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191478

Ordinance

Amend Flood Hazard Areas Code to comply with Federal Emergency Management Agency National Flood Insurance Program requirements and modify compensatory excavation and removal requirements (amend Code Chapter 24.50 and 24.10)

Passed

Amended by Council

The City of Portland ordains:

Section 1. The Council finds:

1. The Bureau of Development Services (BDS) promotes safety, livability, and economic vitality through efficient and collaborative application of building and development codes.
2. BDS administers Portland City Code Chapter 24.50 – Flood Hazard Areas.
3. The City is required to comply with Federal Emergency Management Administration (FEMA) National Flood Insurance Program (NFIP) requirements related to development in flood hazard areas so that affordable flood insurance is available to residents and property owners and federal disaster relief funding is available to the City.
4. The State of Oregon Department of Land Conservation and Development (DLCD) works with FEMA to develop a statewide model ordinance with language that ensures compliance with the minimum standards for participating in the NFIP. The model ordinance includes standards and provisions that encourage sound floodplain management based on the minimum requirements of the NFIP found in the Code of Federal Regulations and the Oregon Specialty Codes (State Building Codes) that regulate development in the state.
5. DLCD replaced the 2014 model ordinance in 2019. The updated ordinance more closely aligns with the language in the Code of Federal Regulations and incorporates relevant standards from the State Building Codes. BDS administers and enforces the State Building Codes through Portland City Code Titles 24 (Building

Introduced by

[Commissioner Carmen Rubio](#)

Bureau

[Development Services \(BDS\)](#)

Contact

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Development Services

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📞 [503-823-4936](tel:503-823-4936)

📞 [711](#) Oregon Relay Service

Date and Time Information

Requested Council Date

October 11, 2023

Changes City Code

- Regulations), 25 (Plumbing Regulations), 26 (Electrical Regulations), and 27 (Heating and Ventilating Regulations).
6. In 2020, a representative from FEMA Region X conducted a Community Assistance Contact meeting with BDS to review the City's current flood hazard regulations. As a result of that meeting, FEMA identified changes needed to bring Title 24 into compliance with the NFIP.
 7. FEMA has given the City until early 2024 to adopt the required changes to its flood hazard regulations. The amendments in this ordinance (see Exhibit A) are primarily in response to the Community Assistance Contact meeting analysis.
 8. This ordinance also adopts the City-developed Composite February 1996 Flood Inundation Area Map that combines the February 1996 Flood Inundation Area from the 1998 Metro Council Title 3 map (adopted via Metro Council Ordinance No. 98-730C on June 18, 1998) (Metro Title 3 Map) with the results of a hydraulic model of the Lower Willamette River within the Central and South Reach of the Willamette River. These changes are consistent with performance standards of Metro's Urban Growth Management Functional Plan (UGMFP), codified in Metro Council Code Chapter 3.07. The City's map is substantially similar to the February 1996 Flood Inundation Area depicted on the Metro Title 3 Map.
 9. Consistent with Metro Council Code Chapter 3.07 and the Metro Title 3 Map, and in recognition of ongoing development, employment, and housing opportunities, the exemptions in the Metro Title 3 Map for areas such as South Waterfront will be carried forward in this ordinance, including flood storage compensation exemptions.
 10. Under Section 7 of the federal Endangered Species Act (ESA), FEMA is required to consult with the US Fish and Wildlife Service or the National Marine Fisheries Service (NMFS) when any action FEMA carries out, funds, or authorizes may affect a listed endangered or threatened species or adversely modify the habitat of such species.
 11. In 2009, various environmental groups sued FEMA, alleging its Oregon floodplain development rules did not protect listed endangered species, including salmon and steelhead.
 12. A settlement agreement was reached in 2010 and FEMA initiated formal consultation with NMFS in July 2011 with the submittal of a Programmatic Biological Assessment on the NFIP for listed species and their critical habitat.
 13. On April 4, 2016, NMFS completed its analysis of the effects of the NFIP on species listed as threatened or endangered under the ESA and issued a Biological Opinion (BiOp).
 14. In the BiOp, NMFS directed FEMA to make changes to the NFIP in Oregon to ensure that FEMA's flood insurance program complies with the ESA and will not result in jeopardy to protected salmon and steelhead or to their critical habitat. The BiOp included a Reasonable and Prudent Alternative (RPA) to NFIP performance standards that, if implemented, will avoid continued jeopardy for the listed species and habitat described in the opinion.

