

City of St. Helens
ORDINANCE NO. 3253

AN ORDINANCE AMENDING THE ST. HELENS MUNICIPAL CODE CHAPTERS
17.46 AND 17.124 REGARDING FLOODPLAINS AND FLOODWAYS, AND
ACCESSORY STRUCTURES

WHEREAS, pursuant to St. Helens Municipal Code 17.20.020(1)(c) the Planning Director initiated a legislative change to adopt text amendments to the Community Development Code (St. Helens Municipal Code Title 17); and

WHEREAS, pursuant to the St. Helens Municipal Code and Oregon Revised Statutes, the City has provided notice to the Oregon Department of Land Conservation and Development on January 30, 2020, agencies on February 19, 2020, and the local newspaper of record on February 26, 2020; and

WHEREAS, due to the COVID-19 pandemic and social distancing efforts, the City provided additional notice to agencies on April 3, 2020, and the local newspaper of record on April 8, 2020; and

WHEREAS, the St. Helens Planning Commission did hold a duly noticed public hearing on March 10, 2020 and, following deliberation, made a recommendation of approval to the City Council; and

WHEREAS, the St. Helens City Council conducted a public hearing on April 15, 2020 and having the responsibility to approve, approve with modifications, or deny an application for a legislative change, has deliberated and found that based on the information in the record and the applicable criteria in the SHMC that the code amendments be approved.

NOW, THEREFORE, THE CITY OF ST. HELENS DOES ORDAIN AS FOLLOWS:

Section 1. The above recitations are true and correct and are incorporated herein by reference.

Section 2. The City of St. Helens Municipal Code (Development Code) is hereby amended, attached hereto as **Attachment "A"** and made part of this reference.

Section 3. In support of the code amendments described herein, the Council hereby adopts the Findings of Fact and Conclusions of Law, attached hereto as **Attachment "B"** and made part of this reference.

Section 4. Severability. If any section, provision, clause, sentence, or paragraph of this Ordinance or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other sections, provisions, clauses or paragraphs of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be servable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 5. Provisions of this Ordinance shall be incorporated in the St. Helens Municipal Code and the word "ordinance" may be changed to "code," "article," "section," or another word, and the sections of this Ordinance may be renumbered, or re-lettered, provided however that Whereas clauses and boilerplate provisions need not be codified.

Section 6. The effective date of this Ordinance shall be 30 days after approval, in accordance with the City Charter and other applicable laws.

Read the first time: May 6, 2020
Read the second time: May 20, 2020

APPROVED AND ADOPTED this 20th day of May, 2020 by the following vote:

Ayes:

Nays:

Rick Scholl, Mayor

ATTEST:

Kathy Payne, City Recorder

Added text is underlined.

Deleted text is ~~stricken~~.

[...] means skipping text as it reads in the code (e.g., to focus on text being edited in this document)

Chapter 17.46 FLOODPLAINS AND FLOODWAYS

Sections:

17.46.010 Statutory ~~A~~ authorization, findings of fact, purpose, and ~~objectives~~ methods of reducing flood losses.

17.46.020 Definitions.

17.46.030 General provisions.

17.46.040 Administration.

17.46.045 Variances and FIRM Boundary Appeal.

17.46.050 Provisions for flood hazard reduction.

17.46.010 Statutory ~~A~~ authorization, findings of fact, purpose, and ~~objectives~~ methods of reducing flood losses.

(1) Statutory ~~A~~ authorization. The State of Oregon has in ~~the home rule provisions of the Oregon Constitution~~ ORS 197.175 delegated the responsibility to ~~the City of St. Helens~~ local government units to adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City of St. Helens does ordain as follows in the subsequent sections of this chapter.

(2) Findings of Fact:

(a) The flood hazard areas of the City of St. Helens are subject to periodic inundation which may ~~results~~ in loss of life and property, health, and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(b) These flood losses ~~are~~ may be caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, cause ~~uses~~ damage in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to ~~the~~ flood loss.

(3) Purpose. It is the purpose of this chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flooding ing conditions in specific in flood hazard areas by provisions designed:

- (a) To protect human life and health;
- (b) To minimize expenditure of public money and costly flood control projects;
- (c) To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (d) To minimize prolonged business interruptions;
- (e) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;

(f) To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize ~~future flood~~ blight areas caused by flooding;

(g) To ~~ensure that~~ notify potential buyers ~~are notified~~ that the property is in an area of special flood hazard; ~~and~~

(h) To ~~ensure that~~ notify those who occupy ~~the~~ areas of special flood hazard that they assume responsibility for their actions; ~~and~~

(i) To participate in and maintain eligibility for flood insurance and disaster relief.

(4) ~~Objectives~~ Methods of reducing flood losses. In order to accomplish its purposes, this chapter includes methods and provisions for:

(a) Restricting or prohibiting ~~uses~~ development which ~~are~~ is dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

(b) Requiring that ~~uses~~ development vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

(c) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel floodwaters;

(d) Controlling filling, grading, dredging, and other development which may increase flood damage;

(e) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or may increase flood hazards in other areas; and

(f) Coordinating and supplementing the provisions of the state building code with local land use and development ordinances.

17.46.020 Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage, ~~to give this chapter its most reasonable application~~, and shall apply only to requirements of this chapter and Chapter 17.44 SHMC.

(1) "Appeal" means a request for a review of the interpretation of any provision of this chapter or a request for a variance.

(2) "Area of shallow flooding" means a designated Zone AO, ~~or~~ AH, AR/AO or AR/AH Zone on the a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow. ~~The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and, velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.~~

(3) "Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. ~~Designation on maps always includes the letter "A."~~ It is shown on the Flood Insurance Rate Map (FIRM) as Zone A, AO, AH, A1-30, AE, A99, or AR. "Special flood hazard area" is synonymous in meaning and definition with the phrase "area of special flood hazard."

(4) "Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year. ~~Also referred to as the "100-year flood." Designation on maps always includes the letter "A."~~

(5) “Base Flood Elevation (BFE)” means the ~~water surface~~ elevation to which floodwater is anticipated to rise during the base flood ~~in relation to a specified datum. The Base Flood Elevation (BFE) is depicted on the FIRM to the nearest foot and in the FIS to the nearest 0.1 foot.~~

(6) “Basement” means any portion area of ~~a structure or~~ the building having its floor ~~sub-grade~~ subgrade (below ground level) on all sides.

