

# CITY COUNCIL AGENDA



April 16, 2020  
6:00 P.M.  
Virtual Meeting

This meeting may be viewed via livestream at [www.cityofmedford.org](http://www.cityofmedford.org) or click [here](#). To attend virtually, click [here](#).

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10. **Roll Call**

20. **Recognitions, Community Group Reports**

30. **Oral Requests and Communications from the Audience**

Due to restrictions with public gatherings, no in-person public comments are being allowed at this time although you can attend the meeting virtually and provide comments using the link above. Comments can also be submitted via email at [council@cityofmedford.org](mailto:council@cityofmedford.org) or first class mail to Medford City Hall.

40. **Approval or Correction of the Minutes of the April 2, 2020 Regular Meeting**

50. **Consent Calendar**

50.1 **COUNCIL BILL 2020-45**

An ordinance approving a contract in the amount of \$1,008,008.00 with Knife River Materials to perform asphalt pavement overlays on various streets in the City of Medford.

50.2 **COUNCIL BILL 2020-46**

An ordinance authorizing the temporary amendment of Section 2.117 of the Medford Municipal Code pertaining to the nomination requirements for City Council and Mayoral elections.

50.3 **COUNCIL BILL 2020-47**

An ordinance authorizing execution of a three-year Agreement between the City of Medford and Teamsters Local 223/Municipal Mechanics Employees concerning wages, hours, fringe benefits, and other working conditions from July 1, 2020 through June 30, 2023.

50.4 **COUNCIL BILL 2020-48**

A resolution authorizing the opening of a \$1 million line of credit at Umpqua Bank to facilitate a commercial card program to pay certain vendors instead of issuing checks.

**60. Items Removed from Consent Calendar**

**70. Ordinances and Resolutions**

**70.1 COUNCIL BILL 2020-49**

A resolution of the City Council of the City of Medford, Oregon, authorizing the issuance, sale, execution, and delivery of full faith and credit bonds; authorizing the execution and delivery of a bond purchase agreement or other financing agreement, and related issuance and sales documents; and authorizing such other agreements, certificates, and documents as may be necessary and appropriate to carry out such transaction; designating authorized representatives and delegating authority; and related matters.

**70.2 COUNCIL BILL 2020-50**

An ordinance reinstating Sections 9.701, 9.702, 9.703, 9.704, 9.705, 9.706, and 9.707 of the Medford Municipal Code pertaining to the floodplain, which were repealed on December 19, 2019.

**80. Public Hearings**

**90. Council Business**

**90.1 Proclamations issued**

Administrative Professionals Day - April 22, 2020

Days of Remembrance - April 19-26, 2020

**90.2 Committee Reports and Communications**

a. Council Officers Update

b. Police Advisory Commission Appointment

**100. City Manager and Staff Reports**

**110. Adjournment**



**AGENDA ITEM COMMENTARY**

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**DEPARTMENT:** Public Works  
**PHONE:** (541) 774-2100  
**STAFF CONTACT:** Cory Crebbin, Public Works Director

**AGENDA SECTION:** Consent Calendar  
**MEETING DATE:** April 16, 2020

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**COUNCIL BILL 2020-45**

An ordinance approving a contract in the amount of \$1,008,008.00 with Knife River Materials to perform asphalt pavement overlays on various streets in the City of Medford.

**SUMMARY AND BACKGROUND**

Council is requested to consider the approval of a contract in the amount of \$1,008,008.00 to Knife River Materials to perform asphalt pavement overlays on various streets in the City of Medford. The City contracts for a large portion of pavement maintenance because it is seasonal work that exceeds the capacity of Public Works crews.

Timely repair of streets decreases long-term maintenance costs by postponing the need for more costly reconstructions and produces a smoother ride for the traveling public. This contract includes overlays of failed pavement areas. Overlays are a cost-effective option for restoring structural integrity to an otherwise sound street section.

**PREVIOUS COUNCIL ACTIONS**

On April 19, 2019, Council approved Council Bill 2019-26 awarding a contract to Knife River Materials for asphalt repairs and overlays on streets in the City.

On June 6, 2019, Council approved Council Bill 2019-45 adopting budget for the City of Medford for the biennium commencing July 1, 2019, and making appropriations thereunder.

**ANALYSIS**

Two bids were received and Knife River Materials Inc. was the apparent low bidder with a bid of \$1,008,008.00. The other bid submitted was CPI Acquisitions LLC - \$1,751,500.00.

This work will be on one street section of Crater Lake Avenue. The existing pavement condition has been analyzed and it has been determined that this maintenance option will produce a smoother and safer ride for the traveling public at the lowest life-cycle cost. The City's Pavement Management Analysis Report is used to determine which pavements will receive asphalt overlays.

