

CHAPTER 14.20 FLOOD HAZARD AREA

14.20.005 Authority

The State of Oregon has in ORS 197.175 delegated the responsibility to local governmental units to adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City of Newport does ordain as follows:

- A. The flood hazard areas of the City of Newport are subject to periodic inundation which may result 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 may be caused by the cumulative effect of obstructions in special flood hazard areas which increase flood heights and velocities, and when inadequately anchored, cause damage in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to flood loss.

Staff: This is a new section that specifically calls out the City's authority to implement flood hazard regulations. We would typically include this in the ordinance, but not code. FEMA wants it in the code. This change addresses Sections 1.1 and 1.2 of the 9/2/19 FEMA Code Audit.

14.20.010 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 in flood hazard areas by provisions designed to:

- A. Protect human life and health;
- B. Minimize expenditure of public money for costly flood control projects;

- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. Minimize prolonged business interruptions;
- E. Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in special flood hazard areas;
- F. Help maintain a stable tax base by providing for the sound use and development of flood hazard areas so as to minimize blight areas caused by flooding;
- G. Notify potential buyers that the property is in a special flood hazard area
- H. Notify those who occupy special flood hazard areas that they assume responsibility for their actions
- I. Participate in and maintain eligibility for flood insurance and disaster relief.

Staff: The Purpose section of the code has been expanded upon to include additional reasons why a flood hazard code is necessary. The changes address Section 1.3 of the 9/2/19 FEMA Code Audit.

14.20.015 Methods of Reducing Flood Losses

In order to accomplish its purposes, this Chapter includes methods and provisions for:

- A. Restricting or prohibiting development which 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 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 flood waters;

- 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 flood waters or may increase flood hazards in other areas.

Staff: This is a new section that explains how the regulations outlined below go about achieving the purpose of the code. It responds to Section 1.4 of the 9/2/19 FEMA Code Audit.

14.20.020 Definitions

Words or phrases used in this Code shall be interpreted so as to give them the meaning they have in common usage and to give this Code its most reasonable application.

1. Appeal: 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: A designated Zone AO, AH, AR/AO, AR/AH, or VO on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one (1) to three (3) 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.
3. Area of special flood hazard: The land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year. It is shown on the Flood Insurance Rate Map (FIRM) as Zone A, AO, AH, A1-30, AE, A99, AR (V, VO, V1-30, VE). "Special flood hazard area" is synonymous in meaning and definition with the phrase "area of special flood hazard".
4. Base flood: the flood having a 1% chance of being equaled or exceeded in any given year.
5. Base flood elevation (BFE): The elevation to which floodwater is anticipated to rise during the base flood.
6. Basement: Any area of the building having its floor or subgrade (below ground level) on all sides.

7. Breakaway walls: A wall that is not part of the structural support of the building and is intended - through its design and construction - to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation system.
8. Coastal high hazard area: An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.
9. Development: Any man-made 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.
10. Flood or flooding:
 - A. general and temporary condition of partial or complete inundation of normally dry land areas from:
 - i. The overflow in inland or tidal waters.
 - ii. The unusual and rapid accumulation or run-off of surface waters from any source.
 - iii. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a)(2) 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.

11. Flood elevation study: 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.
12. Flood insurance rate map (FIRM): the 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).
13. Flood insurance study: See “Flood elevation study.”
14. Floodproofing: 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.
15. Floodway: The channel of a river or other water-course 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 a designated height. Also referred to as “Regulatory Floodway.”
16. Functionally dependent use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long term storage or related manufacturing facilities. Uses classified as “water-dependent” in NMC Chapter 14 are considered functionally dependent uses.
17. Highest adjacent grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.
18. Historic structure: Any structure that is:
 - A. Listed individually in the National Register of Historic Places (a listing maintained by the 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 a district preliminarily determined by the Secretary to qualify as a registered historic district;
- C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
- D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - i. By an approved state program as determined by the Secretary of the Interior or
 - ii. Directly by the Secretary of the Interior in states without approved programs.

19. Lowest floor: The lowest floor of the lowest enclosed area (including the basement). An unfinished or flood-resistant enclosure, usable solely for the parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Chapter.

20. 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" and is synonymous with "manufactured home."

