



COMMUNITY DEVELOPMENT DEPARTMENT

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NOTICE OF DECISION

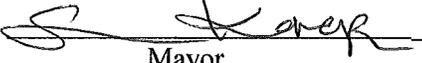
GENERAL INFORMATION

DATE OF NOTICE: September 30, 2016
FILES: DC-01-16
TYPE OF APPLICATION: Floodplain Development Code Text Amendment to the Albany Development Code (Type IV, Legislative Amendment)
REVIEW BODIES: Planning Commission and City Council
APPLICANTS: City of Albany, Community Development Department
ADDRESS/LOCATION: Not Applicable

On September 28, 2016, the Albany City Council adopted Ordinance No. 5875 to amend the Albany Development Code as described above.

A copy of Ordinance No. 5875 is available on request. The supporting documentation relied upon by the City in making this decision is available for review at the Community Development Department, City Hall, 333 Broadalbin Street SW, on the second floor. Office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday. For more information, please contact Project Planner Melissa Anderson at 541-704-2319.

The City's decision may be appealed to the Oregon Land Use Board of Appeals (LUBA). Per ORS 197.830 a notice of intent to appeal the plan and/or zoning map amendments shall be filed with LUBA no later than 21 days after notice of the decision is mailed or otherwise submitted to parties entitled to notice.


Mayor

Attachments:

- Ordinance No. 5875 with associated Exhibit

AN ORDINANCE AMENDING ORDINANCE NO. 4441, WHICH ADOPTED THE CITY OF ALBANY DEVELOPMENT CODE, BY AMENDING THE ALBANY DEVELOPMENT CODE TEXT RELATING TO FLOODPLAIN MANAGEMENT AND ADOPTING FINDINGS

WHEREAS, the Albany Planning Commission held a public hearing on August 15, 2016, and considered public testimony on the proposed text amendments to the Albany Development Code (ADC), and recommended approval based on evidence presented in the Staff Report presented at the public hearing for City of Albany Planning File DC-01-16; and

WHEREAS, the proposed text amendments to the Albany Development Code are discussed in detail in the Staff Report, and the specific text amendments are presented as Exhibit A of this Ordinance; and

WHEREAS, the Albany City Council held a public hearing on the proposal on September 28, 2016, and reviewed the findings of fact and testimony presented at the public hearing and then deliberated.

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

Section 1: The Findings of Fact and Conclusions included in the Staff Report are hereby adopted in support of this decision.

Section 2: The Albany Development Code is hereby amended.

Passed by the Council: Sept 28, 2016

Approved by the Mayor: Sept 28, 2016

Effective Date: Oct 28, 2016



Mayor

ATTEST:



City Clerk

Adopted Code Amendments

Proposed code amendments are written in red with additions underlined and deletions in ~~strike-out~~.

ARTICLE 6 NATURAL RESOURCE DISTRICTS

FLOODPLAIN

6.070 Purpose. The Floodplain overlay district (/FP) standards are intended to manage development in the floodplain in a way that promotes public and environmental health and safety and minimizes the economic loss and social disruption caused by impending flood events. [Ord. 5746, 9/29/10]

6.075 Definitions. As used in this Article the following words and phrases have the following meanings: [Ord. 5746, 9/29/10]

Base Flood or 100-year Flood: The flood having a one percent chance of occurring in any given year.

Base Flood Elevation (BFE): The BFE is the elevation, expressed in feet above sea level, that the base flood is expected to reach.

Basement: The portion of a structure with its floor sub grade (below ground level) on all sides.

Continuous Storage Operations: Operations that continuously store equipment or materials, including, but not limited to lumber yards, automobile junkyards, logging or sawmill operations, storage yards for heavy equipment, automobile dealership lots, and other storage operations with similar impacts. These operations are included in the definition of floodplain development.

Critical Facility: A facility that needs to be operable during a flood, or for which even a slight chance of flooding might pose unacceptable risk to health and safety. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and other emergency responders, and installations that produce, use or store hazardous materials.

Datum: Until recently, the FIRMs have referenced the National Geodetic Vertical Datum of 1929 (NGVD 29). A newer more accurate vertical datum, the North American Vertical Datum of 1988 (NAVD 88), will be used for all FIRM updates. The 2010 Albany FIRMs reference the NAVD 88 datum.

NAVD 88 will be used for floodplain management purposes in the City of Albany. The conversion factor from NGVD 29 to NAVD 88 for all flooding sources in Albany is +3.38 feet. This represents an average conversion offset. This simplified uniform conversion procedure can be used for entire counties when the maximum error is not more than 0.25 feet (3 inches) for that county, which is the case for the City of Albany.

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 on either side of the floodway within the Special Flood Hazard Area (100-year floodplain). This area is subject to inundation by the base flood but conveys little or no velocity flows. Zone designations on Flood Insurance Rate Maps for Albany include A and AE. Note Floodplain Relationships diagram (Figure 6-1).

Flood Insurance Rate Map (FIRM): The official map on which FEMA has delineated the Base Flood Elevations, regulatory floodways, and Special Flood Hazard Areas.

