



## Staff Report

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**File #:** 19-471

**Version:** 1

**Date:** 10/14/2019

**Item #:** 4.b.

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**TO:** Mayor and City Council

**THROUGH:** Steve Powers, City Manager

**FROM:** Peter Fernandez, PE, Public Works Director

### **SUBJECT:**

Amending Salem Revised Code Chapter 601, Floodplain Overlay Zone

Ward(s): All Wards

Councilor(s): All Councilors

Neighborhood(s): All Neighborhoods

Result Area(s): Natural Environment Stewardship; Safe Community

### **ISSUE:**

Shall City Council engross Ordinance Bill No. 17-19 and conduct a public hearing for Engrossed Ordinance Bill No. 17-19, amending Chapter 601 (Floodplain Overlay Zone) of the *Salem Revised Code*, and, after the public hearing, conduct second reading to adopt the ordinance?

### **RECOMMENDATION:**

Engross Ordinance Bill No. 17-19 and conduct a public hearing for Engrossed Ordinance Bill No. 17-19, amending Chapter 601 (Floodplain Overlay Zone) of the *Salem Revised Code*, and, after the public hearing, conduct second reading to adopt the ordinance.

### **SUMMARY:**

Engrossed Ordinance Bill No. 17-19 (Attachment 1) updates Chapter 601 of *Salem Revised Code* (SRC), which contains development standards in the floodplain overlay zone. Updating SRC Chapter 601 is required by the Federal Emergency Management Agency (FEMA) in conjunction with new mapping efforts focused in the City of Turner and the surrounding area. Because the new mapping affects a small portion of the City of Salem, FEMA requires that *Salem Revised Code* Chapter 601 (Floodplain Overlay Zone) be amended to conform with Oregon's statewide model National Flood Insurance Program (NFIP) ordinance (Attachment 3). FEMA has established a deadline for adoption

of October 18, 2019. Engrossed Ordinance Bill 17-19 includes the required elements from the Oregon statewide model ordinance and retains applicable portions of the existing provisions of SRC Chapter 601.

The complete text of the proposed amendments is included in Exhibit A of Engrossed Ordinance Bill No. 17-19 (Attachment 2).

## **FACTS AND FINDINGS:**

### ***Procedural Findings***

1. ORS 197.610 and OAR 660-018-0020 require that notice be provided to the Department of Land Conservation and Development (DLCD) on any proposed amendment to a local land use regulation at least 35 days prior to the first public hearing. The public hearing is scheduled for October 14, 2019. Notice to DLCD was provided on September 4, 2019 within 35 days of the proposed hearing date.
2. Public notice will be sent by mail and published in the Statesman Journal newspaper, as required under SRC 300.1110(e).
3. City Council conducted first reading of Ordinance Bill 17-19 on September 23, 2019, forwarding it to a public hearing and second reading for adoption on October 14, 2019.

### ***Proposed Amendments***

1. The complete text of the proposed amendments is included as Exhibit A to the Engrossed Ordinance (See Attachment 2). The majority of the engrossed ordinance reflects verbatim language of the Oregon Model NFIP ordinance (See Attachment 3) with minor edits as needed to reflect the format of *Salem Revised Code*. The remaining portions of the engrossed ordinance are retained from the prior language of *Salem Revised Code* Chapter 601 that were not addressed in the Oregon Model Code.
2. Engrossed Ordinance Bill 17-19 will result in a minor change to how development within the Special Flood Hazard Area is regulated. Engrossed Ordinance Bill 17-19 is primarily a formatting change to align with the Oregon statewide model ordinance. The revised SRC Chapter 601 will continue implement state and federal law no differently than it has been done previously by the City of Salem, with one minor exception as described below:
  - a. In existing SRC 601.045 and 601.100, electrical, heating, plumbing, air conditioning equipment, and other service facilities must be elevated to the base flood elevation. In the equivalent new section SRC 601.070, these facilities must be elevated a

minimum of one foot above the base flood elevation. This provision is requirement for improving the City's Community Rating System program and increasing the amount of discount provided for flood insurance policies.