**FINANCIAL AND/OR RESOURCE CONSIDERATIONS**

Expenditure of \$1,008,008.00 is included on page 9-18 of the 2019-2021 adopted Biennial Budget. This contract will be paid for from the Street Utility Fund.

**TIMING ISSUES**

Work will start after July 6, 2020, and is scheduled to be complete by September 11, 2020.



**COUNCIL OPTIONS**

- Approve the ordinance as presented.
- Modify the ordinance.
- Deny the ordinance and provide direction to staff regarding pavement maintenance.

**STAFF RECOMMENDATION**

Approve the ordinance for a contract with Knife River Materials.

**SUGGESTED MOTION**

I move to approve the ordinance for a contract in the amount of \$1,008,008.00 to Knife River Materials for asphalt pavement overlays.

**EXHIBITS**

Ordinance

Exhibit A - Bid Tabulation

Exhibit B - Work To Be Done

Exhibit C - Map

Contract documents are on file in the City Recorder's office

ORDINANCE NO. 2020-45

AN ORDINANCE approving a contract in the amount of \$1,008,008.00 with Knife River Materials to perform asphalt pavement overlays on various streets in the City of Medford.

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

That execution of a contract in the amount of \$1,008,008.00 with Knife River Materials to perform asphalt pavement overlays on various streets in the City of Medford, on file in the City Recorder's office, is hereby authorized.

PASSED by the Council and signed by me in authentication of its passage this \_\_\_\_ day of April, 2020.

ATTEST:

\_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor

APPROVED \_\_\_\_\_, 2020

\_\_\_\_\_  
Mayor

**BID TABULATIONS Overlay Various Streets in the City of Medford**

**Project; Overlay Various Streets in the City of Medford**  
**Location: Various Streets in the City of Medford 2020**  
**Project No: MST-2103**  
**Date of Bid Opening: March 17, 2020**



**Peter Brown**  
**Public Works Operations**  
**Engineering Tech IV**

Item No.	Item Description	Unit of Measure	Estimated Quantity	Low Bidder Knife River Materials		CPI Acquisitions	
				Unit Bid	Amount	Unit Bid	Unit Bid
1	MOBILIZATION	LS	1	\$47,708.00	\$47,708.00	\$255,000.00	
2	TEMPORARY WORK ZONE TRAFFIC CONTROL, COMPLETE	LS	1	\$75,000.00	\$75,000.00	\$175,000.00	
3	EROSION CONTROL	LS	1	\$300.00	\$300.00	\$15,000.00	
4	MINOR ADJUSTMENT OF MANHOLES	EACH	39	\$1,500.00	\$58,500.00	\$1,600.00	
5	COLD PLANE PAVEMENT REMOVAL, 0 - 4 INCHES DEEP	SQYD	57,000	\$2.50	\$142,500.00	\$3.25	
6	LEVEL 3, 1/2 INCH ACP	TON	6,200	\$68.00	\$421,600.00	\$107.00	
7	LEVEL 3, 3/8 INCH ACP IN LEVELING	TON	1,550	\$80.00	\$124,000.00	\$127.00	
8	FIBER REINFORCEMENT IN HMAC	POUND	6,200	\$10.00	\$62,000.00	\$10.00	
9	4 INCH ASPHALT CONCRETE PAVEMENT REPAIR	SQYD	3,100	\$24.00	\$74,400.00	\$42.00	
10	EXTRA FOR ASPHALT APPROACHES	EACH	4	\$500.00	\$2,000.00	\$1,600.00	
11	LOOSEN WATER VALVES	T & M	0	\$0.00	\$0.00	\$0.00	
				<b>Total Bid =</b>	<b>\$1,008,008.00</b>	<b>\$1,751,500.00</b>	

## SPECIAL PROVISIONS

### WORK TO BE DONE

The Work to be done under this Contract consists of asphalt repairs, cold plane removal of pavement and overlay of various streets, manhole adjustments and other appurtenances, etc. on One (1) street section, in the City of Medford, Oregon.

1. Minor Adjustment of Manholes.
2. Cold Plane Removal of Pavement.
3. 4 inch Asphalt Concrete Pavement Repairs.
4. Place Level 3, 3/8 Dense ACP in Leveling.
5. Place Level 3, 1/2 Dense ACP.
6. Perform additional and incidental Work as called for by the Specifications and Plans.

This project includes work at the following locations:

Street	From	To	4 Inch Asphalt Concrete Repair	Cold Plane Removal of Pavement
CRATER LAKE AV	75' North of E MAIN ST	SUZANNA ST	3,100.0 SY	57,000.0 SY

### APPLICABLE SPECIFICATIONS

The Specifications that are applicable to the Work on this Project is the 2018 edition of the "Oregon Standard Specifications for Construction", as modified by these Special Provisions. All Sections in Part 00100 apply, whether or not modified or referenced in the Special Provisions.