(7) “Below-grade crawl space” means an enclosed area below the base flood elevation in which the interior grade is not more than two feet below the lowest adjacent exterior grade and the height, measured from the interior grade of the crawlspace to the top of the crawlspace foundation, does not exceed 4 feet at any point.

~~(8) “Building Codes” means the combined specialty codes adopted under ORS 446.062, 446.185, 447.020 (2), 455.020 (2), 455.496, 455.610, 455.680, 460.085, 460.360, 479.730 (1) or 480.545, but does not include regulations adopted by the State Fire Marshal pursuant to ORS chapter 476 or ORS 479.015 to 479.200 and 479.210 to 479.220.~~

~~(9)~~ (8) “Critical facility” means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installation, and installations which produce, use or store hazardous materials or hazardous waste.

~~(10)~~ (9) “Development” means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.

~~(11)~~ (10) “Digital FIRM (DFIRM)” means Digital Flood Insurance Rate Map. It depicts flood risk and zones and flood risk information. The DFIRM presents the flood risk information in a format suitable for electronic mapping applications.

~~(12)~~ (11) “Elevated building” means, for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

~~(13)~~ (12) “Flood” or “flooding” means:

(a) A general and temporary condition of partial or complete inundation of normally dry land areas from:

~~(a)~~ (i) The overflow of inland or tidal waters; ~~and/or~~

~~(b)~~ (ii) The unusual and rapid accumulation of runoff of surface waters from any source; ~~and/or~~

(iii) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a)(ii) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(i) of this definition.

(13) “Flood elevation study” means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

(14) “Flood insurance rate map (FIRM)” means the official map of a community, on which the Federal Insurance Administration Administrator has delineated both the areas of special flood hazards and/or the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

(15) “Flood insurance study (FIS)” means the official report provided by the Federal Insurance Administration Administrator that includes flood profiles, the flood boundary-floodway map, and the water surface elevation of the base flood.

(16) “Flood proofing” means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

~~(16)~~ (17) “Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one-foot a designated height. Also the channel of a river/watercourse and those portions of the floodplain adjoining the channel required to discharge and store the floodwater or flood flows associated with the regulatory flood. Also referred to as a “regulatory floodway.”

(18) “Functionally dependent use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. This term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

(19) “Hazardous material” per the Oregon Department of Environmental Quality means 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 ORS 469.605 and radioactive substances defined in ORS 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 (EPA) under section 311 of the Federal Water Pollution Control Act, P.L. 92-500, as amended;

(e) Substances listed by the United States EPA in section 40 of the 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; and

(i) Dry cleaning solvent as defined by ORS 465.200.

(20) “Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

~~(17)~~ (21) “Historic structure” means a structure that is:

(a) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or to a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) Individually listed on a state inventory of historic places ~~and determined as eligible by~~ **in** states with historic preservation programs which have been approved by the Secretary of the Interior; or

(d) Any “designated landmark” pursuant to Chapter 17.36 SHMC.

(22) “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. The following are categories of LOMCs:

(a) Conditional Letter of Map Amendment (CLOMA): A CLOMA is FEMA’s comment on a proposed structure or group of structures that would, upon construction, be located on existing natural ground above the base (1-percent-annual-chance) flood elevation on a portion of a legally defined parcel of land that is partially inundated by the base flood.

(b) Conditional Letter of Map Revision (CLOMR): A CLOMR is FEMA’s comment on a proposed project that would, upon construction, affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the special flood hazard area.

(c) Conditional Letter of Map Revision based on Fill (CLOMR-F): A CLOMR-F is FEMA’s comment on a proposed project that would, upon construction, result in a modification of the special flood hazard area through the placement of fill outside the existing regulatory floodway.

(d) Letter of Map Amendment (LOMA): An official amendment, by letter, to the Flood Insurance Rate Maps (FIRMs) based on technical data showing that an existing structure, parcel of land or portion of a parcel of land that is naturally high ground, (i.e., has not been elevated by fill) above the base flood, that was inadvertently included in the special flood hazard area.

(e) Letter of Map Revision (LOMR): A LOMR is FEMA’s modification to an effective Flood Insurance Rate Map (FIRM), or Flood Boundary and Floodway Map (FBFM), or both. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the SFHA. The LOMR officially revises the FIRM or FBFM, and sometimes the Flood Insurance Study (FIS) report, and, when appropriate, includes a description of the modifications. The LOMR is generally accompanied by an annotated copy of the affected portions of the FIRM, FBFM, or FIS report.

(f) Letter of Map Revision based on Fill (LOMR-F): A LOMR-F is FEMA’s modification of the special flood hazard area shown on the Flood Insurance Rate Map (FIRM) based on the placement of fill outside the existing regulatory floodway.

(g) Physical Map Revision (PMR): A PMR is FEMA’s physical revision and republication of an effective Flood Insurance Rate Map (FIRM) or Flood Insurance Study (FIS) report. PMRs are generally based on physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the special flood hazard area.

~~(18)~~ (23) “Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than basement area, is not considered a ~~structure’s building’s~~ lowest floor; provided, that ~~the such enclosed area enclosure~~ is ~~not~~ built ~~and maintained in accordance with~~ so as to render the structure in violation of the applicable ~~non-elevation~~ design requirements of ~~the Building Codes~~ this chapter.

~~(19)~~ (24) “Manufactured dwelling” or “manufactured home” means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured dwelling” or “manufactured home” does not include a “recreation vehicle.”

~~(20)~~ (25) “Manufactured home park or subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

(26) “Mean sea level” means the National Geodetic Vertical Datum of 1929 (NVGD 29), North American Vertical Datum of 1988 (NAVD 88), or other datum, to which Base Flood Elevations shown on a community’s Flood Insurance Rate Map are referenced.

~~(21)~~ (27) “New construction” means structures for which the “start of construction” commenced on or after the effective date of the ordinance codified in this chapter, and includes any subsequent improvements to such structures.

~~(22)~~ (28) “Recreational vehicle” means a vehicle which is:

- (a) Built on a single chassis;
- (b) Four hundred square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable 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.

(29) Special flood hazard area. See “area of special flood hazard” for this definition.

~~(23)~~ (30) “Start of construction” includes “substantial improvement,” and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other 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 that alteration affects the external dimensions of the building.

~~(24)~~ ~~“State building code” means the combined specialty codes adopted by the State of Oregon.~~

~~(25)~~ (31) “Structure” means a walled and roofed building, a manufactured dwelling, a modular or temporary building, or a gas or liquid storage tank that is principally above ground.

