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<i>CITY RECORDER USE ONLY:</i>	
AGENDA ITEM #:	_____
MEETING DATE:	_____
FINAL ACTION:	_____

PLANNING COMMISSION STAFF REPORT

TO: *Planning Commission*

FROM: *Bryan W. Pohl, Community Development Director*

MEETING DATE: *October 8, 2018*

PROJECT TEAM: *Robert A. Foster, Public Works Director
Derek Robbins, Civil Engineer
James Reitz (AICP), Senior Planner*

SUBJECT TITLE: *Public hearing on an ordinance to amend Development Code Articles 8 and 12 to revise the Flood Damage Prevention Regulations and Related Definitions*

ACTION REQUESTED:	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Order	<input type="checkbox"/> Resolution	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Informational
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X all that apply

ISSUE STATEMENT: In 2016 Forest Grove adopted new code to regulate flood hazard areas. FEMA staff recently completed a review of the ordinance and has developed a list of required revisions. Adoption of this ordinance would ensure continued compliance with the standards for participation in the National Flood Insurance Program (NFIP) and will enable Forest Grove to avoid suspension from the NFIP. FEMA is requiring that the code revisions be in effect by October 19, 2018.

BACKGROUND: The code adopted in 2016 was largely based on a Model Code developed by the Department of Land Conservation and Development (DLCD). Even though this process was completed two years ago, the Federal Emergency Management Agency (FEMA) has only now completed its review of the code for compliance with federal standards. The City was notified by email on September 5, 2018 that the review was complete and that FEMA had a number of "requested changes" although it is clear that these changes are mandatory in order to remain in compliance with the NFIP. DLCD staff followed up on September 10, 2018 with some minor revisions to ensure internal code consistency.

In a letter to the Mayor dated September 14, 2018, FEMA staff informed the City that these revisions would have to be in effect (not just adopted) by October 19, 2018. City staff responded that the normal legislative process could not be completed so quickly. On September 18, 2018 FEMA staff replied:

FEMA is not able to extend the 19 October 2018 deadline. The City of Forest Grove must have the FEMA and State ordinance revisions completed, (and) the ordinance adopted and effective prior to midnight 19 October 2018, to avoid suspension from the NFIP.

*Roxanne Reale-Pilkenton CFM
Floodplain Management Specialist
FEMA Region X | Floodplain Management and Insurance Branch*

Due to the impending and non-negotiable deadline imposed by FEMA, staff developed an expedited review process whereby the Planning Commission hearing will be followed a week later by the City Council hearing.

To meet the October 19, 2018 deadline, the City Council will have to adopt the ordinance with an emergency clause so that it may take effect immediately.

The amendments would primarily add to and revise definitions. One other amendment would remove code from the *Floodway* section (10.8.345) that allows structures in the floodway if the structure is part of a stream habitat restoration project. With this amendment, habitat restoration projects in a floodway would be required to submit a no-rise analysis and file for a Conditional Letter of Map Revision (CLOMR) with FEMA.

The following is a list of all of the proposed ordinance revisions. The remarks in quotes are FEMA's review comments:

EXHIBIT A (Article 8 Revisions)

§10.8.315(B) - The proposed text would allow FEMA to revise the *Flood Insurance Study* and the *Flood Insurance Rate Maps* without the City then having to adopt additional Development Code amendments.

§10.8.325(E) - The proposed text would correct an apparent typographical error.

§10.8.345(C) - "FEMA would like this portion of the code removed as we disagree with this provision of the Oregon Model Ordinance and have asked for it to be removed." This is the section referenced above pertaining to structures in a floodway.

EXHIBIT B (Article 12 Revisions)

§10.12.110(A) - DLCD staff noted that the Development Code uses "manufactured home" and "manufactured dwelling" interchangeably. This and subsequent amendments would ensure that "manufactured dwelling" is used consistently.

§10.12.210(F1)g. - "Please use the NFIP definition of Flood or Flooding ..." The proposed language is as FEMA stipulated.

§10.12.210(F1)k. - "Please use the NFIP definition..." The proposed language is as FEMA stipulated.

§10.12.210(F1)l. - "Please use the NFIP definition..." The proposed language is as FEMA stipulated.