Flood Insurance Study (FIS): The official report by the Federal Insurance Administration evaluating flood hazards and containing flood profiles, floodway boundaries and water surface elevations of the base flood.

Floodplain: The combined area of the floodway and the flood fringe. Also known as the 100-year floodplain, and the Special Flood Hazard Area. Note Floodplain Relationships diagram in Figure 6-1.

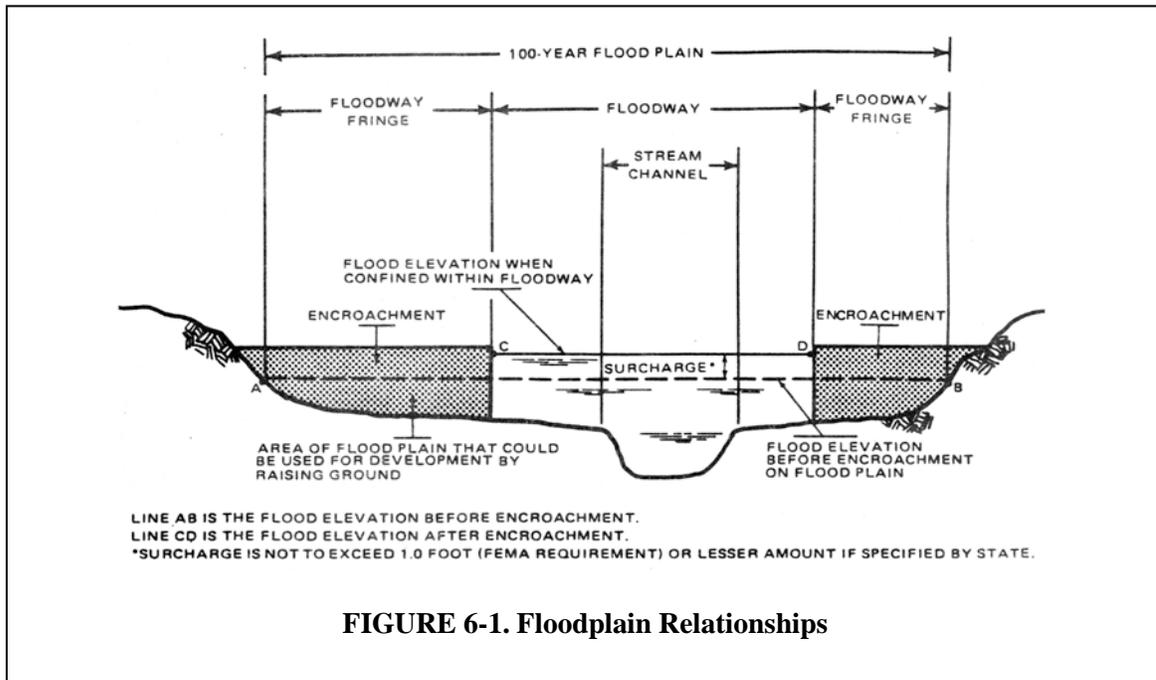


FIGURE 6-1. Floodplain Relationships

Floodplain Development: Any man-made change to real property, including but not limited to, construction or placement of buildings or other structures, fencing, mining, dredging, filling, grading, paving, excavating, land clearing, drilling, or Continuous Storage Operations in the Special Flood Hazard Area (100-year floodplain).

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 regulatory floodway is the stream channel plus that portion of the overbanks that must be kept free from encroachment in order to discharge the 1-percent-annual-chance flood without increasing flood levels by more than 1.0 foot. Note Floodplain Relationships diagram in Figure 6-1.

Hazardous Material: The Oregon Department of Environmental Quality defines hazardous materials to include any of the following:

- (a) Hazardous waste as defined in ORS 466.005;
- (b) Radioactive waste as defined in ORS 469.300, radioactive material identified by the Energy Facility Siting Council under 469.605 and radioactive substances as defined in 453.005;
- (c) Communicable disease agents as regulated by the Health Division under ORS Chapter 431 and 433.010 to 433.045 and 433.106 to 433.990;
- (d) Hazardous substances designated by the United States Environmental Protection Agency under section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;
- (e) Substances listed by the United States Environmental Protection Agency in 40 Code of Federal

- Regulations Part 302 -- Table 302.4 (List of Hazardous Substances and Reportable Quantities) and amendments;
- (f) Material regulated as a Chemical Agent under ORS 465.550;
 - (g) Material used as a weapon of mass destruction, or biological weapon;
 - (h) Pesticide residue;
 - (i) Dry cleaning solvent as defined by ORS 465.200(9).

Letter of Map Change (LOMC) means an official FEMA determination, by letter, to amend or revise effective Flood Insurance Rate Maps and Flood Insurance Studies. LOMCs are issued in the following categories:

Letter of Map Amendment (LOMA): A revision based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property is not located in a special flood hazard area;

Letter of Map Revision (LOMR): A revision based on technical data showing that, usually due to manmade changes, shows changes to flood zones, flood elevations, floodplain and floodway delineations, and planimetric (horizontal) features. One common type of LOMR, a LOMR-F, is a determination that a structure or parcel has been elevated by fill above the Base Flood Elevation and is excluded from the special flood hazard area; and

Conditional Letter of Map Revision (CLOMR): A formal review and comment by FEMA as to whether a proposed project complies with the minimum National Flood Insurance Program floodplain management criteria. A CLOMR does NOT amend or revise effective Flood Insurance Rate Maps, Flood Boundary and Floodway Maps, or Flood Insurance Studies.