All number references in these Special Provisions shall be understood to refer to the Sections and subsections of the Standard Specifications bearing like numbers and to Sections and subsections contained in these Special Provisions in their entirety.

### CLASS OF PROJECT

This is a City of Medford Project.

### PROJECT INFORMATION

Information pertaining to this Project may be obtained from the following:

Peter Brown, Engineering Tech IV, City of Medford  
821 N Columbus Ave, Medford OR;

Phone 541-774-2617.





**AGENDA ITEM COMMENTARY**

**DEPARTMENT:** City Recorder/Legal  
**PHONE:** (541)774-2088/(541)774-2024  
**STAFF CONTACT:** Karen Spoons, City Recorder  
Eric Mitton, Deputy City Attorney

**AGENDA SECTION:** Consent Calendar  
**MEETING DATE:** April 16, 2020

**COUNCIL BILL 2020-46**

An ordinance authorizing the temporary amendment of Section 2.117 of the Medford Municipal Code (MMC) pertaining to the nomination requirements for City Council and Mayoral elections.

**SUMMARY AND BACKGROUND**

Council is requested to consider an ordinance temporarily amending Section 2.117 of the MMC, which describes the nomination requirements and processes for candidates for City Council and Mayoral elections.

The proposed amendment temporarily amends MMC 2.117 for the November 2020 General Election by allowing a prospective candidate to pay a filing fee of \$25.00. Currently MMC only allows the collection of signatures. In doing so, this allows candidates to comply with social distancing guidelines due to the coronavirus outbreak. Providing a fee instead of signatures is a second, alternative option; providing signatures in lieu of the fee is still permissible.

**PREVIOUS COUNCIL ACTIONS**

On May 17, 1984, Council Bill 5147 was approved, amending Chapter 2 of the MMC by adding Sections 2.116 and 2.117 pertaining to nominations and elections.

On May 17, 2018, Council Bill 2018-47 was approved, amending Section 2.117 of the MMC pertaining to nomination requirements for City Council and Mayoral elections.

**ANALYSIS**

The proposed amendment reflect changes due to the coronavirus (COVID-19) and social distancing requirements. The nomination process for Council and Mayor elections requires prospective candidates to comply with the requirements set forth in the Medford Charter of 1998, MMC, as well as with rules established by the Oregon Secretary of State's Office. These rules include residency requirements for Council and Mayoral candidates; the number of signatures required for nomination; the manner in which signatures are collected and submitted; the timeline for submission and review of nominations; and the process for verifying that nomination papers have been properly submitted to the City Elections Officers. Additionally, Section 2.117 outlines the process by which a candidate may withdraw his or her nomination.

ORS 249.056 sets the filing fees for candidates, such as U.S. Senator, Governor, district attorney, and State Senator or Representative. The filing fee for a State Senator or Representative is \$25.00.



**FINANCIAL AND/OR RESOURCE CONSIDERATIONS**

For the 2020 election, an increase of \$25.00 would be received for each prospective candidate who chose to use a fee instead of signatures.

**TIMING ISSUES**

Election packets will be available for potential candidates on our website or in person from the City Elections Officer on June 3, 2020. Because Section 2.117 affects the nomination and election processes, it seems prudent to approve the updated language before election packets are made available to potential nominees for this year's election cycle.

**COUNCIL OPTIONS**

Approve the ordinance as written.

Modify the ordinance.

Deny the ordinance and provide direction to staff.

**STAFF RECOMMENDATION**

Staff recommends approval of the ordinance.

**SUGGESTED MOTION**

I move to approve the ordinance amending MMC Section 2.117.

**EXHIBITS**

Ordinance

ORDINANCE NO. 2020-46

AN ORDINANCE authorizing the temporary amendment of Section 2.117 of the Medford Municipal Code (MMC) pertaining to the nomination requirements for City Council and Mayoral elections.

Section 1. Section 2.117 of the Medford Municipal Code is amended to read follows:

2.117 Nominations.

Pursuant to Section 22 of the Medford Charter of 1998, the City Recorder shall be the City Elections Officer and shall oversee the nomination process as outlined in this Section. A qualified elector who meets the qualifications of Sections 8 and 12 of the Charter may be nominated for elective city office, pursuant to the process outlined in this Section. For purposes of this Section, a “qualified elector” shall mean an active Oregon registered voter who has continuously resided within the City for no less than six months prior to election day, and who remains in the City for the duration of his or her term in elective office. Nominees for City Council must live in the Ward they seek to represent at the time they are qualified for office, and must reside and remain in that ward. A candidate is considered “qualified for office” at the time the candidate submits his or her nomination papers to the City Elections Officer, as described in subsection (3) of this Section. If a person is a resident of an area annexed by the City less than six months prior to election, the person’s total continuous residency in the area annexed shall be counted towards the six-month requirement.

