

ORDINANCE No.

*Amend City Code and the Special Flood Hazard Map to adopt updated FEMA special flood hazard area maps and ensure regulations are consistent. (Amend Titles 24 and 33, Special Flood Hazard Map) (Ordinance)

The City of Portland Ordains:

Section 1. The Council finds:

General Findings

1. The Federal Emergency Management Agency (FEMA) maintains maps of areas around the country that are prone to flooding. They update these maps periodically. The current maps were last updated in 2004 and were adopted by the City of Portland.
2. The maps maintained by FEMA are called the Flood Insurance Rate Maps (FIRMs). They are also referred to as the maps of special flood hazard areas.
3. The FEMA maps show the land area covered by the floodwaters of the base flood. The base flood is the flood having a one percent chance of being equaled or exceeded in any given year. This is the regulatory standard also referred to as the "100-year flood."
4. After conducting a public process, including notice as required in 44 CFR 9.8, FEMA has revised and updated nine of the 26 FIRM Panels that cover the City of Portland. The revised and updated panels affect special flood hazard areas in the North Reach of the Willamette River, Columbia River, Columbia Slough, Peninsula Drainage Districts No. 1 and 2, and Multnomah Drainage District No. 1.
5. FEMA has issued a Letter of Final Determination and requires the revised FIRMs to be adopted by municipalities and become effective by November 26, 2010.
6. The changes to FEMA's maps are primarily because of better information: FEMA was able to map contours and potential flood areas using recent and more accurate technology called LIDAR. The maps indicate which properties—or portions of properties—are in or out of the special flood hazard areas. These areas are often called the "100-year floodplain."
7. Some areas of Portland are subject to periodic flooding. This flooding can cause the loss of life, health and property; disrupt commerce and the provision of governmental services, and require extraordinary public expenditures for flood protection and relief. Flooding losses harm the public health, safety, and general welfare of the city.
8. When communities adopt flood hazard regulations that apply within the areas mapped by FEMA, communities in those areas are eligible to participate in the National Flood Insurance Program (NFIP). The regulations limit the kinds of development allowed in the areas likely to flood, and specify building regulations that limit damage when there is a flood. The NFIP makes flood insurance available to homeowners, renters, and business owners at a lower rate than private insurance companies would be able to provide.
9. The City's flood program and regulations are in City Code Chapter 24.50 and in several chapters of Title 33, Planning and Zoning.
10. Portland participates in the NFIP. However, to maintain compliance with federal programs—and maintain the ability for community members to obtain flood insurance in Portland—Portland must update the maps of flood-prone areas in the city to reflect the changes made by the November 26,

2010 FEMA map update. Portland's maps must exactly match FEMA's maps, without variation. The City also has to update some references in City Code by that date.

11. Meeting the requirements necessary to participate in the NFIP is in the public interest. It is also in the public interest to adopt the updated maps and make minor, concurrent amendments to City Titles in order to protect human life and health; minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public, minimize prolonged business interruptions, and minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, streets, and bridges.
12. On May 26, 2010, the Department of Land Conservation and Development (DLCD) notified the City of Portland that the 2010 FEMA maps were considered "new hazard inventory information" requiring a response under Statewide Planning Goal 7. Although Goal 7 provides local governments three years to complete the required response, the City must adopt the new maps by November 26, 2010 to preserve Portland's eligibility under the NFIP program.
13. On September 8, 2010, notice of the proposed action was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by OAR 660-18-020.
14. On September 24, 2010 notice of the proposal was sent to 538 people and organizations on the Bureau of Planning and Sustainability's Legislative Mailing List. This includes all neighborhood and business associations. The notice also informed them of the hearing to be held before the Planning and Sustainability Commission.
15. On October 1, 2010 supplemental notice of the proposed action was mailed to the Department of Land Conservation and Development, along with specific proposed amendments to the Portland City Code.
16. On October 5, 2010 notice of the proposal as required by ORS 227.186 was sent to approximately 225 property owners potentially affected by proposed changes. This notice is also known as a "Measure 56 notice." The notice was sent to the owners of property where no portion of the property is now within the special flood hazard area, but some or all of the property will be in the special flood hazard area under the proposed changes.
17. The boundaries of the special flood hazard area are changing on 641 properties where some portion of the property is now within the special flood hazard area, and some or all of the property will be in the special flood hazard area under the proposed changes. The "Measure 56" notice was not sent to the owners of these properties because the regulations that affect their use of the property are not changing in a way that will impose additional limitations or restrictions on the use of these properties.