~~(26)~~ (32) “Substantial damage” means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

(27) (33) “Substantial improvement” means reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. The market value of the structure should be:

(a) The appraised real market value of the structure prior to the start of the initial repair or improvement; or

(b) In the case of damage, the appraised real market value of the structure prior to the damage occurring.

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 which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(b) Any alteration of a “historic structure,” provided that the alteration will not preclude the structure's continued designation as a “historic structure.”

(28) (34) “Variance” means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited by this chapter and shall follow the requirements as established in Chapter 17.108 SHMC and SHMC 17.46.045.

(35) “Violation” means the failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

(29) (36) “Water-dependent” means a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

17.46.030 General provisions.

(1) Lands to Which This Chapter Applies. This chapter shall apply to all areas of special flood hazards within the jurisdiction of the city of St. Helens.

(2) Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard identified by the Federal Insurance Administration Administrator in a scientific and engineering report entitled “The Flood Insurance Study (FIS) for Columbia County, Oregon and Incorporated Areas,” dated November 26, 2010, with accompanying flood insurance rate maps (FIRMs) including panels 41009C0345D, 41009C0451D, 41009C0452D, 41009C0454D, 41009C0456D and 41009C0458D is are hereby adopted by reference and declared to be a part of this chapter. The flood insurance study FIS and FIRMs are on file with the Planning Department at City Hall. ~~The best available information for flood hazard area identification as outlined in SHMC 17.46.040(3)(b) shall be the basis for regulation until a new FIRM is issued which incorporates the data utilized under SHMC 17.46.040(3)(b).~~

(3) Coordination with State of Oregon Specialty Codes. Pursuant to the requirement established in ORS 455 that the city of St. Helens administers and enforces the State of Oregon Specialty Codes, the city of St. Helens does hereby acknowledge that the Oregon Specialty Codes contain certain provisions that apply to the design and construction of buildings and structures located in special flood hazard areas. Therefore, this chapter is intended to be administered and enforced in conjunction with the Oregon Specialty Codes.

(4) Compliance. All development within special flood hazard areas is subject to the terms of this chapter and required to comply with its provisions and all other applicable regulations.

(3) (5) Penalties for Noncompliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violations of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined and/or imprisoned pursuant to SHMC 17.12.030, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the City of St. Helens from taking such other lawful action as is necessary to prevent or remedy any violation.

(4) (6) Abrogation and Greater Restrictions.

(a) Abrogation. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another chapter, ordinance, state building code, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more restrictions shall prevail.

(b) Severability. This chapter and the various parts thereof are hereby declared to be severable. If any section clause, sentence, or phrase of this chapter is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this chapter.

(5) (7) Interpretation. In the interpretation and application of this chapter, all provisions shall be:

(a) Considered as minimum requirements;

(b) Liberally construed in favor of the governing body; and

(c) Deemed neither to limit nor repeal any other powers granted under state statutes and rules including the state building code.

(6) (8) Warning and Disclaimer of Liability. The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city of St. Helens, an officer or employee thereof, or the Federal Insurance Administration Administrator, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

17.46.040 Administration.

(1) Establishment of Development Permit.

(a) Development Permit Required. A development permit shall be obtained before construction or development begins within any area horizontally within of the special flood hazard area established in SHMC 17.46.030(2). The development permit shall be required for all structures including manufactured homes dwellings, as set forth in the "Definitions" (SHMC 17.46.020), and for all development including fill and other activities, also as set forth in the "Definitions" (SHMC 17.46.020).

(b) Application for Development Permit. Application for a development permit shall be made on forms furnished by the community development department Floodplain Administrator and may include but not be limited to plans in duplicate drawn to scale showing the nature,

location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

(i) Elevation (based on the North American Vertical Datum of 1988 (NAVD 88)) in relation to mean sea level of the lowest floor (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the requirements of (3)(b) of this section;

(ii) Elevation (based on the North American Vertical Datum of 1988 (NAVD 88)) in relation to mean sea level to which any non-residential structure ~~has~~ will been floodproofed;

(iii) Certification by a registered professional engineer or architect licensed in the State of Oregon that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in SHMC 17.46.050(23)(b); ~~and.~~

(iv) Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

(v) Base Flood Elevation data for subdivision proposals or other development when required per (3) of this section and SHMC 17.46.050(1)(g).

(vi) Substantial improvement calculation for any improvement, addition, reconstruction, renovation, or rehabilitation of an existing structure.

(vii) The amount and location of any fill or excavation activities proposed.

(2) Designation of the ~~Planning Director~~ Floodplain Administrator. The planning director is hereby appointed to administer, ~~and~~ implement, and enforce this chapter by granting or denying development permit applications in accordance with its provisions. The floodplain administrator may delegate authority to implement these provisions.

(3) Duties and Responsibilities of the ~~Planning Director~~ Floodplain Administrator. Duties of the ~~planning director~~ floodplain administrator, or their designee, shall include, but not be limited to:

(a) Permit Review. Review all development permits to determine:

(i) ~~Review all development permits to determine t~~That the permit requirements and conditions of this chapter have been satisfied.

(ii) ~~Review all development permits to determine t~~That all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.

(iii) ~~Review all development permits to determine i~~If the proposed development is located in the a floodway. If located in the floodway, assure that the encroachment provisions of SHMC 17.46.050(45)(a) are met.

(iv) If the proposed development is located in an area where Base Flood Elevation (BFE) data is available either through the Flood Insurance Study (FIS) or from another authoritative source. If BFE data is not available then ensure compliance with the provisions of SHMC 17.46.050(1)(h).

(v) That the Base Flood Elevation (BFE) including the minimum freeboard required per this chapter has been provided to the Building Official for any building or structure requiring a development permit.

(vi) If the proposed development qualifies as a substantial improvement as defined by this chapter.

(vii) If the proposed development activity is a watercourse alteration. If a watercourse alteration is proposed, ensure compliance with the provisions in SHMC 17.46.050(1)(a).

(viii) If the proposed development activity includes the placement of fill or excavation.