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(4) **Withdrawal of Nomination.** Any person who has been nominated and has accepted the nomination may withdraw from nomination not later than the 67th day before the general election by filing a completed copy of the withdrawal form, published by the Secretary of State’s Office, with the City Elections Officer. The statement shall be signed and acknowledged by the candidate.

(5) **Alternative Method for Social Distancing.** **Until January 1, 2021, in lieu of the above-described signatures supporting a nomination, an individual may instead choose to pay a fee of \$25 to the City of Medford along with the above-described form and information, provided to the City Recorder.**

Section 2. This change above, the addition of Section 2.117(5), shall be repealed without further Council action effective January 1, 2021.

PASSED by the Council and signed by me in authentication of its passage this \_\_\_\_ day of April, 2020.

ATTEST: \_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor

APPROVED \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor

NOTE: Matter in **bold** is new. Matter ~~struck out~~ is existing law to be omitted. Three asterisks ( \* \* \* ) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity.



**AGENDA ITEM COMMENTARY**

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**DEPARTMENT:** Human Resources  
**PHONE:** [(541) 774-2010  
**STAFF CONTACT:** Bonnie Barasch, HR Director

**AGENDA SECTION:** Consent Calendar  
**MEETING DATE:** April 16, 2020

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**COUNCIL BILL 2020-47**

An ordinance authorizing execution of a three-year Agreement between the City of Medford and Teamsters Local 223/Municipal Mechanics Employees concerning wages, hours, fringe benefits, and other working conditions from July 1, 2020 through June 30, 2023.

**SUMMARY AND BACKGROUND**

Council is requested to consider a three-year agreement with Teamsters Municipal Mechanics employees. The previous agreement, representing employees within the Public Works Department Fleet Services, expires June 30, 2020. The proposed three-year agreement from July 1, 2020 through June 30, 2023, provides consistency with past history on Council direction regarding wages, hours, fringe benefits and other working conditions.

**PREVIOUS COUNCIL ACTIONS**

On July 19, 2018 – Council Bill O2018-89 was approved authorizing an agreement with Teamsters Local 223 representing Medford Municipal Mechanics.

**ANALYSIS**

The proposed agreement covers six (6) Public Works Fleet Services employees and provides for:

1. Salary increases: 2.75% effective 7/1/20, 2.75% effective 7/1/2021, and 2.75% effective 7/1/2022.
2. Health insurance: Beginning July 1, 2020 and for the term of this contract the City would pay 100% of the insurance premium for the lowest cost insurance plan. An employee would be responsible to pay any difference between the lowest cost plan and any higher cost plan they have selected. Currently that cost is approximately \$1564 per employee for the lowest cost plan.
3. Additional amendments were tentatively agreed to. These amendments have minimal financial impact and provide for clarity within the agreement.
4. The contract was ratified by the bargaining unit on March 10, 2020.

**FINANCIAL AND/OR RESOURCE CONSIDERATIONS**

The total increased compensation cost of the proposed action has been estimated by the Finance Department to be approximately \$19,731 for the first year of the agreement, approximately \$35,829 for the second year of the agreement and approximately \$41,169 for the third year of the agreement and Funds for the contract increases are available in the current and upcoming budget.



**TIMING ISSUES**

If the Council chooses not to approve this proposed agreement, negotiations with the bargaining unit will need to be re-opened.

**COUNCIL OPTIONS**

- Approve the ordinance as presented.
- Modify the ordinance as presented.
- Deny the ordinance as presented and direct staff regarding further action

**STAFF RECOMMENDATION**

Staff recommends approval of the ordinance authorizing the agreement with Teamsters Medford Municipal Mechanics Employees.

**SUGGESTED MOTION**

I move to approve the ordinance authorizing the agreement with Teamsters Construction & Maintenance Employees.

**EXHIBITS**

Ordinance

Agreement on file in City Recorder's office.

ORDINANCE NO. 2020-47

AN ORDINANCE authorizing execution of a three-year Agreement between the City of Medford and Teamsters Local 223 / Municipal Mechanics Employees concerning wages, hours, fringe benefits, and other working conditions from July 1, 2020 through June 30, 2023

THE CITY OF MEDFORD ORDAINS AS FOLLOWS:

That execution of an Agreement between the City of Medford and Teamsters Local 223 / Municipal Mechanics Employees concerning wages, hours, fringe benefits, and other working conditions from July 1, 2020, through June 30, 2023, which is on file in the City Recorder's office, is hereby authorized.