Lowest Floor: The lowest floor of the lowest enclosed 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 the enclosure is not built so as to render the structure in violation of the applicable design requirements of this Article found in Section 6.121(1).

National Flood Insurance Program: FEMA's National Flood Insurance Program (NFIP) has three basic components – flood hazard mapping, flood insurance, and floodplain regulations. The combination of the three all work together to reduce flood damages. NFIP is founded on a mutual agreement between the federal government and each participating community. Local, state and federal governments and private insurance companies must share roles and responsibilities to meet the goals and objectives of the NFIP. The City of Albany joined the NFIP in 1985. The community's role is of paramount importance. Residents and property owners can get federally-backed flood insurance only if the community carries out its responsibilities. The community enacts and implements the floodplain regulations required for participation in NFIP. The community's regulations must meet the regulations set by its state, as well as the NFIP criteria.

Nonresidential: For the purposes of development in the floodplain, FEMA defines nonresidential construction to include structures not used for human habitation. This includes parking, limited storage, and building access associated with residential uses, as well as commercial, industrial, and institutional uses. This differs from the definition of nonresidential in other Articles and Sections of this Code, and from the definition in the locally adopted State Building Codes.

Oregon Drainage Law: Oregon, through court decisions, has adopted a civil law doctrine of drainage. Generally, under this doctrine, adjoining landowners are entitled to have the normal course of natural drainage maintained. The lower landowner must accept water that naturally comes to his land from above, but he is entitled not to have the normal drainage changed or substantially increased. The lower landowner may not obstruct the runoff from the upper land, if the upper landowner is properly discharging the water. The drainage law has developed without legislative action; therefore there are no

Oregon Revised Statutes, rules or other laws to cite. Note that this definition is intended to provide general information and should not be used as the basis for legal advice or legal decisions.

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.

Recreational Vehicle: A vehicle that is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towed by a light duty truck, and;
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Residential: For the purposes of development in the floodplain, FEMA defines residential construction to include the entire habitable structure, including bathroom, laundry rooms, hobby rooms, workshops, etc. Residential accessory structures are considered residential construction. This differs from the definition of residential in other Articles and Sections of this Code, and from the definition of residential and habitable in the locally adopted State Building Codes.

Special Flood Hazard Area: Areas subject to inundation during the occurrence of the 1 percent annual flood. These areas include both the flood fringe and the floodway and are collectively commonly referred to as the “100-year floodplain.”

Start of Construction: Includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of a building.

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 49 percent of the market value of the structure before the damage occurred.

Substantial Improvement: For the purposes of this section any and all repairs, reconstruction, additions or improvements of a structure occurring within the ten years prior to the date of the application for the current improvement, the cost of which, when cumulatively added to the costs of prior improvements, equals or exceeds 49 percent of the market value of the structure before the start of construction of the improvement. Cumulative value will be computed by adding the valuations of all improvements within the ten-year period as calculated on the associated building permit plus the valuations that would have applied for improvements requiring permits but for which no permit was actually issued. This cumulative value shall be used in comparing the value of improvements against the current market value of the structure before the start of construction of the new improvement. The market value determination shall be based upon the county assessor's most recent computation of real market value at the time of the current application. This term includes structures that 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 that have been identified by the local code enforcement official and are the minimum necessary to assure safe living conditions; or
- (b) Any restoration or rehabilitation of a structure on the City's ~~adopted Local~~ Historic Inventory or the National Register of Historic Places (additions and new construction are not exempt);
- (c) Maintenance, replacement, or repair of prior lawfully constructed improvements.

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; including any adjacent area subject to inundation by reason of overflow or flood water. This also includes any topographic feature not meeting the above definition that is identified in the City's Stormwater Master Plan as needing preservation.

GENERAL PROVISIONS

6.080 Lands to Which These Regulations Apply. These regulations apply to all areas in the City of Albany that are subject to inundation from a 100-year flood. These areas have been identified by the Federal Emergency Management Agency (FEMA) in the Flood Insurance Study for Linn County, Oregon and Incorporated Areas ~~effective date~~ September 29, 2010 and as revised effective date December 8, 2016, 2016, and associated Flood Insurance Rate Maps (FIRMs) with Community Number 410137. These areas are depicted on the FIRMs by the letter A and AE. The Flood Insurance Study and FIRMs are on file at the City of Albany, Community Development Department at 333 Broadalbin Street SW.

In addition, the City Council may adopt by resolution more current floodplain studies or boundary information. If the new information conflicts with the current effective Flood Insurance Study of Flood Insurance Rate Maps, the more restrictive information will apply. [Ord. 5773, 02/08/12]

Precise Special Flood Hazard Area (100-year floodplain) 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 Floodplain Administrator 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 Floodplain Administrator shall reasonably use other 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.