§10.12.210(M1) - While the Development Code has a definition of "Mobile Home", it does not have a definition of "Manufactured Home". The proposed definition would comply with FEMA requirements.

§10.12.210(M5) - The existing definition of Manufactured Dwelling Park would not comply with FEMA requirements. The proposed definition would comply with FEMA requirements.

No other changes to the "M" definitions are proposed. The existing definitions would be renumbered and a new #16 added due to the addition of "Manufactured Home" as the new M1 definition.

§10.12.210(N3) - "Please use the NFIP definition ..." The proposed language is as FEMA stipulated.

§10.12.210(R1) - "Please use the NFIP definition ..." The proposed language is as FEMA stipulated.

§10.12.210(S8) – According to FEMA, this definition is “Incomplete (because it) does not reference 180 days from Permit issue date, or Substantial Improvement.” While FEMA did not provide the text for this amendment, the proposed language has been adopted by at least one other Oregon jurisdiction.

STAFF RECOMMENDATION: Staff recommends that the Planning Commission recommend approval of the ordinance to amend Forest Grove Development Code Articles 8 and 12 to revise the Hazards and Resources (flood damage prevention) regulations and related definitions.

ATTACHMENTS:

- Draft Planning Commission Decision and Findings Number 2018-05
- Ordinance Exhibits to Amend Forest Grove Development Code Articles 8 and 12

**Planning Commission Findings and Decision Number 2018-05
To Recommend Approval of an Ordinance to Amend Forest Grove
Development Code Articles 8 and 12 to Adopt Revised
Flood Damage Prevention Regulations and Definitions
File Number 311-18-000029-PLNG**

WHEREAS, Oregon Constitution Article XI Section 2 delegates the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Development Code was amended in 2016 with the addition of new standards to regulate development in floodplains and flood management areas to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas; and

WHEREAS, the 2016 amendments were based largely on a Model Code developed by the Oregon Department of Land Conservation and Development (DLCD); and

WHEREAS, in a notice received on September 5, 2018, the Federal Emergency Management Agency (FEMA) informed the City that FEMA had completed its review of the 2016 amendments and concluded that revisions were necessary to comply with federal standards; and

WHEREAS, FEMA is requiring that the City have these revisions in effect by October 19, 2018, and that failure to do so could result in the City being suspended from the National Flood Insurance Program (NFIP); and

WHEREAS, in a notice received on September 10, 2018, DLCD also noted the need for some minor edits pertaining to specific terms and definitions; and

WHEREAS, notice of these amendments was provided to DLCD on September 25, 2018; and

WHEREAS, notice of the Planning Commission hearing on this ordinance was published in the *Forest Grove News-Times* on September 26, 2018; and

WHEREAS, the Planning Commission held the duly-noticed public hearing on the proposed amendments on October 1, 2018.

The City of Forest Grove Planning Commission does hereby recommend to the City Council approval of the Development Code amendments as provided in Exhibits A and B, making the following specific findings in support of this decision:

Development Code §10.2.630 *Review Criteria* lists two standards to be satisfied to adopt a text amendment:

- A. *The text amendment is consistent with relevant goals and policies of the Forest Grove Comprehensive Plan; and*

Finding: Comprehensive Plan goals and policies address flood hazards as follows:

Natural Resources and Natural Hazards Goals

- (1) *All development shall consider, take into account and demonstrate suitability relative to the natural hazard limitations of the Forest Grove area;*

Finding: This goal applies to the actual development of land, not to the code regulating how the land develops. This goal does not apply to an ordinance revision, and is therefore not applicable.

- (2) *Floodplain areas shall be protected from incompatible uses to reduce potential for property damage;*

Finding: With the adoption of the 2016 amendments, floodplain areas are already protected from incompatible uses. The purpose of the current amendments would be to ensure that the Development Code is compliant with FEMA standards, and ensure that the City remains in good standing with the National Flood Insurance Program.

Natural Resources and Natural Hazards Policies

- (2) *Those involved in development will be required to address hazard conditions by the inclusion of basic environmental data (i.e. soil type, elevation of the floodplain, geologic limitations, etc.) and related designs and for engineering solutions in the submittal requirements for the development;*

Finding: This goal applies to the actual development of land, not to the code regulating how the land develops. This goal does not apply to an ordinance revision, and is therefore not applicable.