~~(b) Use of Other Base Flood Data (In A Zones). When base flood elevation data has not been provided (A zones) in accordance with SHMC 17.46.030(2), Basis for Establishing the Areas of Special Flood Hazard, the planning director shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer SHMC 17.46.050(2), Specific Standards, and 17.46.050(4), Floodways.~~

(e) (b) Information to Be Obtained and Maintained. The following information shall be obtained and maintained and shall be made available for public inspection as needed:

~~(i) Where base flood elevation data is provided through the flood insurance study, FIRM, or required as in subsection (3)(b) of this section, obtain and record the actual (as built) elevation (in relation to mean sea level based on the North American Vertical Datum of 1988 (NAVD 88)) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.~~

~~(ii) For all new or substantially improved floodproofed structures where base flood elevation data is provided through the flood insurance study, FIRM, or as required in subsection (3)(b) of this section:~~

~~(A) Verify and record the actual elevation (in relation to mean sea level based on the North American Vertical Datum of 1988 (NAVD 88)) to which the structure was floodproofed, and~~

~~(B) Maintain the floodproofing certifications required in subsection (1)(b)(iii) of this section.~~

(i) Obtain, record, and maintain the actual elevation (in relation to mean sea level) of the lowest floor (including basements) and all attendant utilities of all new or substantially improved structures where Base Flood Elevation (BFE) data is provided through the Flood Insurance Study (FIS), Flood Insurance Rate Map (FIRM), or obtained in accordance with SHMC 17.46.050(1)(h).

(ii) Obtain and record the elevation (in relation to mean sea level) of the natural grade of the building site for a structure prior to the start of construction and the placement of any fill and ensure that the requirements of (3)(a)(ii) of this section and SHMC 17.46.050(5) are adhered to.

(iii) Upon placement of the lowest floor of a structure (including basement) but prior to further vertical construction, obtain documentation, prepared and sealed by a professional licensed surveyor or engineer, certifying the elevation (in relation to mean sea level) of the lowest floor (including basement).

(iv) Where base flood elevation data are utilized, obtain As-built certification of the elevation (in relation to mean sea level) of the lowest floor (including basement) prepared and sealed by a professional licensed surveyor or engineer, prior to the final inspection.

(v) Maintain all Elevation Certificates (EC) submitted to the City of St. Helens.

(vi) Obtain, record, and maintain the elevation (in relation to mean sea level) to which the structure and all attendant utilities were floodproofed for all new or substantially improved floodproofed structures where allowed under this chapter and where Base Flood Elevation (BFE) data is provided through the FIS, FIRM, or obtained in accordance with SHMC 17.46.050(1)(h).

(vii) Maintain all floodproofing certificates required under this chapter.

(viii) Record and maintain all variance actions, including justification for their issuance.

(ix) Obtain and maintain all hydrologic and hydraulic analyses performed as required under SHMC 17.46.050(5).

(x) Record and maintain all Substantial Improvement and Substantial Damage calculations and determinations as required under (3)(f) of this section.

(xi) All elevation information (in relation to mean sea level) required by this subsection shall be based on the North American Vertical Datum of 1988 (NAVD 88).

~~(iii)~~ (xii) Maintain for public inspection all records pertaining to the provisions of this chapter.

(c) Community Boundary Alterations. The Floodplain Administrator shall notify the Federal Insurance Administrator in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed authority or no longer has authority to adopt and enforce floodplain management regulations for a particular area, to ensure that all Flood Hazard Boundary Maps (FHBM) and Flood Insurance Rate Maps (FIRM) accurately represent the community's boundaries. Include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority.

(d) Alteration of Watercourses.

(i) Notify adjacent communities, the State Department of Land Conservation and Development (DLCD), and other appropriate state and federal agencies prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration Administrator. This notification shall be provided by the applicant to the Federal Insurance Administrator as a Letter of Map Revision (LOMR) along with either:

(A) A proposed maintenance plan to assure the flood carrying capacity within the altered or relocated portion of the watercourse is maintained; or

(B) Certification by a registered professional engineer that the project has been designed to retain its flood carrying capacity without periodic maintenance.

~~(ii) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.~~ The applicant shall be required to submit a Conditional Letter of Map Revision (CLOMR) when required under (3)(e) of this section. Ensure compliance with all applicable requirements in (3)(e) of this section and SHMC 17.46.050(1)(a).

(e) Requirement To Submit New Technical Data.

(i) A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six (6) months after the date such information becomes available, a community shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Section 44 of the Code of Federal Regulations (CFR), Sub-Section 65.3. The community may require the applicant to submit such data and review fees required for compliance with this section through the applicable FEMA Letter of Map Change (LOMC) process.

(ii) The Floodplain Administrator shall require a Conditional Letter of Map Revision (CLOMR) prior to the issuance of a floodplain development permit for:

(A) Proposed floodway encroachments that increase the base flood elevation; and

(B) Proposed development which increases the base flood elevation by more than one foot in areas where FEMA has provided base flood elevations but no floodway.

(iii) An applicant shall Notify FEMA within six (6) months of project completion when an applicant has obtained a Conditional Letter of Map Revision (CLOMR) from FEMA. This notification to FEMA shall be provided as a Letter of Map Revision (LOMR).

(iv) The applicant shall be responsible for preparing all technical data to support CLOMR/LOMR applications and paying any processing or application fees associated with the CLOMR/LOMR. The Floodplain Administrator shall be under no obligation to sign the Community Acknowledgement Form, which is part of the CLOMR/LOMR application, until the applicant demonstrates that the project will or has met the requirements of this code and all applicable state and federal laws.

(f) Substantial Improvement and Substantial Damage Assessments and Determinations. Conduct Substantial Improvement (SI), as set forth in the "Definitions" (SHMC 17.46.020), reviews for all structural development proposal applications and maintain a record of SI calculations within permit files in accordance with (3)(b) of this section. Conduct Substantial Damage (SD), as set forth in the "Definitions" (SHMC 17.46.020), assessments when structures are damaged due to a natural hazard event or other causes. Make SD determinations whenever structures within the special flood hazard area, as established in SHMC 17.46.030(2), are damaged to the extent that the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

(g) Interpretation of FIRM Boundaries. Make interpretations, where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in SHMC 17.46.045.

17.46.045 Variances and FIRM Boundary Appeal.

(1) The issuance of a variance is for floodplain management purposes only. Flood insurance premium rates are determined by federal statute according to actuarial risk and will not be modified by the granting of a variance.

(2) The applicable approval authority shall hear and decide appeals and requests for variances from the requirements of this chapter.

(3) The applicable appellate authority shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the City of St. Helens in the enforcement or administration of this chapter.

(4) Those aggrieved by the decision of the applicable approval authority or any taxpayer, may appeal such decision to the applicable appellate authority, in accordance with the St. Helens Development Code.