[Ord. 5146, 9/14/94; Ord. 5410, 7/28/99; Ord. 5746, 9/29/10]

6.081 Warning and Disclaimer of Liability. The degree of flood protection required by this article 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 article does not imply that the land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This article does not create any duty or 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 article or any administrative decision lawfully made thereunder. [Ord. 5746, 9/29/10]

6.082 Abrogation and Greater Restrictions. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, Building Codes, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. [Ord. 5746, 9/29/10]

ADMINISTRATION

6.090 Floodplain Administrator. The Community Development Director is appointed to administer and implement this Article in accordance with its provisions. Duties of the local floodplain administrator shall include, but are not limited to: [Ord. 5746, 9/29/10]

- (1) Review all development permit applications to determine whether proposed new development will be located in Areas of Special Flood Hazard.
- (2) Review applications for modifications of any existing development in Areas of Special Flood Hazard for compliance with the requirements of this Article.
- (3) Interpret flood hazard area boundaries, provide available flood hazard information, and provide Base Flood Elevations, where they exist.
- (4) Review proposed development to assure that necessary permits have been received from governmental agencies from which approval is required by federal or state law, including but not limited to section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334; the Endangered Species Act of 1973, 16 U.S.C. 1531-1544; and State of Oregon Removal-Fill permits. Copies of such permits shall be maintained on file.
- (5) Review all development permit applications to determine if the proposed development is located in the floodway, and if so, ensure that the standards in Sections 6.100 through 6.110 are met.
- (6) When Base Flood Elevation data or floodway data are not available, then the Floodplain Administrator shall obtain, review and reasonably utilize any Base Flood Elevation and floodway data available from a federal, state or other authoritative source in order to administer the provisions of this Article.
- (7) When Base Flood Elevations or other engineering data are not available from an authoritative source, the Floodplain Administrator shall take into account the flood hazards, to the extent they are known, to determine whether a proposed building site or subdivision will be reasonably safe from flooding.
- (8) Where interpretation is needed of the exact location of the Special Flood Hazard Boundary, including regulatory floodway, the Floodplain Administrator shall make the interpretation. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 6.091.
- (9) Issue floodplain development permits when the provisions of this Article have been met, or disapprove the same in the event of noncompliance.
- (10) Coordinate with the Building Official to assure that applications for building permits comply with the requirements of this Article.
- (11) Obtain, verify and record the actual elevation in relation to the vertical datum used on the effective FIRM, or highest adjacent grade where no BFE is available, of the lowest floor level, including basement, of all new construction or substantially improved buildings and structures.
- (12) Obtain, verify and record the actual elevation, in relation to the vertical datum used on the effective FIRM, or highest adjacent grade where no BFE is available, to which any new or substantially improved buildings or structures have been flood-proofed. When flood-proofing is utilized for a structure, the Floodplain Administrator shall obtain certification of design criteria from a registered professional engineer or architect.
- (13) Ensure that all records pertaining to the provisions of this Article are permanently maintained in the Community Development Department and shall be open for public inspection.
- (14) Make inspections in Areas of Special Flood Hazard to determine whether development has been undertaken without issuance of a floodplain development permit, ensure that development is undertaken in accordance with a the floodplain development permit and this Article, and verify that existing buildings and structures maintain compliance with this Article.
- (15) Coordinate with the Building Official to inspect areas where buildings and structures in flood

hazard areas have been damaged, regardless of the cause of damage, and notify owners that permits may be required prior to repair, rehabilitation, demolition, relocation, or reconstruction of the building or structure.

(16) Make Substantial Improvement or Substantial Damage determinations based on the definitions described in Section 6.075.

6.091 Appeals. Appeals to the interpretations of the Floodplain Administrator shall be reviewed by the Hearings Board as a Type II procedure in accordance with Sections 1.040 and 1.520 of this Code. Appeals to the land use decisions (Types I-L, II, and III) resulting from the Floodplain Development Permit applications shall be reviewed in accordance with Section 1.520 of this Code. [Ord. 5746, 9/29/10]

6.092 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. Variances as interpreted in the National Flood Insurance Program are based on the physical characteristics of the land and are not dependent upon the occupants, type, or use of a structure. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare. [Ord. 5746, 9/29/10]

No variance will be given to the standards for development in a 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: [Ord. 5746, 9/29/10]

- (1) The applicant can show good and sufficient cause; and
- (2) Failure to grant the variance would result in exceptional hardship to the applicant; and
- (3) Issuing 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.
- (5) Variances from the required lowest floor elevation for new construction and substantial improvements may be granted if the review body find that the request meets criteria (1)-(4) and 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. As the lot size increases the technical justification required for issuing the variance increases.
- (6) Variances may be granted for a water dependent use provided that the structure or other development meets criteria (1)-(4) and is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- (7) Variances may be granted for the reconstruction, rehabilitation, or restoration of structures listed on Albany’s Local Historic Inventory or the National Register of Historic Places, without regard to the procedures set forth in this section.
- (8) Variances may be granted for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria and otherwise complies with Building Codes.