21. Manufactured dwelling park or subdivision: A parcel (or contiguous parcels) of land divided into two or more manufactured dwelling lots for rent or sale.

22. Mean sea level (MSL): For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which Base Flood

Elevations shown on a community's Flood Insurance Rate Map are referenced.

23. New construction: For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by the City of Newport and includes any subsequent improvements to such structures.
24. 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 uses as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
25. Special flood hazard area: See "Area of special flood hazard" for this definition.
26. Start of construction: Includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days from the date 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 dwelling on a foundation. Permanent construction does not include land preparation (such as clearing, grading, and filling), the installation of streets and/or walkways, excavation (for a basement, footings, piers, or foundation or the erection of temporary forms), or 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 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.

27. Structure: For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above the ground, as well as a manufactured dwelling.

28. Substantial damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

29. Substantial improvement: Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50% 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 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."

30. Variance: A grant of relief by the City of Newport from the terms of a flood plain management regulation.

31. Violation: 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 Chapter is presumed to be in violation until such time as that documentation is provided.

Staff: Definitions were updated or added to comply with the Oregon State Model Flood Ordinance. Definitions for "below grade crawl space," "critical facility," "elevated building," "state

building code,” and “water dependent” have been deleted as unnecessary, redundant, or outdated. For example, water-dependent is now addressed under the definition for “functionally dependent use.” Definitions for existing, expansion, and new Manufactured Dwelling Parks are deleted as the circumstances they speak to are adequately addressed in the code. These changes address Section 2.0 of the 9/2/19 FEMA Code Audit.

14.20.025 Lands to Which this Chapter Applies

This Chapter shall apply to all special flood hazard areas within the jurisdiction of the City of Newport.

Staff: This is a new section that specifically links this code chapter to “special flood hazard areas.” This is a clarification, as the existing code applies to special flood hazard areas as well (it was just framed differently). This change addresses Section 3.1 of the 9/2/19 FEMA Code Audit.

14.20.030 Basis for Establishing the Special Flood Hazard Areas

The special flood hazard identified by the Federal Insurance Administrator in a scientific and engineering report entitled “The Flood Insurance Study (FIS) for Lincoln County, Oregon and Incorporated Areas,” dated October 18, 2019, with accompanying Flood Insurance Rate Maps (FIRMs) 41041C0354E, 41041C0360E, 41041C0362E, 41041C0364E, 41041C0366E, 41041C0368E, 41041C0369E, 41041C0502E, 41041C0504E, 41041C0506E, 41041C0507E, 41041C0508E, 41041C0515E, and 41041C0520E are hereby adopted by reference and declared to be part of this Chapter. The FIS and FIRM panels are on file at the Community Development Department located at Newport City Hall (169 SW Coast Hwy, Newport).

Staff: This section has been amended to reference the latest flood insurance study and to specifically call out the FIRM map panels relevant to this code chapter. It addresses Section 3.2 of the 9/2/19 FEMA Code Audit.

14.20.035 Coordination with State of Oregon Specialty Codes

Pursuant to the requirement established in ORS 455 that the City of Newport administers and enforces the State of Oregon Specialty Codes, the City of Newport 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.

Staff: This is a new section that acknowledges the Oregon Specialty Codes apply to new construction and that both codes are to be applied within special flood hazard areas. That is the current practice, so this is a clarification not a substantive change to how the two codes are applied. This revision addresses Section 3.3 of the 9/2/19 FEMA Code Audit.

14.20.040 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.

Staff: This is a new section that stipulates development in special flood hazard areas must adhere to the requirements of this chapter. It is somewhat redundant, as NMC Chapter 14.55 already requires this for the whole of Chapter 14. FEMA though wants the language in the flood hazard chapter. This change addresses Section 3.4.1 of the 9/2/19 FEMA Code Audit.

14.20.045 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 civil infraction subject to penalties set forth in NMC Chapter 14.57. Nothing contained herein shall prevent the City of Newport from taking such other lawful action as is necessary to prevent or remedy any violation.

Staff: This new section cross-references to the existing Chapter that spells out penalties for non-compliance. The penalties themselves are unchanged. This revision addresses Section 3.4.2 of the 9/2/19 FEMA Code Audit.