The FEMA maps show the special flood hazard area, which is the land area covered by the floodwaters of the base flood. The base flood is the flood having a one percent chance of being equaled or exceeded in any given year. This is the regulatory standard also referred to as the "100-year flood."

FEMA has predicted how deep the water will be—the elevation to which it will rise—at various locations during the 100-year flood. Their maps show the 100-year flood elevations and the areas of Portland that are predicted to be inundated by floodwater during a 100-year flood. However, the maps are not exact: they are drawn with a somewhat broad brush, and are based on the best data available, which might be of limited accuracy.

Because these maps are not exact, when any portion of a property is shown to be in the special flood hazard area, the City's regulations require additional information to establish up-to-date, site-specific,

and accurate elevation information. The results of the survey determine the location of the actual flood elevation and will determine what regulations apply to the property.

Although the maps of the special flood hazard area are changing, the actual elevation contours of each property have not changed, and so the requirements that each of these properties is subject to are the same.

18. On October 5, 2010, the *FEMA Flood Map Update Project: Proposed Draft* was published. The report was available to City bureaus and the public, and mailed to all those requesting a copy. An electronic copy was posted to the Bureau of Planning and Sustainability's website.
19. On October 26, 2010, the Planning and Sustainability Commission held a public hearing on the *FEMA Flood Map Update Project: Proposed Draft*. They heard testimony, and recommended that City Council adopt the proposed changes to City Code and maps.
20. On October 26, 2010, notice of the City Council hearing on this proposal was sent to all those who had written or emailed with comments on the proposal. Notice was also given by hand to all those who testified in person at the hearing of the Planning and Sustainability Commission.
21. On October 27, 2010, the *FEMA Flood Map Update Project: Recommended Draft* was published. The report was available to City bureaus and the public, and mailed to all those requesting a copy. An electronic copy was posted to the Bureau's website.
22. On November 10, 2010, City Council held a public hearing on the *FEMA Flood Map Update Project: Recommended Draft*. They heard testimony, and voted to amend the City Code and maps as shown in the Recommended Draft.
23. On November 15, 2010, notice of the adoption was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by OAR 660-18-020.

Findings on Statewide Planning Goals

24. State planning statutes require cities to adopt and amend comprehensive plans and land use regulations in compliance with state land use goals. Only the state goals addressed below apply.
25. **Goal 1, Citizen Involvement**, requires provision of opportunities for citizens to be involved in all phases of the planning process. The preparation of these amendments has provided numerous opportunities for public involvement, including:
 - On September 8, 2010, notice of the proposed action was mailed to the Department of Land Conservation and Development in compliance with the post-acknowledgement review process required by OAR 660-18-020.
 - On September 24, 2010 notice of the proposal was sent to 538 people and organizations on the Bureau of Planning and Sustainability's Legislative Mailing List. This includes all neighborhood and business associations. The notice also informed them of the hearing to be held before the Planning and Sustainability Commission.
 - On October 1, 2010 supplemental notice of the proposed action was mailed to the Department of Land Conservation and Development, along with specific proposed amendments to the Portland City Code.
 - On October 5, 2010 notice of the proposal as required by ORS 227.186 was sent to approximately 225 property owners potentially affected by proposed changes. This notice is also known as a "Measure 56 notice." The notice was sent to the owners of property where no portion of the

property is now within the special flood hazard area, but some or all of the property will be in the special flood hazard area under the proposed changes.