- (3) *Adopt as a provision in both the zoning and subdivision ordinances that an environmental report be prepared and certified by a qualified engineer for all development proposals in areas having natural physical hazards and/or limitations. As part of the environmental report, the engineer shall identify the intensity of urban development to be permitted based upon the carrying capacity of the land. Open space may be required within the development in order to protect the public health and safety;*

Finding: This policy was addressed with the 2016 amendments, which created Development Code §10.8.320 *Establishment of Development Permit*. This section requires a permit before development or construction begins in an area of special flood hazard, and describes plan submittal requirements. The proposed amendments would not modify this Development Code section. Thus, this policy has already been addressed.

- (4) *Permanent structural improvements will not be permitted in areas delineated as being located within the floodway of the 100-year floodplain as indicated from floodplain surface elevations provided by the U.S. Army Corps of Engineers;*

Finding: The proposed amendment to Development Code §10.8.345 *Floodways* would delete the provision to allow structural improvements for stream habitat restoration projects in floodways. With the deletion of this section, the Development Code would be in compliance with FEMA regulations and this policy.

- (5) *The development of areas delineated as being within the 100-year floodplain as indicated from floodplain surface elevations provided in the most current Washington County, Oregon - U.S. Army Corps of Engineers information shall be limited to appropriate open space uses;*

Finding: Development Code §10.8.320(C) currently limits use of the land below the base flood elevation to open space, parking lots or landscaped areas. The proposed amendments would not modify this Development Code section. Thus, this policy is met.

- (6) *Fill and compensatory excavation of the floodplain shall be used only as a final design solution for development adjacent to the floodway. Developers shall be required to spell out how development alternatives were evaluated and conclusions were made.*

Finding: None of the proposed amendments would modify existing Development Code standards for fill and compensatory excavation. Thus, this policy is not applicable.

- B. *The text amendment is consistent with relevant statewide and regional planning goals, programs and rules.*

Finding: Statewide Planning Goal 7 Areas Subject to Natural Hazards is "To protect people and property from natural hazards." Natural Hazards are defined as floods (coastal and riverine), landslides, earthquakes and related hazards, tsunamis, coastal erosion, and wildfires. To protect people and property from natural hazards, local governments are required to adopt comprehensive plans (inventories, policies and implementing measures) to reduce risk to people and property. Local governments are deemed to have complied with Goal 7 for riverine flood hazards by adopting and implementing local floodplain regulations that meet the minimum National Flood Insurance Program (NFIP) requirements. With the adoption of the proposed amendments, Forest Grove would remain in compliance with NFIP requirements and thus also with Statewide Planning Goal 7.

TOM BECK, Chair

Date

EXHIBIT A
ORDINANCE NO. 2018-00
File No. 311-18-000029-PLNG

ARTICLE 8 - GENERAL DEVELOPMENT STANDARDS
HAZARDS AND RESOURCES

- 10.8.300 PURPOSE
- 10.8.305 RESOURCE AREAS
- 10.8.310 HAZARD AREAS

10.8.315 FLOODPLAINS AND FLOOD MANAGEMENT AREAS

- A. Lands to Which This Code Applies
- B. Basis for Establishing Areas of Special Flood Hazard

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for Washington County and Incorporated Areas” dated November 4, 2016, **and as subsequently revised**, with accompanying Flood Insurance Rate Maps (FIRM) are hereby adopted by reference and declared to be a part of this code. The Flood Insurance Study is on file at the Forest Grove Engineering Department. The best available information for flood hazard area identification as outlined in §10.8.325(C) shall be the basis for regulation until a new FIRM is issued which incorporates the data utilized under §10.8.325(C).

- C. Warning and Disclaimer of Liability

10.8.320 ESTABLISHMENT OF DEVELOPMENT PERMIT

10.8.325 DESIGNATION, DUTIES & RESPONSIBILITIES OF THE CITY ENGINEER

- A. The City Engineer is hereby appointed to administer and implement this code by granting or denying development permit applications in accordance with its provisions.
- B. The duties of the City Engineer shall include, but not be limited to:
 - 1. Reviewing all development permits to determine that the permit requirements of this code have been satisfied.
 - 2. Reviewing all development permits to determine that all necessary permits have been obtained from those Federal, State, or local governmental agencies from which prior approval is required.
 - 3. Reviewing all development permits to determine if the proposed development is located in the floodway. If located in the floodway, ensure that the encroachment provisions of §10.8.345 are met.