14.20.050 Abrogation

This Chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Chapter and other provisions of the Newport Municipal Code, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Staff: This new section adds language explaining the relationship between the code chapter and private binding agreements such as easements and covenants. Even without the additional language, the practice would be that the most stringent restrictions prevail, so this is really a clarification of existing practice. The change addresses Section 3.5.1 of the 9/2/19 FEMA Code Audit.

14.20.055 Severability

This Chapter and the various parts thereof are hereby declared to be severable. If any section clause, sentence, or phrase of the 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.

Staff: This is a new section. The issue is already addressed under Chapter 14.59; however, FEMA wants the language in the code chapter proper. The change addresses Section 3.5.2 of the 9/2/19 FEMA Code Audit.

14.20.060 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.

Staff: This new section articulates what is already existing law. The change addresses Section 3.6 of the 9/2/19 FEMA Code Audit.

14.20.065 Warning

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 on rare occasions. Flood heights may be increased by man-made 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.

Staff: This new section is informational, not regulatory. It addresses Section 3.7.1 of the 9/2/19 FEMA Code Audit.

14.20.070 Disclaimer of Liability

This Chapter shall not create liability on the part of the City of Newport, any officer or employee thereof, or the Federal Insurance Administrator for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made hereunder.

Staff: This new section is informational, not regulatory. It addresses Section 3.7.2 of the 9/2/19 FEMA Code Audit.

14.20.075 Designation of the Floodplain Administrator

The Community Development Director is hereby appointed to administer, implement, and enforce this Chapter by granting or denying development permits in accordance with its provisions. The Floodplain Administrator may delegate authority to implement these provisions.

Staff: This new section establishes that the Community Development Director, or designee, is responsible for implementing this Code Chapter. The Building Official also has a role in implementing the Chapter. The language codifies existing practice, and addresses Section 4.1 of the 9/2/19 FEMA Code Audit.

14.20.080 Administration

A. Establishment of Building/Development Permit. A Building/Development Permit shall be obtained before construction or development begins within any area horizontally within the special flood hazard area

established in [Section 14.20.030](#). The development permit shall be required for all structures, including manufactured dwellings, and for all other development, as defined in [Section 14.20.020](#), including fill and other development activities.

B. Application for Permit. Application shall be made on forms provided by the Community Development Department for this purpose 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:

1. In riverine flood zones, the proposed elevation (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 [Subsection 14.20.080\(F\)](#).
2. In coastal flood zones (V zones and coastal A zones), the proposed elevation in relation to mean sea level of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all structures, and whether such structures contain a basement.
3. Proposed elevation in relation to mean sea level to which any non-residential structure will be floodproofed.
4. Certification by a registered professional engineer or architect, licensed in the State of Oregon, that the flood-proofing methods for any nonresidential structure meet the flood-proofing criteria in [Subsection 14.20.095\(B\)\(4\)](#); and
5. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.
6. Base Flood Elevation data for subdivision proposals or other development when required per [Subsection 14.20.080\(C\)](#) and [Subsection 14.20.095\(A\)\(6\)](#).

7. Substantial improvement calculation for any improvement, addition, reconstruction, renovation, or rehabilitation of an existing structure.
 8. The amount and location of any fill or excavation activities proposed.
- C. Duties and Responsibilities. The duties of the Community Development Director, or their designee, shall include, but not be limited to, permit review to determine:
1. That the permit requirements of this Chapter have been satisfied;
 2. That necessary permits have been obtained and approved from those Federal, State, or local governmental agencies from which prior approval is required.
 3. Whether or not the proposed development is located in the floodway. If located in the floodway, assure that the floodway provisions of [Subsection 14.20.095\(B\)\(8\)](#) are met.
 4. 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 [Subsection 14.20.080\(E\)](#).
 5. If the proposed development qualifies as a substantial improvement as defined in [Section 14.20.020](#).
 6. If the proposed development activity is a watercourse alteration. If a watercourse alteration is proposed, ensure compliance with the provisions in [Subsection 14.20.080\(I\)](#).
 7. If the proposed development activity includes the placement of fill or excavation.
- D. Provide to building officials the Base Flood Elevation (BFE) applicable to any building requiring a development permit.