Upon issuing the variance, the Floodplain Administrator 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 that such construction below the base flood level increases risks to life and property. [Ord. 5746, 9/29/10]

6.093 Floodplain Development Permit Required. A Floodplain Development Permit is required prior to initiating floodplain development activities, as defined in Section 6.075, in the Special Flood Hazard Area. This Article cannot anticipate all development activities that may be located within the Special Flood Hazard Area. The floodplain development permit shall expire 180 days after issuance unless the permitted activity has been substantially begun and thereafter pursued to completion. [Ord. 5746, 9/29/10]

All development activities that require a Floodplain Development Permit shall be processed in accordance with ADC Section 1.200, Land Use Application Procedures. When ambiguity exists concerning the appropriate classification of a particular activity, the use may be reviewed as a conditional use when the Floodplain Administrator determines that the proposed activity is consistent with other activities allowable within the subject district due to similar characteristics and impacts. When a development proposal involves a combination of activities, the more restrictive provisions of this Code shall apply. [Ord. 5746, 9/29/10]

- A. The following activities will be processed through a Type I procedure as established in ADC 1.320:
- (1) Any structure 200 square feet or more.
 - (2) Any substantial improvement to an existing structure as defined in this code.
 - (3) Placement of a recreational vehicle more than 180 consecutive days, as described in 6.124(2)-(3).
 - (4) Solid fences and walls that require a permit as listed in Section 6.125.
 - (5) Any ~~Site Plan Review~~ site improvement for development in the floodplain pursuant to Section 6.110 that is not exempt under Section 6.094 and does not already require a permit elsewhere in this Section of the Code.
- B. The following activities will be processed through a Type I-L procedure as established in ADC 1.330:
- (1) Any development in the floodway allowed by Sections 6.100-6.101 ~~will be reviewed through the Site Plan Review process.~~
 - (2) Grading, excavation, fill, and paving pursuant to Section 6.111 that cumulatively impacts more than 50 cubic yards of the native elevation and contours of the site or that otherwise requires a permit per this Article, and any associated retaining walls.
 - (3) Mining and drilling operations that result in sledge, slag, or other materials remaining in the Special Flood Hazard area will be considered fill for the purposes of this Article, and will be reviewed through the applicable criteria in Section 6.111.
 - (4) Additions or expansions of Continuous Storage Operations pursuant to Section 6.112 ~~will be reviewed through the Site Plan Review process.~~
 - (5) New Continuous Storage Operations pursuant to Section 6.112 ~~will be reviewed through the Site Plan Review process.~~ [Ord. 5767, Ord. 12/7/11]
 - (6) Land Divisions of 19 lots or less pursuant to Section 6.110.
- C. The following activities will be processed through a Type II procedure as established in ADC 1.350:
- (1) Any alteration of a Watercourse, pursuant to 6.101 and the applicable criteria in Section 6.111.
- D. The following will be processed through a Type III procedure as established in ADC 1.360:
- (1) Land Divisions of 20 or more lots, Cluster Developments and Planned Developments pursuant to Section 6.110 ~~will be reviewed through the Planned Development or appropriate Land Division process.~~
 - (2) Manufactured home parks pursuant to Section 6.110 will be reviewed through the Manufactured Home Park application process.

6.094 Floodplain Development Permit Exemptions. The following development activities in the flood fringe do not require a Floodplain Development Permit. These exemptions do not apply to development in the

floodway. (Note: Federal and State laws and regulations, including Oregon Drainage Law, may still apply to exempted development activities.) [Ord. 5746, 9/29/10]

- (1) Structures less than 200 square feet that meet the provisions of 6.122.
- (2) Grading, excavation, fill or paving less than 50 cubic yards (cumulative).
- (3) Retaining walls not associated with a grading, fill, excavation, and paving review.
- (4) Open barbless wire, pipe, rail, chain link, or wood fences that meet the design guidelines in Section 6.125 of this Article.
- (5) Agricultural activities, not including structures.
- (6) Short-term storage of equipment or materials that in time of flooding could either be removed from the area, or would not cause harm to property, humans, animals or the environment by becoming buoyant or hazardous.
- (7) Signs, markers, aids, etc., placed by a public agency to serve the public.
- (8) Minor repairs or improvements to existing structures provided that the alterations do not increase the size or intensity of use, and do not constitute repair of substantial damage, or substantial improvement as defined in this Article.
- (9) Customary dredging to maintain existing channel capacity consistent with State or Federal laws and permits.
- (10) Replacement of utility facilities that are necessary to serve established and permitted uses, and that are of equal or lesser size and impact.
- (11) Subsurface public utility projects that will not ultimately result in modification to existing topography.
- (12) Transportation facility rehabilitation and maintenance projects that will not result in modifications to existing topography.

6.095 General Information Requirements. In addition to the information required in other sections of this code, the application for any development proposed in the Special Flood Hazard Area (100-year floodplain) 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 based on North American Vertical Datum (NAVD) 1988.
- (4) Location of any designated floodway and base flood boundary. If no floodway is designated, estimate the location of the floodway boundary per Section 6.100
- (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.
- (9) Elevation certificate. The base flood elevation shall be determined based on the applicable flood insurance study and flood profile. A copy of the flood profile with the base flood elevation identified on the flood profile shall be included with the elevation certificate as evidence for determining the base flood elevation.

