 33 Ordinance package with substantive and technical changes: Moved by Rubio and seconded by Ryan. (Y-5)

Motion to amend Section 2 to read as follows, Directives D and F shall take effect on October 1, 2024. Directives A, B, C, and E will still take effect on March 1, 2024: Moved by Rubio and seconded by Mapps. (Y-5)

Continued to October 4, 2023 at 2:00 p.m. Time Certain As Amended

832 Time Certain in [October 4, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/10/4) (<https://www.portland.gov/council/agenda/2023/10/4>)

Passed to second reading as amended

Motion to update the findings and reconcile documents to reflect the amendments: Moved by Mapps and seconded by Ryan. (Y-3)

Passed to second reading October 11, 2023 at 9:45 a.m. Time Certain as amended.

**841 Time Certain in [October 11, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/10/11)
(<https://www.portland.gov/council/agenda/2023/10/11>)**

Passed As Amended

Commissioner Mingus Mapps Yea

Commissioner Carmen Rubio Yea

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Yea

Mayor Ted Wheeler Yea