4. Providing the base flood elevation as has been determined in accordance with §10.8.315(B) Basis for Establishing Areas of Special Flood Hazard to the Building Official, along with any freeboard requirements established in §10.8.335(B) Specific Standards.

C. Use of Other Base Flood Data in “A” Zones.

D. Information to be Obtained and Maintained.

E. Alteration of Watercourses.

1. Development shall not diminish the flood-carrying capacity of a watercourse. If any watercourse will be altered or relocated as a result of the proposed development, the applicant shall submit certification by a registered professional engineer that the flood-carrying capacity of the watercourse will not be diminished.
2. The City Engineer shall:
 - a. Notify adjacent communities, the Department of Land Conservation and Development 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.
 - b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.
3. Applicants shall obtain a Conditional Letter of Map Revision (CLOMR) from FEMA before any encroachment, including fill, new construction, substantial improvement, or other development, in the regulatory floodway is permitted. The applicant shall be responsible for preparing technical data to support the ~~CLOM~~ **CLOMR** application any paying any processing or application fees to FEMA.

F. Requirement to Submit New Technical Data.

G. Non-Conversion of Enclosed Areas Below the Lowest Floor.

H. Interpretation of FIRM Boundaries.

- 10.8.330 VARIANCE PROCEDURE
- 10.8.335 PROVISIONS FOR FLOOD HAZARD REDUCTION
- 10.8.340 BEFORE REGULATORY FLOODWAY
- 10.8.345 FLOODWAYS

Located within areas of special flood hazard established in §10.8.315(B) 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. Except as provided in paragraph (C) below, prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that

encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

- B. If §10.8.345(A) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of §10.8.335 Provisions for Flood Hazard Reduction.
- ~~C. Projects for stream habitat restoration may be permitted in the floodway provided:~~
 - ~~1. The project qualifies for a Department of the Army, Portland District Regional General Permit for Stream Habitat Restoration (NWP 2007-1023); and~~
 - ~~2. 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~~
 - ~~3. No structures would be impacted by a potential rise in flood elevation; and~~
 - ~~4. An agreement to monitor the project, correct problems, and ensure that flood-carrying capacity remains unchanged is included as part of the local approval.~~
- D. C. Temporary structures placed in the floodway: Relief from no-rise evaluation, elevation or dry flood-proofing standards may be granted for a non-residential structure placed during the dry season (June - October) and for a period of less than 90 days. A plan for the removal of the temporary structure after the dry season or when a flood event threatens shall be provided. The plan shall include disconnecting and protecting from water infiltration and damage all utilities servicing the temporary structure.
- ~~E. D. Temporary storage of goods and materials, not including hazardous materials, is allowed in the floodway for a period of less than 90 days within the dry season (June – October).~~

10.8.350 CRITICAL FACILITY
10.8.355 ENVIRONMENTAL PRACTICE

EXHIBIT B

ORDINANCE NO. 2018-00
File No. 311-18-000029-PLNG

ARTICLE 12 - USE CATEGORIES & DEFINITIONS

10.12.110 RESIDENTIAL USE CATEGORY

The residential use category includes the occupancy of living accommodations on a wholly or primarily non-transient basis.

- A. Household Living: Living facilities for small groups (households) of people who are related or unrelated, featuring self-contained units including facilities for cooking, eating, sleeping and hygiene. Tenancy is longer than one (1) month. Examples include single family detached and attached dwellings, duplexes, multifamily dwellings, and manufactured ~~homes~~ **dwellings**. The household living category includes most types of senior housing, e.g., congregate care and assisted living, if residents live in self-contained units. The Uniform Building Code shall determine the maximum number of people who may reside in any given dwelling unit.