6.096 Flood Insurance Rate Map (FIRM) Revisions. Requirements to Submit New Technical Data: [Ord. 5746, 9/29/10]

- (1) It is the responsibility of the applicant to have technical data prepared in a format required for a CLOMR or LOMR and to submit such data to FEMA on the appropriate application forms. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.
- (2) Applicants shall be responsible for all costs associated with obtaining a CLOMR or LOMR from FEMA.
- (3) The City of Albany shall be under no obligation to sign the Community Acknowledgement Form, which is part of the CLOMR/LOMR application, without evaluation and concurrence with the information presented.
- (4) Within six months of project completion, an applicant who obtains an approved CLOMR from FEMA or whose development modifies floodplain boundaries or Base Flood Elevations shall obtain from FEMA a LOMR reflecting the as-built changes to the FIRM.

PROVISIONS FOR FLOOD HAZARD REDUCTION

6.100 Floodway Restrictions. No development is allowed in any floodway except when the review body finds that the development will not result in any increase in flood levels during the occurrence of the 100-year flood. The finding shall be based upon applicant-supplied evidence prepared in accordance with standard engineering methodology approved by FEMA and certified by a registered professional engineer and upon documentation that one of the following criteria has been met:

- (1) The development does not involve the construction of permanent or habitable structures (including fences). [Ord. 5746, 9/29/10]
- (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.

For temporary storage of materials or equipment:

- (4) The temporary storage or processing of materials will not become buoyant, flammable, hazardous explosive or otherwise potentially injurious to human, animal or plant life in times of flooding. [Ord. 5746, 9/29/10]
- (5) The temporary storage of material or equipment are 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. [Ord. 5746, 9/29/10]

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 and new studies. Proposed development along the 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.

6.101 Alteration of a Watercourse. A Watercourse is considered altered when any changes occur within its banks, including installation of new culverts and bridges, or size modifications to existing culverts and bridges. [Ord. 5746, 9/29/10]

- (1) No development shall diminish the flood-carrying capacity of a watercourse.
- (2) Subject to the foregoing regulation, no person shall alter or relocate a watercourse without necessary approval from the Floodplain Administrator. [Ord. 5746, 9/29/10]
- (3) Prior to approval, the applicant shall provide a 30-day written notice to the City, any adjacent community, the Natural Hazards Program of the Oregon Department of Land Conservation and Development, and the DSL. [Ord. 5746, 9/29/10]
- (4) The applicant shall be responsible for ensuring necessary maintenance of the altered or relocated

portion of said watercourse so that the flood carrying capacity is not diminished. [Ord. 5746, 9/29/10]

- 6.110 Site Improvement, Land Division and Manufactured Home Park Standards. Site improvements, land divisions, and manufactured home parks in the Special Flood Hazard Area (100-year floodplain) shall be reviewed by the Planning Division as a part of the land use review process. An application to develop property that has floodplain on it, but where no development is proposed in that floodplain will be processed as otherwise required in this Code. In the case of a land division, “no actual development” means the floodplain area has been excluded from the land division. This can be done by setting the property aside for some other purpose than later development (for example, as a public drainage right-of-way). [Ord. 5746, 9/29/10]

In addition to the general review criteria for site improvements, land divisions and manufactured home parks, applications that propose actual development within the Special Flood Hazard Area shall also be subject to the following standards: [Ord. 5338, 1/28/98; Ord. 5746, 9/29/10]

- (1) All proposed new development and land divisions shall be consistent with the need to minimize flood damage and ensure that building sites will be reasonably safe from flooding.
- (2) All new development and land division proposals shall have utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (3) On-site waste disposal systems shall be located and constructed to avoid functional impairment, or contamination from them, during flooding.
- (4) All development proposals shall have adequate drainage provided to reduce exposure to flood damage.
- (5) 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 Article.
- (6) 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.
- (7) All development proposals shall show the location of the 100-year flood contour line followed by the date the flood elevation was established. When 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 Special Flood Hazard Area 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.” [Ord. 5338, 1/28/98]
- (8) In addition to the general review criteria applicable to manufactured home parks in Article 10, applications that propose actual development within a Special Flood Hazard Area shall include an evacuation plan indicating alternate vehicular access and escape routes.

- 6.111 Grading, Fill, Excavation, and Paving. A floodplain development permit is required for grading, fill, excavation, and paving in the Special Flood Hazard Area (100-year floodplain), except activities exempted in Section 6.094 of this Article. No grading will be permitted in a floodway, except when the applicant has supplied evidence prepared by a professional engineer that demonstrates the proposal will not result in any increase in flood levels during the occurrence of the 100-year flood. The permit will be approved if the applicant has shown that each of the following criteria that are applicable have been met: [Ord. 5746, 9/29/10]

- (1) Provisions have been made to maintain adequate flood-carrying capacity of existing watercourses, including future maintenance of that capacity.