(5) In passing upon such applications, the applicable approval authority shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

- (a) The danger that materials may be swept onto other lands to the injury of others;
- (b) The danger to life and property due to flooding or erosion damage;
- (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (d) The importance of the services provided by the proposed facility to the community;
- (e) The necessity to the facility of a waterfront location, where applicable;

(f) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

(g) The compatibility of the proposed use with existing and anticipated development;

(h) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;

(i) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(j) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

(k) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

➤ (6) Upon consideration of the factors of SHMC 17.46.045(45) and the purposes of this chapter, the approval authority may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

➤ (7) The Planning Director shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency (FEMA) upon request.

➤ (8) Conditions for Variances:

(a) Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items SHMC 17.46.045(45)(a)-(k) have been fully considered. As the lot size increases beyond one-half acre the technical justification required for issuing the variance increases.

(b) Variances may be issued for the reconstruction, rehabilitation, or restoration of historic structures, as set forth in the “Definitions” (SHMC 17.46.020), without regard to the procedures set forth in this section.

(c) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

(d) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(e) Variances shall only be issued upon:

(i) A showing of good and sufficient cause;

(ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

(iii) A determination that the granting of a 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.

(f) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece or property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

(g) Variances may be issued 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 except ~~SHMC 17.46.045(7)~~ (8)(a) of this section, and otherwise complies with the provisions of SHMC 17.46.050(1)(a)-(e).

(h) Variances may be issued by a community for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, as set forth in the "Definitions" (SHMC 17.46.020), provided that the criteria of this section are met except (8)(a), and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

~~(h)~~ (i) Any applicant to whom a variance is granted shall be given written notice that the issuance of a variance to construct a structure below the Base Flood Elevation will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of result in increased premium rates for flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation, and that such construction below the base flood elevation increases risks to life and property. Such notification and a record of all variance actions, including justification for their issuance, shall be maintained in accordance with SHMC 17.46.040(3)(b).

17.46.050 Provisions for flood hazard reduction.

(1) General Standards. In all areas of special flood hazards, the following standards are required:

(a) Alteration of Watercourses. Require that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained. Require that maintenance is provided within the altered or relocated portion of said watercourse to ensure that the flood carrying capacity is not diminished. Require compliance with SHMC 17.46.040(3)(d) and (e).

~~(a)~~ (b) Anchoring.

(i) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(ii) All manufactured homes dwellings must likewise shall be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques) per (3)(c) of this section.

~~(b)~~ (c) Construction Materials and Methods.

(i) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(ii) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

~~(iii) 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 conditions of flooding.~~

~~(c)~~ (d) Utilities Water Supply, Sanitary Sewer, and On-Site Waste Disposal Systems.

(i) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

(ii) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters; and

(iii) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding consistent with the Oregon Department of Environmental Quality.

(e) **Electric, Mechanical, Plumbing, and Other Equipment.** Electrical, heating, ventilating, air-conditioning, plumbing, duct systems, and other equipment and service facilities shall be elevated at or above one (1) foot above the Base Flood Elevation (BFE) or shall be designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during conditions of flooding. In addition, if replaced as part of a substantial improvement, electrical, heating, ventilating, air-conditioning, plumbing, duct systems, and other equipment and service facilities shall meet all the requirements of this section.

(f) **Tanks.**

(i) **Underground tanks shall be anchored to prevent flotation, collapse and lateral movement under conditions of the base flood.**

(ii) **Above-ground tanks shall be installed (elevated) at or above one (1) foot above the Base Flood Elevation (BFE) or shall be anchored to prevent flotation, collapse, and lateral movement under conditions of the base flood.**

~~(g)~~ (g) **Subdivision Proposals and Other Proposed Developments.**

(i) **All new subdivision proposals and other proposed new developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, shall be consistent with the need to minimize flood damage; include within such proposals, Base Flood Elevation data.**

(ii) **All new subdivision proposals and other proposed new developments (including proposals for manufactured home parks and subdivisions) shall:**

(A) **Be consistent with the need to minimize flood damage.**

~~(ii)~~ (B) **All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems, located and constructed to minimize or eliminate flood damage;**

~~(iii)~~ (C) **All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and hazards.**

~~(iv)~~ **Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or five acres (whichever is less).**

~~(e)~~ **Review of Building Permits.** ~~Where elevation data is not available either through the flood insurance study, FIRM, or from another authoritative source (SHMC 17.46.040(3)(b)) 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., where available. Failure to elevate the lowest floor at least two feet above the highest adjacent grade in these zones may result in higher insurance rates.~~

(h) **Use of Other Base Flood Data.**

(A) **When Base Flood Elevation data has not been provided in accordance with SHMC 17.46.030(2) the local floodplain administrator shall obtain, review, and reasonably utilize any Base Flood Elevation data available from a federal, state, or other source, in order to administer this section. All new subdivision proposals and other proposed new developments**

(including proposals for manufactured dwelling parks and subdivisions) must meet the requirements of (1)(g) of this section.

(B) Base Flood Elevations shall be determined for development proposals that are 5 acres or more in size or are 50 lots or more, whichever is lesser in any A zone that does not have an established base flood elevation. Development proposals located within a riverine unnumbered A Zone shall be reasonably safe from flooding; the test of reasonableness includes use of clear and objective information such as historical data, high water marks, FEMA provided Base Level Engineering data, and photographs of past flooding, etc. where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

(i) Structures Located in Multiple or Partial Flood Zones. In coordination with the State of Oregon Specialty Codes:

(A) When a structure is located in multiple flood zones on the community's Flood Insurance Rate Maps (FIRM) the provisions for the more restrictive flood zone shall apply.

(B) When a structure is partially located in a special flood hazard area, the entire structure shall meet the requirements for new construction and substantial improvements.

(⊕) (j) AH Zone Drainage. Adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures.

(2) Specific Standards for Riverine (Including all Non-Coastal) Flood Zones. ~~In all areas of special flood hazards where base flood elevation data has been provided (zones A1—30, AH and AE on the community's FIRM) as set forth in SHMC 17.46.030(2), Basis for Establishing the Areas of Special Flood Hazard, or 17.46.040(3)(b), Use of Other Base Flood Data (In A Zones), the following provisions are required:~~ These specific standards shall apply to all new construction and substantial improvements in addition to the General Standards contained in (1) of this section.

(a) Flood Openings. All new construction and substantial improvements with fully enclosed areas below the lowest floor (excluding basements) are subject to the following requirements. Enclosed areas below the Base Flood Elevation, including crawl spaces shall:

(i) Be designed to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters.

(ii) Be used solely for parking, storage, or building access.