10.12.210 MEANING OF SPECIFIC WORDS AND TERMS

As used in this Code, the following words and phrases shall mean:

D8. Dwelling-Related Definitions:

- a. Dwelling -
- b. Accessory Dwelling Unit -
- c. Apartment Or Multiple-Family Dwelling -
- d. Duplex -
- e. Single-Family Dwelling:
 - (1) Attached Dwelling -
 - (2) Detached Dwelling -
 - (3) Manufactured Home Dwelling- Factory-built, single-family structures that meet the National Manufactured Home Construction and Safety Standards Act (42 U.S.C. §5401), commonly known as the U.S. Department of Housing and Urban Development (HUD) code.

F1. Flood-Related Definitions:

- a. Area of Special Flood Hazard -
- b. Base Flood -
- c. Below-Grade Crawl Space -

- d. Conditional Letter of Map Revision (CLOMR) - A letter from FEMA commenting on whether a proposed project, if built as proposed, would meet the minimum NFIP standards or proposed hydrology changes.
- e. Critical Facility -
- f. Elevated Building -
- g. Flood or Flooding - ~~A general and temporary condition of partial or complete inundation of normally dry land areas from:~~
 - ~~(1) The overflow of inland waters and/or~~
 - ~~(2) The unusual and rapid accumulation of runoff of surface waters from any source.~~
 - (1) A general and temporary condition of partial or complete inundation of normally dry land areas from:**
 - (A) The overflow of inland or tidal waters.**
 - (B) The unusual and rapid accumulation or runoff of surface waters from any source.**
 - (C) Mudslides (i.e. mudflows) which are proximately caused by flooding as defined in paragraph (g)(1)(B) 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.**
 - (2) The collapse or subsidence of land along the shore of a lake or other both 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 a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (g)(1)(A) of this definition.**
- h. Floodplain -
- i. Floodway -
- j. Floodway Fringe - The area of the floodplain lying outside of the floodway.
- k. Flood Insurance Rate Map (FIRM) - ~~The official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.~~

An official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and 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).

- l. ~~Flood Insurance Study - The official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary Floodway Map, and the water surface elevation of the base flood.~~

An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determining of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

- m. Flood Management Area (FMA) –
- n. Highest Adjacent Grade -
- o. Letter of Map Change (LOMC) -
 1. Letter of Map Amendment –
 2. Letter of Map Revision (LOMR) -
- p. Lowest Floor -

M1. **Manufactured Dwelling. 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” does not include a “recreational vehicle”.**

M2. Mitigation.

M3. Mixed Use Development.

M4. Mobile Home. A structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.

M5. Manufactured Dwelling Park. ~~Any place where four (4) or more manufactured dwellings are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent or lease space or keep space for rent or lease to any person for a charge or fee paid or to be paid for the rental or lease or use of facilities or to offer space free in connection with securing the trade or patronage of such person.~~

A parcel (or contiguous parcels) or land divided into two or more manufactured home lots for rent or sale.

“Manufactured dwelling park” does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one manufactured dwelling per lot if the subdivision was approved by the local government unit having jurisdiction under an ordinance adopted pursuant to ORS 92.010 to 92.190. ORS 446.003 (27)

M6 - M15. *(No changes aside from shifting each definition down one number.)*

M16. Marijuana Wholesaler.

- N3. ~~New Construction. Structures for which the “start of construction” commenced on or after the effective date of this ordinance.~~

Structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by Forest Grove and includes any subsequent improvements to such structures.

- R1. ~~Recreational Vehicles. A vacation trailer or other unit, with or without motor power, which is designed for human occupancy and to be used temporarily for recreation or emergency purposes. The manufacturer shall identify the unit as a recreational vehicle.~~

A vehicle which 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 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.**

- S8. ~~Start of Construction. The first placement of permanent construction of a structure (other than a manufactured dwelling) on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation. 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 structure (other than a manufactured dwelling) without a basement of poured footings, the “start of construction” including the first permanent framing or assembly of the structure or any part thereof on its piling or foundation. For manufactured dwellings not within a manufactured home park or subdivision, “start of construction” is the date on which the construction of facilities for servicing the site on which the manufactured dwelling is to be affixed (including, at a minimum, the construction of streets, either final site grading or the pouring of concrete pads, and installation of utilities) is completed.~~

Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement occurred within 180 days of the permit date. The actual start means either the first placement of permanent construction of the 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 state of excavation; or the placement of a manufactured dwelling on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of street and/or walkways; nor does it include excavation for a

basement, footings, piers, or foundation 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.