- (2) The proposal will be approved only where adequate provisions for stormwater runoff have been made that are consistent with the Public Works Engineering standards, or as otherwise approved by the City Engineer.
- (3) The proposal will not increase the existing velocity of flood flows so as to exceed the erosive velocity limits of soils in the flood area.
- (4) No grading, fill, excavation, or paving will be permitted over an existing public storm drain, sanitary sewer, or water line unless it can be demonstrated to the satisfaction of the City Engineer that the proposed grading, fill, excavation, or paving will not be detrimental to the anticipated service life, operation and maintenance of the existing utility.
- (5) In areas where no floodway has been designated on the applicable FIRM, grading will not be permitted unless it is demonstrated by the applicant that the cumulative effect of the proposed grading, fill, excavation, or paving when combined with all other existing and planned development, will not increase the water surface elevation of the base flood more than a maximum of one foot (cumulative) at any point within the community.
- (6) The applicant shall notify the City of Albany, any adjacent community, and the Natural Hazards Mitigation Office of the Oregon Department of Land Conservation and Development of any proposed grading, fill, excavation, or paving activity that will result in alteration or relocation of a watercourse (See Section 6.101).
- (7) All drainage facilities shall be designed to carry waters to the nearest practicable watercourse approved by the designee as a safe place to deposit such waters. Erosion of ground in the area of discharge shall be prevented by installation of non-erosive down spouts and diffusers or other devices.
- (8) Building pads shall have a drainage gradient of two percent toward approved drainage facilities, unless waived by the Building Official or designee.

6.112 Continuous Storage Operations. The regulation of storage in the flood fringe focuses on long-term storage activities associated with continuous operations as defined in this Article. [Ord. 5746, 9/29/10]

A continuous storage operation is allowed if it can be shown that:

- (1) The materials or equipment will not be flammable, hazardous, explosive or otherwise potentially injurious to human, animal, or plant life in times of flooding; and
- (2) The materials or equipment are not subject to major damage by flood and are firmly anchored to prevent flotation or is readily removable from the area within the time available after flood warning.

6.113 Critical Facility Standards. Construction of new critical facilities, and additions to critical facilities built after September 29, 2010, shall be, to the maximum extent feasible, located outside the limits of the Special Flood Hazard Area (100-year floodplain). [Ord. 5746, 9/29/10]

Construction of new critical facilities shall be permissible within the Special Flood Hazard Area if no feasible alternative site is available. Critical facilities constructed within the Special Flood Hazard Area shall have the lowest floor elevated three feet above BFE or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility shall also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that hazardous materials will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible. [Ord. 5746, 9/29/10]

6.120 Building Standards. Applications for building permits within the Special Flood Hazard Area, as established in Section 6.080, shall be reviewed by the Building Official pursuant to locally adopted state building codes. In addition to building code criteria, all development in the Special Flood Hazard Area, except that exempted in Section 6.094, is subject to the following building standards: [Ord. 5746,

9/29/10]

- (1) Property owners or developers shall file with the City two elevation certificates in a format that is acceptable to FEMA. These certificates must be approved by the Building Official, prepared by a registered surveyor or professional engineer, architect or surveyor, and maintained for public inspection. A Pre-Construction Elevation Certificate shall be submitted and approved prior to setback and foundation inspection approval. A Post-Construction Elevation Certificate shall be submitted and approved prior to final inspection approval for all building permits when the Pre-Construction Elevation Certificate shows the building site to be within a Special Flood Hazard Area and lowest adjacent grade to be at or below the base flood elevation (BFE). The Post-Construction 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 flood proofing; and 3) whether or not the structure contains a basement.
- (2) The lowest floor, including basement, of any proposed structure (including residential and non-residential structures) shall be placed at least one (1) foot above the 100-year flood as determined by the latest Flood Insurance Study.
- (3) When elevation data is not available either through the Flood Insurance Study, FIRM, or from other sources of floodplain and floodway data as described in Section 6.080, applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., when available.
- (4) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (5) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (6) 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 a flood.
- (7) 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.
- (8) All new and replacement public water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- (9) All new 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.
- (10) If floodproofing methods are required as per Section 6.121(2), the property owners or developers shall file with the City a certification by a registered professional engineer or architect that the floodproofing methods meet or exceed FEMA standards. The City will maintain the certification available for public inspection. [Ord. 5146, 9/14/94; Ord. 5281, 3/26/97]

6.121 Flood Hazard Reduction Standards for Structures. All applicable flood hazard reduction measures are required and must be certified as required in 6.120 (1) and (10) above to at least meet the following standards (these standards do not apply to structures exempted in Section 6.122): [Ord. 5746, 9/29/10]