(iii) Be certified by a registered professional engineer or architect or meet or exceed all of the following minimum criteria:

(A) A minimum of two openings. The openings shall be installed on at least two sides of each enclosed area to decrease the chances that all openings could be blocked with floating debris and to allow for more even filling by floodwater and draining of the enclosed area. In addition, openings shall be distributed around the entire perimeter of the enclosed area unless there is clear justification for putting all openings on just one or two sides (such as in attached dwellings as defined by Chapter 17.16 SHMC or buildings set into sloping sites).

(B) The total net area of non-engineered openings shall be not less than one (1) square inch for each square foot of enclosed area, where the enclosed area is measured on the exterior of the enclosure walls.

(C) The bottom of all openings shall be no higher than one foot above grade.

(D) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they shall allow the automatic flow of floodwater into and out of the enclosed areas and shall be accounted for in the determination of the net open area.

(E) All additional higher standards for flood openings in the State of Oregon Residential Specialty Codes Section R322.2.2 (as revised) shall be complied with when applicable.

(b) Garages.

(i) Attached garages may be constructed with the garage floor slab below the Base Flood Elevation (BFE) if the following requirements are met:

(A) If located within a floodway the proposed garage must comply with the requirements of (5) of this section.

(B) The floors are at or above grade on not less than one side;

(C) The garage is used solely for parking, building access, and/or storage;

(D) The garage is constructed with flood openings in compliance with (2)(a) of this section to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater.

(E) The portions of the garage constructed below the BFE are constructed with materials resistant to flood damage.

(F) The garage is constructed in compliance with the standards in (1) of this section.

(G) The garage is constructed with electrical, and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the base flood.

(ii) Detached garages must be constructed in compliance with the standards for appurtenant structures in (3)(e) of this section or non-residential structures in (3)(b) of this section depending on the square footage of the garage.

(c) Below grade crawlspaces (i.e. crawlspaces below the lowest adjacent exterior grade) as set forth in the "Definitions" (SHMC 17.46.020) and described in FEMA Technical Bulletin 11-01 (as revised), are prohibited.

(3) Additional Specific Standards for Riverine (Non-Coastal) Special Flood Hazard Areas with Base Flood Elevations (BFEs). In addition to the standards listed in (1) and (2) of this section, the following additional standards shall apply in Riverine (non-coastal) special flood hazard areas with Base Flood Elevations (BFE): Zones A1-A30, AH, and AE.

(a) Residential Construction.

(i) New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated ~~a minimum of one foot or more~~ at or above ~~one (1) foot~~ above the ~~b~~Base ~~f~~Flood ~~e~~Elevation (BFE).

(ii) ~~Fully e~~Enclosed areas below the lowest floor ~~that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:~~

~~(A) A minimum of two opening 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.~~ shall comply with the flood opening requirements in (2)(a) of this section.

(b) Nonresidential Construction.

(i) New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall ~~either have the lowest floor, including basement, elevated at or above the base flood elevation or, together with attendant utility and sanitary facilities, shall:~~

~~(A) Have the lowest floor, including basement elevated at or above one (1) foot above the Base Flood Elevation (BFE); or together with attendant utility and sanitary facilities comply with (B), (C) and (D) as follows:~~

~~(i) (B) Be floodproofed so that below one (1) foot above the base flood level Base Flood Elevation (BFE) the structure is watertight with walls substantially impermeable to the passage of water;~~

~~(ii) (C) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;~~

~~(iii) (D) Be certified 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. Such certifications shall be provided to the official Floodplain Administrator as set forth in SHMC 17.46.040(3)(e)(ii);~~

~~(iv) (ii) Nonresidential structures that are elevated, not floodproofed, must meet shall comply with the same standards for space enclosed areas below the lowest floor as described in subsection (2)(a)(ii) of this section;~~

~~(v) (iii) Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one (1) foot below the floodproofed level (e.g., a building floodproofed to one (1) foot above the base flood level will be rated as one foot below at the base flood level).~~

(c) ~~Manufactured Homes Dwellings. New or substantially improved manufactured dwellings shall comply with all the following:~~

~~(i) The ground area reserved for the placement of a manufactured dwelling shall be a minimum of 12 inches above BFE unless the foundation walls are designed to automatically equalize hydrostatic forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must be either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:~~

~~(A) A minimum of 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; and~~

~~(C) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters. Manufactured dwellings supported on solid foundation walls shall be constructed with flood openings that comply with (2)(a) of this section.~~

~~(ii) The bottom of the longitudinal chassis frame beam in A-zones shall be a minimum of 12 inches above BFE (see definition of Lowest Floor in Manufactured Dwelling Specialty Code) at or above one (1) foot above the Base Flood Elevation (BFE).~~

~~(iii) The manufactured dwelling shall be anchored to prevent flotation, collapse and lateral movement during the base flood. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques); and~~

~~(iv) Electrical crossover connections (see Manufactured Dwelling Specialty Code) shall be a minimum of 12 inches one (1) foot above the Base Flood Elevation (BFE).~~

- (d) Recreational Vehicles. Recreational vehicles placed on sites are required to either:
- (i) Be on the site for fewer than 180 consecutive days;
 - (ii) Be fully licensed and ready for highway use, on its wheels or jacking system, be attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or
 - (iii) Meet the requirements of ~~subsection (23)~~(c) of this section and the elevation and anchoring requirements for manufactured ~~homes~~ dwellings.

~~(e) Below grade crawlspaces (i.e. crawlspaces below the lowest adjacent exterior grade) as described in FEMA Technical Bulletin 11-01, are prohibited.~~

~~(f) (e) Appurtenant (Accessory) Structures. "Accessory buildings" or "accessory structures" as defined by Chapter 17.16 SHMC that qualifies under the definition of "structure" pursuant to SHMC 17.46.020, are not considered residential construction or nonresidential construction pursuant to SHMC 17.46.050(2)(a) and (b), for the purpose of administering the standards of structures in areas of special flood hazard, as long as such structure represents a minimal investment (i.e. no more than 10% of the total assessed value of the property based on current Columbia County Assessor records) and such structure is not greater than 200 square feet in gross floor area. Such structure needn't be subject to elevation or dry floodproofing requirements provided all of the following performance standards are met: Relief from elevation or floodproofing requirements for residential and non-residential structures in Riverine (Non-Coastal) flood zones may be granted for appurtenant structures that meet the following requirements:~~