15. In October 2021, FEMA published a draft 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.
16. Local compliance with FEMA's updated NFIP program will be required in Portland to maintain access to FEMA's federally-backed flood insurance and disaster relief funds for Portland residents and businesses.
17. 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.
18. Since 2016, several bureaus have been working together to craft a citywide strategy and response to the BiOp. The bureaus developed a five-year flood management update workplan in 2019 that includes a variety of regulatory changes across multiple chapters of City Code. Among other proposals, the workplan identified potential amendments to land use requirements in Title 33 (Zoning Code) and Chapter 24.50, including those in this ordinance. Future projects will continue implementation of the City's workplan.
19. The City worked with FEMA while developing the workplan 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 requirements will take a significant amount of time.
20. The existing language in Chapter 24.50 requires that fill placed below the flood elevation be balanced by the removal of an equal volume of soil to prevent the loss of water storage volume so that water flow will not be impeded during flooding. This is known in the current version of Chapter 24.50 and Exhibit A as "cut and fill" and in Exhibit B as "compensatory excavation."
21. The Chapter 24.50 amendments shown in Exhibit B to this ordinance are designed to increase the flood storage compensation volume required to offset floodwater displaced by soil or structures placed below the flood elevation.
22. This ordinance will create areas where the ratio of flood storage compensation will be increased to 2:1 or 1.5:1 in certain areas based on the volume of floodwater displaced by the placement of fill or structures below the flood elevation (see Exhibit B). The purpose of these changes is to better align City regulations with the BiOp's recommendations.
23. To provide more certainty for property owners, this ordinance allows a project with an application for a building or development permit for development approved by an Environmental Review, Greenway Review, South Waterfront Greenway Review, Land Division, Conditional Use Master Plan, Planned Development Review, or River Review land use decision that has not expired to vest in the compensatory flood storage compensation requirements in effect on

the date the land use application was filed. A building permit must be issued before the expiration of the final land use decision or within 10 years of final land use decision, depending on the type of land use decision. Early assistance meetings do not meet the requirement for vesting.

24. The changes to the flood storage compensation ratios do not apply to industrial lands because the development of those lands is tied to the City's Economic Opportunities Analysis (EOA), which is not yet complete and may contain information that would make this ordinance inconsistent with the EOA.
25. The changes to the flood storage compensation ratios do not apply to proposed projects in areas such as the Willamette River North Reach, Johnson Creek, or Tryon Creek because of complications in these areas, including potential conflicts with the EOA and lack of accurate mapping. Regulating without accurate data would have unintended consequences, particularly for some of the City's most vulnerable residents. BDS will develop the regulations for these areas as part of subsequent phases of the City's workplan.
26. Over the past few years, the City has worked to ensure that a limited amount of compensatory flood storage mitigation is available via third parties elsewhere on the Willamette River. Additional sites along the Willamette River have been identified as potential future mitigation banks to provide compensatory storage for Title 24. However, they are not currently available due to long lead times; complexity; sequencing of funding, design, construction, and long-term management; and federal and state regulatory approvals for mitigation bank development. The City continues to dedicate staff and funding to work through these issues to make comprehensive mitigation banks available within FEMA's expected compliance deadline.
27. As described above, this ordinance amends Title 24, the City's Building Regulations Code. This ordinance is not a land use decision and does not implement any Comprehensive Plan or Statewide Planning Goal. Council finds that, while there are policies in the City's Comprehensive Plan generally related to floodplain management, there is no clear or direct connection between Title 24 or this ordinance's changes to Chapter 24.50. Specifically, there are no Comprehensive Plan policies that speak to the City's regulation of compensatory excavation. The Council finds that Title 33 implements the Comprehensive Plan policies related to floodplain management.
28. This ordinance also adds a provision to Code Section 24.10.072 A. that requires a permit for work on structures located within the flood hazard area, regardless of whether such structures are exempt from obtaining a permit under the State Building Codes.
29. Per Resolution No. 37577, which directs that the effective dates of development-related City Code changes should be either October 1 or March 1, the effective date of amendments in Exhibit A to this ordinance will be March 1, 2024.



30. In order to avoid inconsistencies between the FEMA implementation plan and the Title 24 changes in this ordinance and to allow for any further Code changes necessitated by that plan, the effective date of the amendments in Exhibit B to this ordinance will be October 1, 2024.
31. The Council finds this ordinance strikes a necessary balance through promoting safety, livability and economic vitality. Council heard testimony concerned that the delayed implementation and areas not subject to these regulations would impact the flood storage capacity. The Council recognizes that the flood storage compensation requirements provide some protection to people and property by ensuring flood storage is not reduced and is interested in finding additional ways to further mitigate development.


NOW, THEREFORE, the Council directs:


- A. Portland City Code Chapter 24.50 and Section 24.10.072 are amended as set forth in Exhibit A. The effective date of the amendments in Exhibit A to this ordinance is March 1, 2024.
- B. Portland City Code Chapter 24.50 is amended as set forth in Exhibit B. The effective date of the amendments in Exhibit B to this ordinance is October 1, 2024.
- C. Under the leadership of the Office of Governmental Relations, the City of Portland will establish a policy position for 2024 and 2025 state legislative sessions of support for state policies, programs, or resources that support environmental mitigation. Policies should include funding to provide or purchase mitigation credits in the floodplain along the Willamette, and additional strategies to help mitigate development of housing or other community needs.