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 - On October 26, 2010, the Planning and Sustainability Commission held a public hearing on the FEMA Flood Map Update Project: Proposed Draft. They heard testimony.
 - On October 26, 2010, notice of the City Council hearing on this proposal was sent to all those who had written or emailed with comments on the proposal. Notice was also given by hand to all those who testified in person at the hearing of the Planning and Sustainability Commission.
 - On October 27, 2010, the FEMA Flood Map Update Project: Recommended Draft was published. The report was available to City bureaus and the public, and mailed to all those requesting a copy. An electronic copy was posted to the Bureau's website.
 - On November 10, 2010, City Council held a public hearing on the FEMA Flood Map Update Project: Recommended Draft. They heard testimony.
 - Staff of the Bureau of Development Services and the Bureau of Planning and Sustainability engaged in telephone and email exchanges with property owners and other interested parties in regards to project provisions.
 - The Bureau of Planning and Sustainability maintained and updated, as needed, a project web site that included basic project information, announcements of public events, project documents and staff contact information.
26. **Goal 6, Air, Water, and Land Resource Quality**, requires the maintenance and improvement of the quality of air, water, and land resources. The amendments support this goal because they continue to protect land in special flood hazard areas from development that would have a negative impact on other properties during flooding, or increase the volume and velocity of floodwaters.
27. **Goal 7, Areas Subject to Natural Disasters and Hazards**, requires the protection of people and property from natural hazards. The amendments support this goal because they continue to protect people and property from flooding, and maintain Portland's eligibility to participate in the NFIS program.

The amendments to the City Code are clarifications of terminology, and also bring the City into conformance with recent court cases; the court cases clarify that the City must refer to the maps by their specific adoption dates rather than simply "the current maps." There are no substantive changes to the City Code.

The changes to the maps are based on update maps produced by FEMA. Portland has in place the maps FEMA updated in 2004. The FEMA maps show the land area covered by the floodwaters of the base flood. The base flood is the flood having a one percent chance of being equaled or exceeded in any given year. This is the regulatory standard also referred to as the "100-year flood."

FEMA has updated maps for parts of Portland; the new maps take effect on November 26, 2010. It is these 2010 maps that Portland is adopting. These also amend the City's inventory of natural hazards. The changes to FEMA's maps are primarily because of better information: FEMA was able to map contours and potential flood areas using recent and more accurate technology called LIDAR. The maps indicate which properties—or portions of properties—are in or out of the special flood hazard areas. These areas are often called the "100-year floodplain."

Adoption of special flood hazard area maps that are more accurate will increase Portland's ability to protect people and property from flooding. Therefore, this goal is met.

28. **Goal 12, Transportation**, requires provision of a safe, convenient, and economic transportation system. The Oregon Transportation Planning Rule (TPR) was adopted in 1991 and amended in 1996 and 2005 to implement State Goal 12. The TPR requires certain findings if the proposed Comprehensive Plan Map amendment, Zone Change, or regulation will significantly affect an existing or planned transportation facility. This proposal will have no effect on existing or planned transportation facilities. The proposed map and code amendments update maps of the special flood hazard areas, but do not change what uses are allowed, the amounts of uses allowed, or the amount of development allowed.
29. **Goal 15, Willamette River Greenway**, requires protection, conservation, enhancement and maintenance of the natural, scenic, historic, agricultural, economic, and recreational qualities of lands along the Willamette River. Under this Goal, any "intensification" of land use after December 6, 1975 requires an examination against the requirements of the Goal. Because adoption of the updated FEMA maps does not intensify land use, this goal is met.

Findings on Metro Urban Growth Management Functional Plan

30. **Title 1, Requirements for Housing and Employment Accommodation**, requires that each jurisdiction contribute its fair share to increasing the development capacity of land within the Urban Growth Boundary. This requirement is to be generally implemented through citywide analysis based on calculated capacities from land use designations. The amendments are consistent with this title because they do not increase the development capacity of the city.
31. **Title 2, Regional Parking Policy**, regulates the amount of parking permitted by use for jurisdictions in the region. The amendments are consistent with this title because they do not affect the parking regulations.
32. **Title 3, Water Quality, Flood Management and Fish and Wildlife Conservation**, protects the public's health and safety by reducing flood and landslide hazards, controlling soil erosion and reducing water pollution by avoiding, limiting, or mitigating the impact of development on streams, rivers, wetlands, and floodplains. Title 3 specifically implements Statewide Land Use Goal 7. The findings for that statewide goal are incorporated here to show that the amendments are consistent with this Title.
33. **Title 4, Industrial and Other Employment Areas**, limits retail and office development in Employment and Industrial areas to those that are most likely to serve the needs of the area and not draw customers from a larger market area. The amendments are consistent with this title because they do not affect the development capacity of industrial or employment areas.
34. **Title 7, Affordable Housing**, ensures opportunities for affordable housing at all income levels, and calls for a choice of housing types. The amendments are consistent with this title because they do not affect the development capacity of residential areas.