3. The original Ordinance Bill 17-19 has been engrossed to implement minor changes as required by DLCD and to correct minor reference errors, including a change to Table 300-2 in SRC Chapter 300 to correct the procedure described for floodplain overlay zone variances.
4. Staff received confirmation from DLCD by email on October 1, 2019, that Engrossed Ordinance 17-19 complies with state and federal requirements for floodplain management.

### ***Substantive Findings***

SRC 110.085 establishes the following approval criteria that must be met for a code amendment to be approved:

1. *The amendment is in the best interest of the public health, safety, and welfare of the City.*

**Finding:** The code amendment is in the best interest of the public health, safety, and welfare of the City because it is required for ongoing participation in the National Flood Insurance Program.

2. *The amendment conforms with the Salem Area Comprehensive Plan, applicable Statewide Planning Goals, and applicable administrative rules adopted by the Department of Land Conservation and Development.*

**Finding:** The Salem Area Comprehensive Plan (SACP) is the long-range plan for guiding development in the Salem urban area. The overall goal of the plan is to accommodate development in a timely, orderly, and efficient arrangement of land uses and public facilities and services that meet the needs of present and future residents of the Salem urban area.

The proposed code amendment was reviewed for conformance with the applicable goals and policies of the SACP, Statewide Planning Goals and administrative rules adopted by the Department of Land Conservation and Development. The following goals and policies relate to the proposed code amendment:

- ***Natural Resources Goal:*** *To conserve open space, protect natural, historic, cultural and scenic resources, and to protect life and property from natural disasters and hazards.*

***Policy 7: Flood Hazards***

*Development in the floodplain shall be regulated to preserve and maintain the capability of the floodplain to convey the flood water discharges and to minimize danger to life and property.*

The proposed code amendment is consistent with the above SACP natural resources goal and policy because it implements the National Flood Insurance Program as required by FEMA.

- **Statewide Land Use Planning Goal 7 - Areas Subject to Natural Disasters and Hazards:** *Goal 7(C)(7) Local governments will be deemed to comply with Goal 7 for coastal and riverine flood hazards by adopting and implementing local floodplain regulations that meet the minimum National Flood Insurance Program (NFIP) requirements.*

The proposed code amendment conforms to this goal because it implements the Oregon Model NFIP ordinance as approved by DLCD and FEMA.

## **Alternatives**

City Council may:

- A. Conduct reading, adopting Engrossed Ordinance Bill No. 17-19; or
- B. Decline to adopt Engrossed Ordinance Bill No. 17-19. Failure to adopt the Engrossed Ordinance Bill may result in sanctions from FEMA that affect ability of Salem residents to obtain flood insurance and mortgage loans.

## **BACKGROUND:**

On August 23, 2019, the Oregon Department of Land Conservation and Development informed staff that revisions are required to the City's Floodplain Overlay Zone ordinance and must be adopted by October 18, 2019, for Salem to avoid being considered by FEMA to be in violation of the NFIP. This requirement to amend the ordinance in compliance with the Oregon Model NFIP ordinance was initiated because of mapping changes focused around the City of Turner. Those mapping changes affect a small portion of Salem and take effect on October 18, 2019.

Staff was fully aware of the mapping changes but were unaware of any action required by Salem because DLCD had recently approved Salem's floodplain management program through a Community Assistance Visit in 2017. However, on August 23, 2019, DLCD notified staff of a change in FEMA policy that required the ordinance changes. Engrossed Ordinance Bill 17-19 makes minor changes to the existing text of SRC Chapters 300 and 601 and implements state and federal regulations already in place while using the format of the recently approved Oregon statewide model ordinance.

Staff maintains a comprehensive list of stakeholders who are interested in floodplain management and stormwater master planning. In addition to the required legal notice, staff has also sent notice of the proposed amendments to these stakeholders, as well as Neighborhood Associations, Marion Polk Home Builders Association, Salem Realtors Association, Salem Area Chamber of Commerce, and watershed councils.

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Assistant Public Works Director

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**Attachments:**

1. Engrossed Ordinance Bill No. 17-19
2. Exhibit A to Ord. Bill No. 17-19
3. Oregon Model NFIP Ordinance