E. Use of Other Base Flood Data.

1. When base flood elevation data has not been provided in accordance with this Section, the Community Development Director shall obtain, review, and reasonably utilize any base flood elevation data available from a Federal, State, or other source, in order to administer [Section 14.20.095](#) (Specific Standards) and [Subsection 14.20.095\(B\)\(8\)](#) (Floodways).
2. All new subdivision proposals and other proposed new developments (including proposals for manufactured dwelling parks and subdivisions) must meet the requirements of [Subsection 14.20.095\(A\)\(6\)](#).
3. 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 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.

F. Information to be obtained and maintained by the Community Development Director:

1. 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 [Subsection 14.20.080\(E\)](#).
2. 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 [Subsection 14.20.095\(B\)\(8\)](#), [Subsection](#)

[14.20.095\(C\)\(7\)](#), [Subsection 14.20.080\(C\)\(2\)](#) are adhered to.

3. 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).
4. 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.
5. Maintain all Elevation Certificates (EC) submitted to the City of Newport.
6. 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 [Subsection 14.20.080\(E\)](#).
7. Maintain all floodproofing certificates required under this Chapter.
8. Record and maintain all variance actions, including justification for their issuance.
9. Obtain and maintain all hydrologic and hydraulic analyses performed as required under [Subsection 14.20.095\(B\)\(8\)](#).
10. Record and maintain all Substantial Improvement and Substantial Damage calculations and determinations as required under [Section 14.20.090](#).
11. Maintain for public inspection all records pertaining to the provisions of this Chapter.

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

1. 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.
2. 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.

H. 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.

I. Alteration of Watercourses. The Community Development Director shall:

1. 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 water course and submit evidence of such notification to the Federal Insurance Administration. This notification shall be provided by the applicant to the Federal Insurance Administration 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.

2. The applicant shall be required to submit a Conditional Letter of Map Revision (CLOMR) when required under [Section 14.20.085](#). Ensure compliance with all applicable requirements in Sections [14.20.085](#) and [14.20.080\(I\)](#).

Staff: Language has been added and amended to address Sections 4.2, 4.2.1, 4.2.2, 4.2.3.1, 4.2.3.2, 4.3.1, 4.3.2 and 5.1.1 of the 9/2/19 FEMA Code Audit. The changes elaborate on what the City looks for when evaluating development in special flood hazard areas and the types of records it must keep. The scope of the City's responsibilities are unchanged, as is the extent private property is regulated. It is more about ensuring that all requirements are clearly and explicitly articulated so that steps are not missed.

14.20.085 Requirement to Submit New Technical Data

- A. 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 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), Subsection 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.
- B. The Floodplain Administrator shall require a Conditional Letter of Map Revision prior to the issuance of a floodplain development permit for:
 1. Proposed floodway encroachments that increase the base flood elevation; and
 2. 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.
- C. 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).

Staff: This new section confirms an existing obligation that the City and applicants have to share new technical data with FEMA. It addresses Section 4.2.3.3 of the 9/2/19 FEMA Code Audit.

14.20.090 Substantial Improvement and Substantial Damage Assessments and Determinations

Conduct Substantial Improvement (SI) (as defined in [Section 14.20.020](#)) reviews for all structural development proposal applications and maintain a record of SI calculations within permit files in accordance with [Subsection 14.20.080\(F\)](#). Conduct Substantial Damage (SD) (as defined in [Section 14.20.020](#)) 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 [Section 14.20.030](#)) 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.

Staff: This is a new section. The requirement that substantial improvement/damage assessments be performed is not new, nor is the 50 percent threshold. The record keeping requirements are new. This change addresses Section 4.2.4 of the 9/2/19 FEMA Code Audit.

14.20.095 Provisions for Flood Hazard Reduction

- A. General Standards. In areas of special flood hazard as adopted by this Chapter (which may be illustrated on a zoning map as a Flood Hazard Overlay Zone (FH Zone)) the following provisions are required:
1. Anchoring.
 - a. All new construction and substantial improvements shall be anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 - b. All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement by providing

over-the-top and frame ties to ground anchors.
Specific requirements shall be that:

- i. Over-the-top ties be provided at each end of the manufactured home, with two (2) additional ties per side at intermediate locations, and manufactured homes less than 50 feet long requiring one (1) additional tie per side.
- ii. Frame ties are to be provided at each corner of the home with five (5) additional ties per side at intermediate points, and manufactured homes less than 50 feet long will require four (4) additional ties per side;
- iii. All components of the anchoring system are to be capable of carrying a force of 4,800 pounds; and
- iv. Additions to the manufactured home are to be similarly anchored.
- c. An alternative method of anchoring may involve a system designed to withstand the wind force of 90 miles an hour or greater.
- d. Certification must be provided by a registered structural engineer to the Building Official that this standard has been met.
- e. All modular homes shall comply with the requirements of the applicable building code.