Findings on Portland's Comprehensive Plan Goals

35. Only the Comprehensive Plan goals addressed below apply.
36. **Policy 1.4, Intergovernmental Coordination**, requires continuous participation in intergovernmental affairs with public agencies to coordinate metropolitan planning and project development and maximize the efficient use of public funds. The amendments support this policy because a number of other government agencies were notified of this proposal and given the opportunity to comment. These agencies include the Oregon Department of Land Conservation and Development, Metro, TriMet, and Multnomah County.
37. **Goal 8, Environment**, calls for the maintenance and improvement of the quality of Portland's air, water, and land resources, as well as the protection of neighborhoods and business centers from noise pollution. **Policy 8.12, National Flood Insurance Program**, calls for the City to retain qualification in the National Flood Insurance Program (NFIS) through implementation of a full range of floodplain management measures. Adopting the FEMA maps that take effect on November 26, 2010, along with the amendments to the City Code to accurately refer to those maps is required by FEMA if the City is to remain eligible for the NFIS program. **Policy 8.13, Natural Hazards**, calls for controlling the density of development in areas of natural hazards consistent with the provisions of the City's Building Code, Chapter 70, the Floodplain Ordinance and the Subdivision Ordinance. This policy is met because the proposed amendments to City Codes and maps will not change the effect the City's regulations have on controlling the density of development in areas prone to flooding.
38. **Goal 9, Citizen Involvement**, calls for improved methods and ongoing opportunities for citizen involvement in the land use decision-making process, and the implementation, review, and amendment of the Comprehensive Plan. This project followed the process and requirements specified in Chapter 33.740, Legislative Procedure. The amendments support this goal for the reasons found in the findings for Statewide Planning Goal 1, Citizen Involvement.
39. **Goal 10, Plan Review and Administration**, calls for periodic review of the Comprehensive Plan, for implementation of the Plan, and addresses amendments to the Plan, to the Plan Map, and to the Zoning Code and Zoning Map. **Policy 10.10, Amendments to the Zoning and Subdivision Regulations**, requires amendments to the zoning and subdivision regulations to be clear, concise, and applicable to the broad range of development situations faced by a growing, urban city. The amendments support this policy by being both clear and concise, and are applicable to all properties within the FEMA-defined special flood hazard areas.

NOW, THEREFORE, the Council directs:

- a. Adopt Exhibit A, the *FEMA Flood Map Update Project: Recommended Draft*, dated October 27, 2010.
- b. Amend Title 24, Building Regulations, as shown in Exhibit A, the *FEMA Flood Map Update Project: Recommended Draft*, dated October 27, 2010.
- c. Amend Title 33, Planning and Zoning, as shown in Exhibit A, the *FEMA Flood Map Update Project: Recommended Draft*, dated October 27, 2010.
- d. Adopt the commentary in Exhibit A, the *FEMA Flood Map Update Project: Recommended Draft*, dated October 27, 2010, as legislative intent and as further findings.
- e. Amend the special flood hazard areas Map as shown in Exhibit B, *FEMA Special Flood Hazard Areas (effective 11/26/2010)*.
- f. Update the City's inventory of natural hazards to conform to the map shown in Exhibit B *FEMA Special Flood Hazard Areas (effective 11/26/2010)*.

Section 2. The Council declares that an emergency exists because the maps and code amendments must be adopted by November 26, 2010 to maintain Portland's eligibility to participate in FEMA's National Flood Insurance Program; therefore, this ordinance will be effective on November 26, 2010.

Section 3. If any section, subsection, sentence, clause, phrase, diagram, designation, or drawing contained in this Ordinance, or the plan, map or code 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 plan, map, or code and each section, subsection, sentence, clause, phrase, diagram, designation, and drawing thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, phrases, diagrams, designations, or drawings contained in this Ordinance, may be found to be deficient, invalid or unconstitutional.

[Signature Block will be added by Joan].