- ~~(i) Structure shall not be used for human habitation;~~
- ~~(ii) Structure shall be designed to have low flood damage potential;~~
- ~~(iii) Structure shall be constructed and placed so as to offer the minimum resistance to the flow of floodwaters;~~
- ~~(iv) Structure shall be firmly anchored to prevent flotation which may result in damage to other structures, and shall have flood water openings; and~~
- ~~(v) Any service facilities incorporated into the structure such as electrical and heating equipment shall be elevated above the base flood elevation or floodproofed; flood resistant materials shall be used below the base flood elevation.~~

~~(i) Appurtenant structures located partially or entirely within the floodway must comply with requirements for development within a floodway found in (5) of this section.~~

~~(ii) Appurtenant structures must only be used for parking, access, and/or storage and shall not be used for human habitation;~~

~~(iii) In compliance with State of Oregon Specialty Codes, appurtenant structures on properties that are zoned residential are limited to one-story structures less than 200 square feet, or 400 square feet if the property is greater than two (2) acres in area and the proposed appurtenant structure will be located a minimum of 20 feet from all property lines. Appurtenant structures on properties that are zoned as non-residential are limited in size to 120 square feet.~~

~~(iv) The portions of the appurtenant structure located below the Base Flood Elevation must be built using flood resistant materials;~~

~~(v) The appurtenant structure must be adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.~~

(vi) The appurtenant structure must be designed and constructed to equalize hydrostatic flood forces on exterior walls and comply with the requirements for flood openings in (2)(a) of this section.

(vii) Appurtenant structures shall be located and constructed to have low damage potential:

(viii) Appurtenant structures shall not be used to store toxic material, oil, or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality unless confined in a tank installed in compliance with (1)(f) of this section.

(ix) Appurtenant structures shall be constructed with electrical, mechanical, and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the base flood.

(3) (4) Before Regulatory Floodway. In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within zones A1 – 30 and AE on the community's Flood Insurance Rate Map (FIRM), unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(4) (5) Floodways. Located within areas of special flood hazard established in SHMC 17.46.030(2) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

(a) Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless:

(i) Certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachments shall not result in any increase in flood levels within the community and beyond during the occurrence of the base flood discharge; or

~~(b) If subsection (4)(a) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this section.~~

~~(c) Projects for stream habitat restoration may be permitted in the floodway provided:~~

~~(i) The project qualifies for a Department of the Army, Portland District Regional General Permit for Stream Habitat Restoration (NWP-2007-1023); and,~~

~~(ii) A qualified professional (a Registered Professional Engineer; or staff of NRCS; the county; or fisheries, natural resources, or water resources agencies) has provided a feasibility analysis and certification that the project was designed to keep any rise in 100-year flood levels as close to zero as practically possible given the goals of the project; and,~~

~~(iii) No structures would be impacted by a potential rise in flood elevation; and,~~

~~(iv) An agreement to monitor the project, correct problems, and ensure that flood carrying capacity remains unchanged is included as part of the local approval.~~

(ii) A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that a Conditional Letter of Map Revision (CLOMR) is applied for and approved by the Federal Insurance Administrator, and the requirements for such revision as established under Volume 44 of the Code of Federal Regulations, section 65.12 (as revised) are fulfilled.

(b) If the requirements of (5)(a) of this section are satisfied, all new construction, substantial improvements, and other development shall comply with all other applicable flood hazard reduction provisions of this section.

~~(d)~~ (c) New installation (including replacement) of manufactured dwellings and recreational vehicles is prohibited.

~~(5)~~ (6) Critical Facility. Construction of new critical facilities shall be, to the extent possible, located outside the limits of the special flood hazard area (SFHA) ~~(100-year floodplain)~~. Construction of new critical facilities shall be permissible within the SFHA only if no feasible alternative site is available. Critical facilities construction within the SFHA shall have the lowest floor elevated at least three (3) feet above the Base Flood Elevation (BFE) or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility ~~should~~ shall also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances 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.~~

[...]

Chapter 17.124 ACCESSORY STRUCTURES

[...]

17.124.030 Applicability of provision.

(1) Review of accessory structures by the director is required except for the following situations:

(a) Buildings or structures within residential zoning districts which ~~are less than~~ do not exceed ~~120~~ 200 square feet in gross floor area and 15 feet or less in height, measured from base to highest point of the structure;

**CITY OF ST. HELENS PLANNING DEPARTMENT
FINDINGS OF FACT AND CONCLUSIONS OF LAW
Development Code Amendments ZA.1.20**

APPLICANT: City of St. Helens

PROPOSAL: Amend Chapters 17.46 Floodplains and Floodways and 17.124 Accessory Structures of the St. Helens Municipal Code

The 120-day rule (ORS 227.178) for final action for this land use decision is not applicable.

BACKGROUND

These amendments address two Chapters of the Development Code. One deals with floodplains and the other accessory structures.

Floodplain

The City of St. Helens is a participating community in the National Flood Insurance Program (NFIP). One aspect of being a part of the NFIP is periodic Community Assistance Visits (CAV), so a community's implementation of the NFIP can be reviewed by a higher authority. In November of 2019, the City had its first Community Assistance Visit (CAV) since 2006. This was conducted by DLCDD staff, who identified some follow-up actions. One of those actions was to update the City's floodplain ordinance (Chapter 17.46) to comply with the State of Oregon Model Flood Hazard Management Ordinance, which became effective in August of 2019 after FEMA's approval. The bulk of these amendments pertain to this.

Accessory Structures

For many years the maximum size an accessory structure (in a residential zone) could be installed without requiring permits has been <120 square feet in gross floor area. The Oregon Building Code used this number until sometime in the early to mid-2000's (as the City Planner recalls) when it was changed to 200 square feet. Changing the 120 to 200 to better align with the building codes (i.e., Oregon Residential Specialty Code) is also proposed.

PUBLIC HEARING & NOTICE

Hearing dates are as follows: **March 10, 2020** before the Planning Commission and **April 15, 2020** before the City Council.

Notice was sent to agencies by mail or e-mail on February 19, 2020. Notice was published in the The Chronicle on February 26, 2020. Notice was sent to the Oregon Department of Land Conservation and Development on January 30, 2020.

In addition and due to the COVID-19 epidemic, notice was sent to agencies by email on April 3, 2020 and published the The Chronicle on April 8, 2020, because of changes for how public

meetings are being conducted (i.e., virtually) due to social distancing requirements to help slow the spread of the virus.