2. Construction Materials and Methods.

- a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- b. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

3. Water Supply, Sanitary Sewer, and On-Site Waste Disposal Systems.

- a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
 - b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into the flood waters; and
 - c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding consistent with Department of Environmental Quality regulations.
4. Electrical, Mechanical, Plumbing, and Other Equipment.
- a. Electrical, heating, ventilating, air-conditioning, plumbing, duct systems, and other equipment and service facilities shall be elevated one foot above the base flood level 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, electrical, heating, ventilating, air-conditioning, plumbing, duct systems, and other equipment and service facilities shall:
 - i. If replaced as part of a substantial improvement shall meet all the requirements of this Section.
 - ii. Not be mounted on or penetrate through breakaway walls.
5. Tanks.
- a. Underground tanks shall be anchored to prevent flotation, collapse and lateral movement under conditions of the base flood.
 - b. Above-ground tanks shall be installed one foot above the base flood level or shall be anchored to prevent flotation, collapse, and lateral movement under conditions of the base flood.

- c. In coastal flood zones (V Zones or coastal A Zones) when elevated on platforms, the platforms shall be cantilevered from or knee braced to the building or shall be supported on foundations that conform to the requirements of the State of Oregon Specialty Code.

6. Subdivision Proposals.

- a. All 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 include within such proposals, Base Flood Elevation data.
- b. All new subdivision proposals and other proposed new developments (including proposals for manufactured home parks and subdivisions) shall:
 - i. Be consistent with the need to minimize flood damage.
 - ii. Have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.
 - iii. Have adequate drainage provided to reduce exposure to flood hazards.

Staff: This Subsection includes general regulatory requirements for development in special flood hazard areas, be they inland (i.e. riverine) or coastal. Anchoring requirements have been clarified, as have the standards applicable to utilities. New provisions have been added for tanks. The regulatory concepts when comparing the old and new codes remain the same, which is that structures in flood hazard areas must be anchored, and utilities water-tight, so that they can withstand the hydrostatic and hydrodynamic forces of a flood. These changes address Section 5.1.2, 5.1.3, 5.1.4.1, 5.1.4.2, and 5.1.5 of the 9/2/19 FEMA Code Audit.

- B. Specific Standards for Riverine (including all non-coastal) flood zones. These specific standards shall apply to all

new construction and substantial improvements in addition to the General Standards contained in [Subsection 14.20.095\(A\)](#) of this Chapter.

1. Residential Construction.

- a. New construction and substantial improvement of any residential structures shall have the lowest floor, including the basement, elevated to a minimum of one (1) foot above the base flood elevation.
- b. Enclosed areas below the lowest floor shall comply with the flood opening requirements in [Subsection 14.20.095\(B\)\(7\)](#).

2. Garages.

- a. Attached garages may be constructed with the garage floor slab below the Base Flood Elevation (BFE) in riverine flood zones, if the following requirements are met:
 - i. If located within a floodway the proposed garage must comply with the requirements of [Subsection 14.20.095\(B\)\(8\)](#);
 - ii. The floors are at or above grade on not less than one side;
 - iii. The garage is used solely for parking, building access, and/or storage;
 - iv. The garage is constructed with flood openings in compliance with [Subsection 14.20.095\(B\)\(7\)](#) to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater;
 - v. The portions of the garage constructed below the BFE are constructed with materials resistant to flood damage;
 - vi. The garage is constructed in compliance with the standards in [Subsection 14.20.095\(B\)\(2\)](#); and

- vii. 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.
 - b. Detached garages must be constructed in compliance with the standards for appurtenant structures in [Subsection 14.20.095\(B\)\(3\)](#) or nonresidential structures in [Subsection 14.20.095\(B\)\(4\)](#) depending on the square footage of the garage.
3. Appurtenant (Accessory) Structures.