PASSED by the Council and signed by me in authentication of its passage this \_\_\_ day of April, 2020.

ATTEST: \_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor

APPROVED \_\_\_\_\_, 2019.

\_\_\_\_\_  
Mayor



**AGENDA ITEM COMMENTARY**

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**DEPARTMENT:** Finance  
**PHONE:** (541) 774-2030  
**STAFF CONTACT:** Lorraine Peterson, Acting CFO

**AGENDA SECTION:** Consent Calendar  
**MEETING DATE:** April 16, 2020

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**COUNCIL BILL 2020-48**

A resolution authorizing the opening of a \$1 million line of credit at Umpqua Bank to facilitate a commercial card program to pay certain vendors instead of issuing checks.

**SUMMARY AND BACKGROUND**

Council is requested to approve a resolution authorizing a \$1 million line of credit at Umpqua Bank to facilitate a commercial card program to pay certain vendors instead of issuing checks. Umpqua Bank is requiring City Council authorization since the line of credit exceeds the City Manager's approval authority.

**PREVIOUS COUNCIL ACTIONS**

None.

**ANALYSIS**

Umpqua Bank is offering the City an opportunity to gain efficiencies in its accounts payable process by paying certain vendors with a virtual credit card instead of a check. Benefits to the City include a reduction in check processing, with associated staff, paper and postage costs, as well as a revenue share of total virtual credit card activity. The revenue share will come to the City as an annual rebate. Benefits to vendors include immediate payment into their bank accounts upon invoice approval, eliminating delays caused by mail delivery of checks and manual bank deposits.

A line of credit is necessary to cover the virtual payments in the event of insufficient funds in the City's bank account. It is anticipated that the line of credit will not be needed, but is an Umpqua Bank requirement for the program. We are aware of at least two agencies in Oregon who are using this program: the Medford Water Commission and City of Eugene.

**FINANCIAL AND/OR RESOURCE CONSIDERATIONS**

There are no anticipated financial impacts for the line of credit. The account will be set up as auto debit ensuring the virtual payments are covered well within the due date thereby avoiding interest or late fees.

The amount of the annual rebate is dependent upon the number of vendors opting to participate in the program and the amount paid via the virtual credit cards. Umpqua Bank is offering a revenue share that ranges between 1.25% and 1.45% of combined annual spending; for calendar year 2020, Umpqua Bank is guaranteeing a rate of at least 1.35%. This could result in annual rebates of up to \$100,000.

**TIMING ISSUES**

Umpqua Bank is requiring the line of credit before the program can begin.



**COUNCIL OPTIONS**

Approve the resolution as presented.

Modify the resolution as presented.

Deny the resolution as presented and provide direction to staff.

**STAFF RECOMMENDATION**

Staff recommends approval of the resolution.

**SUGGESTED MOTION**

I move to approve a resolution authorizing a \$1 million line of credit at Umpqua Bank to facilitate a commercial card program to pay certain vendors instead of issuing checks.

**EXHIBITS**

Resolution

RESOLUTION NO. 2020-48

A RESOLUTION authorizing the opening of a \$1 million line of credit at Umpqua Bank to facilitate a commercial card program to pay certain vendors instead of issuing checks.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MEDFORD, OREGON:

That the resolution to open a \$1 million line of credit at Umpqua Bank to facilitate a commercial card program to pay certain vendors instead of issuing checks, is hereby authorized.

PASSED by the Council and signed by me in authentication of its passage this \_\_\_\_ day of April, 2020.

ATTEST: \_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor



**AGENDA ITEM COMMENTARY**

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**DEPARTMENT:** Finance  
**PHONE:** (541) 774-2030  
**STAFF CONTACT:** Lorraine Peterson, Acting CFO

**AGENDA SECTION:** Ordinances and Resolutions  
**MEETING DATE:** April 16, 2020

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**COUNCIL BILL 2020-49**

A resolution of the City Council of the City of Medford, Oregon, authorizing the issuance, sale, execution, and delivery of full faith and credit bonds; authorizing the execution and delivery of a bond purchase agreement or other financing agreement, and related issuance and sales documents; and authorizing such other agreements, certificates, and documents as may be necessary and appropriate to carry out such transaction; designating authorized representatives and delegating authority; and related matters.

**SUMMARY AND BACKGROUND**

Council is requested to approve a resolution authorizing the issuance, sale, execution and delivery of Full Faith and Credit bonds in an aggregate principal amount not to exceed \$3,900,000 to pay for Phase 2 of the Energy Savings Performance contract with Ameresco Inc.