- (1) In all structures that will not be floodproofed, as described in 6.121(2), fully enclosed areas below the lowest floor (crawl spaces, parking areas or building access) and lower than 1 foot above the 100-year flood level must meet or exceed the following criteria:
 - (a) At least 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.
 - (d) The interior grade below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.
 - (e) The height of the below-grade area, measured from the interior grade to the top of the foundation wall must not exceed four (4) feet at any point.
 - (f) There must be an adequate drainage system that removes floodwaters from the interior area. The enclosed area should be drained within a reasonable time after a flood event.
 - (g) It will be used solely for parking vehicles, limited storage, or access to the building and will never be used for human habitation.
 - (h) The property owner of the building shall sign and record on the title to the property a nonconversion agreement, guaranteeing not to improve, finish, or otherwise convert the enclosed area below the lowest floor and lower than 1-foot above the 100-year flood level and granting the City the right to inspect the enclosed area.
- (2) Nonresidential construction meeting the certification requirements of 6.120 (1) and (10) can have the lowest floor and attendant utility and sanitary facilities located lower than one foot above the 100-year flood elevation if all of the following is met:
- (a) The structure is floodproofed so that areas lower than one foot above the 100-year flood level 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. The certification shall be provided to the Building Official as set forth in 6.120(1). [Ord. 5146, 9/14/94; Ord. 5281, 3/26/97]
 - (e) Applicants supply a Maintenance Plan for the entire structure to include but not limited to: exterior envelope of structure; all penetrations to the exterior of the structure; all shields, gates, barriers, or components designed to provide floodproofing protection to the structure; all seals or gaskets for shields, gates, barriers, or components; and, the location of all shields, gates, barriers, and components as well as all associated hardware, and any materials or specialized tools necessary to seal the structure.
 - (f) Applicants supply an Emergency Action Plan (EAP) for the installation and sealing of the structure prior to a flooding event that clearly identifies what triggers the EAP and who is responsible for enacting the EAP.

6.122 Accessory Buildings. Accessory structures in Special Flood Hazard Areas (100-year floodplain) that represent a minimal investment are exempt from the standards of ADC 6.120 and 6.121. The following standards and all other regulations that apply to development in floodplain areas apply to those buildings. The definition of “minimal investment” for the purposes of this section is a building that costs less than \$10,000 in labor and materials to construct. The value of a proposed building will be the value stated on the application for building permits.

- (1) Accessory structures shall not be used for human habitation.

- (2) Accessory structures shall be designed to have low flood damage potential.
- (3) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.
- (4) Accessory structures shall be firmly anchored to prevent flotation that may result in damage to other structures.
- (5) Service facilities such as electrical and heating equipment shall be elevated and/or floodproofed. [Ord. 5281, 3/26/97]

6.123 Manufactured Homes. New and replacement manufactured dwellings fall within the scope of the Building Codes. All new manufactured dwellings and replacement manufactured dwellings shall be installed using methods and practices that minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces. [Ord. 5338, 1/28/98; Ord. 5746, 9/29/10]

6.124 Recreational Vehicles. Recreational vehicles placed on sites within the flood fringe are required to either: [Ord. 5746, 9/29/10]

- (1) Be on the site for fewer than 180 consecutive days; or
- (2) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
- (3) Meet the requirements of Section 6.123 for manufactured homes.

6.125 Flood Fringe Fencing and Wall Standards. Certain types of fences and garden walls may be allowed in the flood fringe of the Special Flood Hazard Area (100-year floodplain). All fences and garden walls constructed within the flood fringe must not obstruct the entry and exit of floodwater, through their design and construction. All fences and walls are prohibited in the floodway. [Ord. 5746, 9/29/10]

Table 6-1 below is provided to assist in selecting appropriate fencing in the flood fringe. All fences and walls also must meet the standards in other sections of the Code. [Ord. 5746, 9/29/10]

TABLE 6-1. Fence type selection for flood fringe areas.

Fence Type	Flood Fringe Areas
Open barbless wire; Open pipe or rail; Other wire, pipe or rail (e.g. field fence, chicken wire, etc.); Chain link (1)	No permit required
Wood fences (2)	No permit required
Solid fences and freestanding walls, such as masonry (3)	Permit required, must have openings at and below BFE
Other fences (4)	Permit required, must have openings at and below BFE

- (1) Acceptable are materials and installation methods that allow for the entry and exit of floodwater.
- (2) Wood fence boards should be spaced to allow for the entry and exit of floodwater.
- (3) Solid fences and freestanding walls must include a flap or opening in the areas at or below the Base Flood Elevation at least once every three fence panels or 24 feet, whichever is less. Fences less than 24 feet in length shall have at least one flap or opening in the areas at or below the Base Flood elevation. The minimum dimensions of the flap or opening shall not be less than 12"x12" or 8"x18". Openings shall not include any screening of any type or size. If flaps are used, they may be secured to allow closure during normal use, but must be capable of self release and opening to full dimensions when under pressure of no greater than 30

pounds per sq. ft. These standards do not apply to retaining walls which shall meet the same standards as other building, paving, and grading activities.

Solid fences and walls constructed within Zone A, where the base flood elevation has not been determined, can use other sources of floodplain and floodway data to determine base flood elevations and boundaries as described in Section 6.080, or the openings can be placed within one foot of the finished grade along the fence alignment.

- (4) Other fence materials and construction that would restrict the flow of floodwaters will require a permit so they can be reviewed and adapted to meet the intent of this section of the Code.