Relief from elevation or floodproofing requirements for Residential and Non-Residential structures in Riverine (Non-Coastal) flood zones may be granted for accessory structures that meet the following requirements:

- a. Appurtenant structures located partially or entirely within the floodway must comply with requirements for development within a floodway found in [Subsection 14.20.095\(B\)\(8\)](#).
- b. Appurtenant structures must only be used for parking, access, and/or storage and shall not be used for human habitation;
- c. 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.
- d. The portions of the appurtenant structure located below the Base Flood Elevation must be built using flood resistant materials;
- e. 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.

- f. 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 [Subsection 14.20.095\(B\)\(7\)](#);
- g. Appurtenant structures shall be located and constructed to have low damage potential;
- h. 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 [Subsection 14.20.095\(A\)\(5\)](#);
- i. 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.

4. Nonresidential Construction.

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including the basement) elevated to one (1) foot above the base floor elevation or, together with attendant utility and sanitary facilities, shall:

- a. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
- b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
- c. 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 Community Development Director, or their designee.

- d. Nonresidential structures that are elevated, not floodproofed, shall comply with the standards for enclosed areas below the lowest floor as described in [Subsection 14.20.095\(B\)\(7\)](#).
- e. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one (1) foot below the flood-proofed level (e.g., a building constructed to the base flood level will be rated as one (1) foot below).

5. Manufactured Dwellings.

- a. New or substantially improved manufactured dwellings supported on solid foundation walls shall be constructed with flood openings that comply with [Subsection 14.20.095\(B\)\(7\)](#).
- b. The bottom of the longitudinal chassis frame beam shall be at or above Base Flood Elevation;
- c. New or substantially improved manufactured dwellings 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;
- d. Electrical crossover connections shall be a minimum of twelve (12) inches above Base Flood Elevation (BFE).

6. Recreational Vehicles.

Recreational vehicles placed on sites are required to:

- a. Be on the site for fewer than 180 consecutive days,

- b. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
- c. Meet the requirements of [Subsection 14.20.095\(B\)\(5\)](#), including the anchoring and elevation requirements for manufactured dwellings.

7. 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:

- a. Be designed to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exist of floodwaters;
- b. Be used solely for parking, storage, or building access;
- c. Be certified by a registered professional engineer or architect or meet or exceed all of the following minimum criteria:
 - i. A minimum of two openings;
 - ii. 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;
 - iii. The bottom of all openings shall be no higher than one foot above grade;
 - iv. 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;

- v. All additional higher standards for flood openings in the State of Oregon Residential Specialty Codes Section R322.2.2 shall be complied with when applicable.

Staff: This Subsection includes specific regulatory requirements for development in inland (i.e. riverine) special flood hazard areas. Standards for residential development have been clarified and new standards added for garages and accessory structures. This is largely a clarification of the rules, as garages and accessory structures were previously regulated as non-residential construction. New standards were added for manufactured dwellings and recreational vehicles, and crawlspace requirements have been folded into a new Subsection titled floor openings. When comparing the old and new codes, the regulatory principals are unchanged. The lowest floor of habitable spaces must be elevated at least one (1) foot above BFE, and non-habitable spaces must be floodproofed such that they can withstand the hydrostatic and hydrodynamic forces of a flood. The rules applicable to RVs are intended to ensure they are transient and mobile or, if not mobile, treated like manufactured dwellings. These changes address Section 5.2, 5.2.1, 5.2.2, 5.2.3, 5.2.3.1, 5.2.3.2, 5.2.3.3, 5.2.3.4, 5.2.3.5, and 5.2.3.6 of the 9/2/19 FEMA Code Audit.

8. Floodways

- a. Located within the special flood hazard areas established in [Section 14.20.030](#) are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of the floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- i. Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless:

- A. Certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that proposed

encroachment shall not result in any increase in flood levels within the community during that occurrence of the base flood discharge; or

- B. 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 are fulfilled.

b. If the requirements of [Subsection 14.20.095\(B\)\(8\)\(a\)\(i\)](#) above are satisfied, all new construction, substantial improvements, and other development shall comply with all other applicable flood hazard reduction provisions of [Section 14.20.095](#)

Staff: Requirements for demonstrating “no rise” in a regulatory floodway have been clarified. They are not materially different, just more specific. Provisions in the existing city code allowing alternative approval processes for manufactured dwellings and stream habitat restoration have been removed. A floodway is an area of active flow during a 100-year event, and the City’s exposure is limited to areas in and around Big Creek.