**PREVIOUS COUNCIL ACTIONS**

On January 10, 2019, the Council held a study session and indicated staff should issue a Request for Proposal (RFP) to convert existing street lights to LED technology. The project was presented at that time as being financed with utility bill savings to pay off the debt.

On June 6, 2019, Council approved Council Bill 2019-45 adopting the budget for the City of Medford for the biennium commencing July 1, 2019, and making appropriations thereunder.

On August 1, 2019, Council Bill 2019-82 was approved and a contract was awarded to Ameresco, Inc. in the amount of \$131,340 to complete Phase 1 of the ESPC contract.

On April 2, 2020, Council approved Council Bill 2020-39 which approves Phase 2 of the Energy Savings Performance contract with Ameresco, Inc. for lighting upgrades throughout the City of Medford.

**ANALYSIS**

Two options were considered to fund the project. Option 1 finances the project over a 15-year period through a Full Faith and Credit bond issuance; Option 2 pays for the project out of existing budgets. Staff recommends adoption of Option 1.

Option 1

Request for Financing Proposals were sent to twenty-nine financial institutions; nine proposals were received from eight financial institutions (Bank of America, BB&T (Trueist) Bank, Capital One Public Funding, Sterling National Bank, TD Equipment Finance (presented two proposals), Umpqua Bank, US Bank and Washington Federal Bank). The lowest interest rate, 1.8% fixed for 15-years, was provided by Umpqua Bank.



Benefits of Option 1 include:

- The project is guaranteeing 15 years of energy savings in the form of reduced electric bills. These utility savings are more than sufficient to meet the debt repayment each year; additionally, there will be excess savings that can be used to accelerate debt repayment, fund other projects, or increase operating reserves.
- Financing allows the City to retain a positive cash flow with this project, something that is critical in these times of economic uncertainty. The City is not able to increase taxes in any of these funds to raise operating reserves; financing allows the project to be paid without using existing reserves or capital.
- The interest rate is extremely low at 1.8%.
- The City has the ability to pay off the debt at any time; there are no prepayment penalties after the sixth year.

#### Option 2

This option would fund the project through existing appropriations. This project was not budgeted; as a result, funding would need to come from contingency and/or deferral of other projects. Both ODOT and the League of Oregon Cities are estimating a reduction in Gas Tax revenue of up to 40% due to travel restrictions and economic uncertainty. A high-level analysis of the Gas Tax fund budget indicates that contingency might be needed to supplement payroll and essential purchases if existing projects are not deferred. Therefore, staff recommends not using any Gas Tax Fund contingency to pay for this project. The Street Utility Fund was also considered as a funding source for this project; however, street utility revenue is already being affected by business closures as a result of the COVID-19 virus. There are no discretionary projects budgeted in the Street Utility Fund, only operating and maintenance projects. Given the uncertainty as to the magnitude of the revenue reduction, and that this fund has significant payroll and essential expenditures, staff recommends funding the project by deferring budgeted projects within the Gas Tax fund.

Benefits of this option include:

- The project is guaranteeing 15 years of energy savings in the form of reduced electric bills. Since these savings would not be needed to pay for debt financing, the funds would be available to pay for the Transportation System Plan projects that were deferred to pay for the LED Lighting project.
- The total cost of the project would be reduced by \$636,397 through interest and bond issuance cost savings.

Given the anticipated Gas Tax revenue reduction and uncertain economic climate, staff reviewed if the City should proceed with this project at this time or wait until some point in the future when the economy has stabilized. It was determined that it is in the City's best interests to move forward with the project now. The energy savings to be generated by this project actually strengthens the City's cash position through the reduction in its street light electric utility bills. Financing the project would allow the City to pay for it with no impact to existing budgets and actually generates surplus funds



that can be used to supplement the anticipated Gas Tax revenue shortfall through excess energy savings over the debt payment.

The General Fund and Parking Fund project costs would need come from contingency. It should be noted that there was an 80% reduction in the Parking Fund revenues after the Governor’s Shelter in Place Order. Using contingency funds at this time to finance a project is risky. Gas Tax funding will come from deferred projects. It is estimated that it will take about 12 years for these funds to be paid back from the savings on the electric utility bills.

**FINANCIAL AND/OR RESOURCE CONSIDERATIONS**

Option 1

The City would issue Full Faith and Credit bonds in an amount not to exceed \$3,900,000 at a fixed interest rate of 1.8% to be repaid over a 15-year period. Principal payments will be \$3,842,698.10 (the anticipated amount of the bond issue); interest payments will be \$564,975.51 for a total payment of \$4,407,673.61. These payments would be made from the guaranteed electric utility bill savings. For the current biennium, the debt payment would be \$264,780.95, with projected energy savings and incentives of \$563,488, leaving an excess of \$298,707 that can be used to cover the anticipated Gas Tax revenue shortfall.