APPLICABLE CRITERIA, ANALYSIS & FINDINGS

SHMC 17.20.120(1) – Standards for Legislative Decision

The recommendation by the commission and the decision by the council shall be based on consideration of the following factors:

- (a) The statewide planning goals and guidelines adopted under ORS Chapter 197;
- (b) Any federal or state statutes or guidelines found applicable;
- (c) The applicable comprehensive plan policies, procedures, appendices and maps; and
- (d) The applicable provisions of the implementing ordinances.
- (e) A proposed change to the St. Helens zoning district map that constitutes a spot zoning is prohibited. A proposed change to the St. Helens comprehensive plan map that facilitates a spot zoning is prohibited.

(a) Findings: This criterion requires analysis of the applicable statewide planning goals. The applicable goals in this case are: Goal 1, Goal 7, and Goal 10.

Statewide Planning Goal 1: Citizen Involvement.

Goal 1 requires the development of a citizen involvement program that is widespread, allows two-way communication, provides for citizen involvement through all planning phases, and is understandable, responsive, and funded.

Generally, Goal 1 is satisfied when a local government follows the public involvement procedures set out in the statutes and in its acknowledged comprehensive plan and land use regulations.

The City's Development Code is consistent with State law with regards to notification requirements. Pursuant to SHMC 17.20.080 at least one public hearing before the Planning Commission and City Council is required. Legal notice in a newspaper of general circulation is required too. The City has met these requirements and notified DLCD of the proposal as required by State law.

After the CAV described above under the background section of this report, the City was instructed to update its floodplain ordinance (Chapter 17.46) to comply with the State of Oregon Model Flood Hazard Management Ordinance. Given the necessary amendments, this was an appropriate opportunity to discuss any measures the City may consider that are more stringent than the minimum standard. "Freeboard" which is the required elevation of buildings above the base flood level, is a key element where the City has latitude (can be 0-3 feet). Currently, residential structures require 1' of freeboard and non-residential 0 feet. An important question on this matter is if the status quo is the way to go or not. Thus, the issue was vetted.

Staff presented the freeboard issue to the Planning Commission at their December 10, 2019 meeting and the City Council at their January 15, 2020 work session. Both the Council (4-1 vote) and the Planning Commission (unanimous vote) favored 1' of freeboard for both residential and non-residential applications. This was a listed agenda item for these meetings which are publicly advertised and attended. Staff also reached out to Columbia County and the Port of St. Helens (potentially most affected land owner) for input in December and early January as well.

Note that the window of time for vetting before the formal adoption process was small because the amendments are supposed to be done by May 5, 2020 according to DLCD in their CAV follow up letter.

The 120 to 200 square foot area change for accessory structures was also discussed at these meetings with unanimous support of the concept from both the Planning Commission and City Council.

The Council consented to this legislative amendment proposal (concept) at their January 15, 2020 work session, as required by SHMC 17.20.020(2)(b).

Statewide Planning Goal 7: Areas Subject to Natural Disasters and Hazards.

Goal 7 requires local comprehensive plans to address Oregon's natural hazards, including but not limited to floods (coastal and riverine), landslides, earthquakes and related hazards, tsunamis, coastal erosion, and wildfires.

Amending the City's floodplain regulations directly aligns with Goal 7. The State created the new model ordinance in coordination with FEMA based on Goal 7. These updates are required by the State's (DLCD per the CAV described above) NFIP representation. Note that Goal 7 states that "*state agencies shall coordinate their natural hazard plans and programs with local governments and provide local governments with hazard inventory information and technical assistance including development of **model ordinances** and risk evaluation methodologies.*"

Goal 7 specifically calls out the NFIP. For example:

Local governments should consider measures that exceed the National Flood Insurance Program (NFIP) such as:

- a. limiting placement of fill in floodplains;*
- b. prohibiting the storage of hazardous materials in floodplains or providing for safe storage of such materials; and*
- c. elevating structures to a level higher than that required by the NFIP and the state building code.*

The City's proposed floodplain regulation amendments honor these provisions and include higher elevations than the minimum required. The minimum required is 0 feet of freeboard. Current law requires 1' of freeboard for residential and 0' for non-residential. As described above, this proposal includes changing the standard to 1' for *both* residential and non-residential.

These amendments are Goal 7 driven with appropriate practices for Goal 1 compliance.

Statewide Planning Goal 10: Housing.

Goal 10 requires buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.

Though not directly related to housing, this Goal must still be addressed as residential lands or any land where needed housing is possible are potentially affected.

St. Helens completed and adopted a Housing Needs Analysis (HNA) and Buildable Lands Inventory (BLI) in 2019 (Ordinance No. 3244). The results of the housing needs analysis indicates that the current St. Helens Urban Growth Boundary is sufficient to accommodate future housing needs, with a small deficiency of high density land for multi-family development.

The area of special flood hazard (100 year floodplain) within St. Helens is not vast. Further, the portion that overlaps Apartment Residential, AR zoning (the City's highest density zoning) is particularly small.

In addition, the proposed floodplain rules impact residential development similarly to those that have been in effect since 2010 (the last time they were changed). The amount of freeboard (i.e., elevation above the flood level) is not proposed to change as it is for non-residential development.

Thus, given the small impact of geographic extent and limited changes for residential development (i.e., not requiring additional heightening) this proposal does not reduce adequate land supply for residential development.

(b) Findings: This criterion requires analysis of any applicable federal or state statutes or guidelines. The Oregon model floodplain code is based on the State's building codes and federal policy; these amendments are largely based on that model code.

In addition, the change to the accessory structure maximum size allowed without permits rule is based on state building code provisions. This will better align the building codes with the City's Development Code.

(c) Findings: This criterion requires analysis of applicable comprehensive plan policies, procedures, appendices and maps. SHMC 19.12.130(2)(a)(1) is pertinent:

(a) Prohibit development on lands within the 100-year floodplain (i.e., special flood hazard areas subject to inundation by at least one percent annual flood probability), on slopes exceeding 20 percent, or with recognized drainage problems unless showing that design and construction techniques can minimize potential loss of life or property; specifically:

(i) All development within the 100-year floodplain (i.e., special flood hazard areas subject to inundation by at least one percent annual flood probability) shall conform to the standards set by FEMA;

The City's floodplain ordinance implements and exceeds these policies.

(d) Findings: This criterion requires analysis of the applicable provisions of the implementing ordinances. This proposal updates the City's implementation ordinances as embodied in the Development Code.

(e) Findings: This criterion is intended to prevent spot zoning, which doesn't apply in this case.

CONCLUSION & DECISION

Based upon the facts and findings herein, the City Council approves these amendments to the St. Helens to the Community Development Code (Title 17 SHMC).

Rick Scholl, Mayor

Date