9. Before Regulatory Floodway. In areas where a regulatory floodway has not been designated, no new construction, substantial improvement, or other development (including fill) shall be permitted within Zones A1-A30 and AE on the community FIRMs, 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.

Staff: This subsection was restructured with minor edits. It addresses Section 5.2.3.1 of the 9/2/19 FEMA Code Audit.

C. Coastal High Hazard Area. Located within areas of special flood hazards established in [Subsection 14.32.040](#) are "Coastal High Hazard Areas," designated as Zones V1-V30, VE, and/or V. These areas have special flood hazards associated with high velocity waters from tidal surges and, therefore, in addition to meeting all applicable provisions of this Chapter and the State Building Code, the following criteria shall apply:

1. All new construction and substantial improvements in Zones V1 - V30 and VE (V if base flood elevation data is available) shall be elevated on pilings and columns such that:
 - a. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated a minimum of one foot above the base flood level; and
 - b. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those specified by the State of Oregon Specialty Codes.
2. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this Section.
3. Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures and whether or not such structures contain a basement. The Community Development Director shall maintain a record of all such information in accordance with [Subsection 14.20.080\(F\)](#).
4. All new construction shall be located landward of the reach of mean high tide.

5. Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this Section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls that exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:
 - a. Breakaway wall collapse shall result from water load less than that which would occur during the base flood; and
 - b. If breakaway walls are utilized, such enclosed space shall be usable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation.
 - c. Walls intended to break away under flood loads shall have flood openings that meet or exceed the criteria for flood openings in [Subsection 14.20.035\(B\)\(7\)](#).
6. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). Maximum water loading values to be used in this determination shall be those associated with the base flood. Maximum wind loading values used shall be those specified by the State of Oregon Specialty Codes.
7. Prohibit the use of fill for structural support of buildings.

8. Prohibit man-made alteration of sand dunes which would increase potential flood damage.
9. All structures, including but not limited to residential structures, non-residential structures, appurtenant structures, and attached garages shall comply with all the requirements of [Subsection 14.20.095\(C\)\(1\)](#) Floodproofing of non-residential structures is prohibited.
10. Manufactured Dwelling Standards for Coastal High Hazard Zones. All manufactured dwellings to be placed or substantially improved within Coastal High Hazard Areas (Zones V, V1-30, VE, or Coastal A) shall meet the following requirements:
 - a. Comply with all of the standards within [Subsection 14.20.095\(C\)](#);
 - b. The bottom of the longitudinal chassis frame beam shall be elevated to a minimum of one foot above the Base Flood Elevation (BFE); and
 - c. Electrical crossover connections shall be a minimum of 12 inches above the BFE.
11. Recreational Vehicle Standards for Coastal High Hazard Zones. Recreational vehicles within Coastal High Hazard Zones V1-30, V, and VE on the community's FIRM shall either:
 - a. Be on the site for fewer than 180 consecutive days; and
 - b. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 - c. Meet the permit requirements of [Section 14.20.020](#) (Administration) and the requirements for manufactured homes in [Subsection 14.20.095\(C\)\(10\)](#).

12. Tank Standards for Coastal High Hazard Zones.
Tanks shall meet the requirements of [Subsection 14.20.095\(A\)\(5\)](#).

Staff: Design standards for development in coastal high hazard areas have been clarified and cross-referenced to the State of Oregon Specialty Codes where appropriate. New standards have been added for manufactured dwellings requiring the chassis be elevated at least one (1) foot above BFE. Standards for tanks have also been added. These changes address Section 5.3, 5.3.1, 5.3.1.1, 5.3.1.2, and 5.3.1.3 of the 9/2/19 FEMA Code Audit.

D. Standards for Shallow Flooding Areas (AO Zone).

Shallow flooding areas appear on FIRMs as AO zones with depth designations. The base flood depths range from one (1) to three (3) feet above ground where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow.