Section 2. If any provision of this Chapter, or its application to any person or circumstance, is held invalid by any court, the remainder of this Chapter and its application to other persons and circumstances, other than that which has been held invalid, shall not be affected by such invalidity, and to that extent the provisions of this Chapter are declared to be severable.

Documents and Exhibits

-  [Ordinance As Amended - strikethrough / underline version](https://www.portland.gov/sites/default/files/council-documents/2023/778-ordinance-strikethrough-underline-version.pdf) 60.71 KB
(<https://www.portland.gov/sites/default/files/council-documents/2023/778-ordinance-strikethrough-underline-version.pdf>)
-  [Approved Amendments](https://www.portland.gov/sites/default/files/council-documents/2023/items-777-and-778-proposed-amendments_1.pdf) 26.83 KB
(https://www.portland.gov/sites/default/files/council-documents/2023/items-777-and-778-proposed-amendments_1.pdf)

 [Exhibit A \(https://www.portland.gov/sites/default/files/council-documents/2023/chapter-24.50-exhibit-a-final-8-24-23.pdf\)](https://www.portland.gov/sites/default/files/council-documents/2023/chapter-24.50-exhibit-a-final-8-24-23.pdf) 236.93 KB

 [Exhibit B \(https://www.portland.gov/sites/default/files/council-documents/2023/chapter-24.50-exhibit-b-final-8-24-23.pdf\)](https://www.portland.gov/sites/default/files/council-documents/2023/chapter-24.50-exhibit-b-final-8-24-23.pdf) 210.63 KB

 [Supplemental Information - Code and Commentary for Exhibits A and B \(https://www.portland.gov/sites/default/files/council-documents/2023/supplemental-information-code-and-commentary-for-exhibits-a-and-b.pdf\)](https://www.portland.gov/sites/default/files/council-documents/2023/supplemental-information-code-and-commentary-for-exhibits-a-and-b.pdf) 601.11 KB

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 City is required to comply with the Federal Emergency Management Administration (FEMA) National Flood Insurance Program (NFIP) requirements related to development in flood hazard areas so that affordable flood insurance is available to residents and property owners and federal disaster relief funding is available to the City. The state works with FEMA to develop model code language that ensures compliance with the minimum standards for participating in the NFIP. The state updated its model code language in 2019. In addition, a FEMA representative reviewed the City's floodplain regulations for compliance with federal regulations and consistency with the state model ordinance. The amendments in this ordinance (Exhibit A) amend Portland City Code Chapter 24.50 and Chapter 24.10 to incorporate the changes required by FEMA based on its review.

In addition to the FEMA flood insurance related changes, this ordinance adds provisions that are designed to increase the flood storage compensation volume required to offset floodwater displaced by soil or structures placed below the flood elevation (see Exhibit B). The ordinance will create areas where the ratio of flood storage compensation will be increased based on the volume of floodwater displaced. It will also adopt an updated flood inundation area map. These changes are in response to a Biological Opinion (BiOp) issued in 2016 by the National Marine Fisheries Service (NMFS) that analyzes the impacts of the NFIP on endangered

species and the FEMA Implementation Plan draft for Oregon to address issues raised in the BiOp.

Financial and Budgetary Impacts

The amendments to Chapter 24.50 in Exhibit A align language in the City Code with the state model ordinance language required to comply with FEMA NFIP requirements. There are no known budgetary impacts as a result of these changes.

The amendments to Chapter 24.50 in Exhibit B related to flood storage compensation could result in fiscal impacts to the City if the City chooses to purchase land to assist developers in providing off-site mitigation for development within the floodplain. The cost of such a program is not known at this time.

Community Impacts and Community Involvement

The ordinance will help maintain lower flood insurance rates for residents and property owners in the City.

The ordinance will also exempt industrial properties and maintain current exemptions for properties on the South Waterfront and allow for a building or development permit application to vest in the compensatory excavation requirements in effect at the time the related land use application was filed for specified application types. These are intended to help property owners have certainty and predictability by maintaining the requirements at the time the project is commenced. The ordinance also increases the compensatory excavation requirements, which could increase the cost of development in the floodplain.

BDS conducted outreach on the ordinance via a Lunch and Learn that was attended by property owners, environmental representatives, and City staff. In addition, BDS met with representatives from the National Association for Industrial and Office Parks (NAIOP), which is national commercial real estate association, the Building Owners and Managers Association of Oregon (BOMA), the City's Development Review Advisory Committee, and various environmental groups to get input on the ordinance.

Testifiers are likely to include environmental groups and property owners with properties along the Willamette River.

100% Renewable Goal

This project does not have any known impacts on the City's renewable energy goals.

Agenda Items

732 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

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

778 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 update Directive B effective date to October 1, 2024: Moved by Mapps and seconded by Ryan. (Y-5)

Motion to add Finding 31 and Directive C: Moved by Mapps and seconded by Rubio. (Y-5)

Motion to add a new Section 2 to the Title 24 Ordinance to incorporate a severability clause: Moved by Rubio and seconded by Gonzalez. (Y-5)

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

833 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

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

842 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