1. In AO zones, adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures.
2. New construction and substantial improvements of residential structures and manufactured dwellings within AO zones shall have the lowest floor (including basement) elevated above the highest grade adjacent to the building, at minimum to or above the depth number specified on the FIRM plus one (1) foot or by at least two (2) feet if no depth number is specified on the FIRM. For manufactured dwellings the lowest floor is considered to be the bottom of the longitudinal chassis frame beam.
3. All new construction and substantial improvements of nonresidential structures within AO zones shall either:
 - a. Have the lowest floor (including the basement) elevated above the highest adjacent grade of the building site, at minimum to or above the depth number specified on the FIRM plus one (1) foot or by at least two (2) feet if no depth number is specified on the FIRM; or

- b. Together with attendant utility and sanitary facilities, be completely floodproofed to or above the depth number specified on the FIRM plus one (1) foot or a minimum of two (2) feet above the highest adjacent grade if no depth number is specified, so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as stated in [Subsection 14.20.095\(B\)\(4\)\(c\)](#).
4. Recreational vehicles placed on sites within AO Zones on the community's Flood Insurance Rate Maps (FIRM) shall either:
 - a. Be on the site for fewer than 180 consecutive days, and
 - b. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 - c. Meet the elevation requirements of [Subsection 14.20.095\(D\)\(2\)](#), and the anchoring and other requirements for manufactured dwellings of [Subsection 14.20.095\(B\)\(5\)](#).
 5. New and substantially improved appurtenant structures must comply with the standards in [Subsection 14.20.095\(B\)\(3\)](#).
 6. Enclosed areas beneath elevated structures shall comply with the requirements in [Subsection 14.20.095\(B\)\(7\)](#).

Staff: Design standards have been clarified and new standards put in place for RVs that are comparable to those applicable to other hazard designations. In reviewing the FIRM panels, it is evident that there is very little in the way of AO designated property in the City. The

*changes address Section 5.2.5, 5.2.5.1, and 5.2.5.2, of the
9/2/19 FEMA Code Audit.*

14.20.100 Variance Procedures

- A. 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.
- B. Variances shall be processed and authorized by the Planning Commission using a Type III decision making procedure.
- C. Conditions for Variance(s). A variance(s) may only be granted if the following conditions exist:
 - 1. New construction and substantial improvements to be erected will occur 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; or
 - 2. New construction, substantial improvements and other development is necessary for the conduct of a functionally dependent use.
- D. Variance(s) permissible pursuant to [Subsection 14.20.100\(C\)](#) may be approved upon a finding that the following criteria have been satisfied.
 - 1. The structure or other development is protected by methods that minimize flood damages during the base flood.
 - 2. There is a good and sufficient cause for the variance. In considering this criterion, the Planning Commission shall consider:
 - a. The importance of the services provided by the facility to the community.
 - b. The necessity to the facility of a waterfront location, where applicable.
 - c. The availability of alternative locations for the use that are not subject to flooding.

- d. The compatibility of the use with existing and anticipated development.
 3. Failure to grant the variance would result in an exceptional hardship to the applicant based on exceptional, unusual, and/or peculiar circumstances of the property. For functionally-dependent uses (a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water) only practical difficulties resulting from the failure to grant the variance rather than exceptional hardship are required.
 4. The granting of the variance will not result in increased flood levels during the base flood discharge, 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.
 5. The variance is the minimum necessary, considering the flood hazard, to afford relief.
- E. Variance Notification. In addition to the notification requirements provided in NMC Chapter 14.52, an 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 result in increased premium rates for flood insurance 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 [Subsection 14.20.080\(F\)](#).

Staff: This section has been amended and restructured to clarify the circumstances that qualify for a variance, the process that is to be followed, and the standards that apply. Variances are limited to situations where the use is a functionally dependent (i.e. water-dependent) use or circumstances where the structure, and surrounding developed properties are nonconforming and situated on small lots where it would be a hardship for them to meet the rules. The process and approval criteria have been clarified and are effectively the same as the existing rules, with the Planning Commission being the approval body. It addresses Section 4.4, 4.4.1, and 4.4.2 of the 9/2/19 FEMA Code Audit.

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