Payments are split proportionally between Public Works and Parks, Recreation and Facilities, with the breakdown as follows:

	<u>Current Biennium</u>	<u>Total 15-Years</u>
General Fund, 100:	\$ 17,617.00	\$ 258,981.58
Gas Tax Fund, 530:	\$241,416.23	\$4,064,196.72
Parking Fund, 701:	\$ 5,747.72	\$ 84,495.31

Option 2

Project costs in the amount of \$4,046,972 will be split proportionally between Public Works and Parks, Recreation and Facilities, with the breakdown as follows:

	<u>Current Biennium</u>
General Fund, 100:	\$ 237,844
Gas Tax Fund, 530:	\$3,731,529
Parking Fund, 701:	\$ 77,599

The City expects to receive an incentive of \$381,429 from the Energy Trust of Oregon in addition to the annual energy savings from the reduced electric bill. Estimated energy and maintenance savings for the current biennium are \$182,059 for a total savings and incentive of \$563,488. These savings and incentive will be received regardless of which funding option is selected. Total energy and maintenance savings over the 15-year financing period are projected to be \$5,623,287, which results in an excess of \$1,215,600 over debt payments should the City elect to carry the bonds for the full 15-year term.



**TIMING ISSUES**

Umpqua Bank locked the interest rate until June 15 to meet the City's 60-day noticing requirement.

**COUNCIL OPTIONS**

Approve the resolution as presented.

Modify the resolution as presented.

Deny the resolution as presented and provide direction to staff.

**STAFF RECOMMENDATION**

Staff recommends approval of the resolution with utilization of funding Option 1.

**SUGGESTED MOTION**

I move to approve a resolution authorizing the issuance, sale, execution and delivery of Full Faith and Credit bonds in an aggregate principal amount not to exceed \$3,900,000 payable from the General, Gas Tax, and Parking funds.

**EXHIBITS**

Resolution

RESOLUTION NO. 2020-49

A RESOLUTION of the City Council of the City of Medford, Oregon, authorizing the issuance, sale, execution, and delivery of full faith and credit bonds; authorizing the execution and delivery of a bond purchase agreement or other financing agreement, and related issuance and sales documents; and authorizing such other agreements, certificates, and documents as may be necessary and appropriate to carry out such transaction; designating authorized representatives and delegating authority; and related matters.

WHEREAS, the City of Medford (the "City") is authorized by Oregon Revised Statutes ("ORS") Section 287A, the laws of the State of Oregon and its City Charter, to issue "revenue bonds" as defined in ORS 287A.010 for any public purpose and to secure those bonds with a pledge of the full faith and credit of the City as provided in ORS 287A.315; and

WHEREAS, the City has determined that it is financially feasible and in the City's best interests to (i) acquire, install, upgrade and improve street lighting throughout the City, and (ii) pay certain costs of issuance relating to such project (the "Project"); and

WHEREAS, the City finds that it is further in the best interests of the City to authorize the sale, issuance and delivery of full faith and credit bonds, in one or more series (the "2020 Bonds"), in an aggregate principal amount not to exceed \$3,900,000; and

WHEREAS, pursuant to Section 32 of the City Charter, the City Council finds that it is in the best interest of the City that the 2020 Bonds have a maturity date of more than 10 years from the date of issuance of the 2020 Bonds; and

WHEREAS, it is in the best interest of the City to authorize the execution and delivery of a bond purchase agreement or other financing agreement (the "Financing Agreement"), establishing the terms and conditions of the purchase and sale of the 2020 Bonds in a method to be determined by the authorized representative of the City as provided herein, and such other agreements, certificates and documents as may be necessary to provide for the financing of the Project, and the terms and conditions for the purchase, sale, issuance, execution, delivery and administration of the 2020 Bonds (collectively, the "Financing Documents"); and

WHEREAS, the City adopts this Resolution to authorize and provide for (i) the financing of the Project; (ii) determining the method of purchase and sale of the 2020 Bonds pursuant to the provisions of this Resolution; (iii) the terms and conditions for purchase, sale, issuance, execution, delivery and administration of the 2020 Bonds, in one or more series and the Financing Documents related thereto; and (iv) to authorize certain officials and employees of the City to take action on the City's behalf and to determine the method of purchase and sale of the 2020 Bonds and to negotiate, execute and deliver the Financing Documents; and

WHEREAS, upon adoption of this Resolution, the City will cause Notice of the 2020 Bonds to be published in the *Mail Tribune*, pursuant to ORS 287A.150 and as provided for herein in Section 8, and none of the 2020 Bonds may be sold, and no purchase agreement for the 2020 Bonds may be executed, until at least sixty (60) days following publication of the notice.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Medford as follows:

**Section 1.** Authorization of the 2020 Bonds. The City authorizes the issuance, sale, execution and delivery of the 2020 Bonds, in one or more series. The proceeds of the 2020 Bonds received by the City pursuant to the terms of the Financing Agreement shall be used to pay all or a portion of the costs of the Project. The 2020 Bonds may be issued such that interest on any series of the 2020 Bonds is designated as tax-exempt or federally taxable by the Authorized Representative (defined below). The true interest cost on the 2020 Bonds issued shall not exceed 1.8% per annum for 2020 Bonds designated as tax-exempt or 2020 Bonds designated as federally taxable. The terms and conditions for the purchase, sale, issuance, execution, delivery and administration of the 2020 Bonds shall be established consistent with the authorization of this Resolution.

**Section 2.** Authorized Representative. The City authorizes and directs the City Manager, Chief Financial Officer or Acting Chief Financial Officer, or their respective designees (each, an "Authorized Representative"), each acting individually, to evaluate, negotiate, enter into, execute, deliver and otherwise implement on behalf of the City the terms and conditions for the purchase, sale, issuance, execution, delivery and administration of the 2020 Bonds and the Financing Documents, as may in the judgment of such Authorized Representative be in the best interest of the City and in a manner consistent with and in furtherance of this Resolution.

**Section 3.** Security. The City pledges its full faith and credit and taxing powers as contemplated by ORS 287A.315 to the payment of the 2020 Bonds. The 2020 Bonds shall be secured by and payable from the City's general non-restricted revenues and other funds that are lawfully available for that purpose, including, the proceeds of the 2020 Bonds, subject to the limitations of sections 11 and 11b, Article XI of the Oregon Constitution, and revenues derived from other taxes, if any, levied by the City in accordance with and subject to limitations and restrictions imposed under applicable law or contract, that are not dedicated, restricted or obligated by law or contract to an inconsistent expenditure or use. The owners of the 2020 Bonds will not have a lien or security interest on any projects financed or refinanced with the proceeds of the 2020 Bonds.

**Section 4.** Form of 2020 Bonds. The 2020 Bonds shall be prepared by Special Counsel in substantially the form approved by an Authorized Representative and the Bank (defined below). The 2020 Bonds shall be subject to authentication, registration, payment, exchange and transfer as provided in the Financing Documents.

**Section 5.** Tax-Exempt Status and Covenant as to Arbitrage. The City covenants to use the proceeds of the 2020 Bonds designated as tax-exempt and the Project financed with the proceeds of the 2020 Bonds designated as tax-exempt, and to otherwise comply with the provisions of the Internal Revenue Code of 1986 (the "Code") so that the interest paid on the 2020 Bonds designated as tax-exempt will not be includable in gross income of the owners of such 2020 Bonds designated as tax-exempt for federal income tax purposes. The City specifically covenants:

- (1) To comply with "arbitrage" provisions of Section 148 of the Code, and to pay any required rebates and penalties; and

(2) To use the Project financed with the proceeds of the 2020 Bonds designated as tax-exempt so that the 2020 Bonds designated as tax-exempt are not “private activity bonds” under Section 141 of the Code; and

(3) To comply with all reporting requirements.

The Authorized Representative may enter into covenants on behalf of the City to protect the tax-exempt status of the interest paid on any series of the 2020 Bonds designated as tax-exempt.

**Section 6.** Delegation for Establishment of Terms and Sale of the Bonds. Pursuant to ORS Section 287A.300, each Authorized Representative, acting singly, is authorized and directed, on behalf of the City without further approval of the Council to:

(a) Evaluate and determine favorable terms and conditions for the purchase, sale, issuance, execution, delivery and administration of the 2020 Bonds and the Financing Documents, subject to a determination by the Authorized Representative that such terms are beneficial to the City to obtain good financing terms for the 2020 Bonds, including:

(1) Soliciting bids, including subsequent updated bids if necessary based on market conditions, from and selecting the method of purchase of the 2020 Bonds by an investment banking institution (the “Bank”), which may occur through a direct private placement with a Bank, a negotiated public sale with a Bank serving as underwriter, or a public, competitive offering of the 2020 Bonds for sale to a Bank;

(2) Negotiating, executing and delivering the Financing Agreement with the Bank, as purchaser or underwriter, to establish the terms and conditions for the purchase and sale of the 2020 Bonds, including, without limitation, the terms and conditions for the issuance of the 2020 Bonds including total aggregate principal amount of the 2020 Bonds not to exceed \$3,900,000, the designation of the 2020 Bonds as tax-exempt or federally taxable, the principal and interest payment dates, redemption or prepayment provisions, registration, covenants for financial reporting and other covenants necessary and appropriate for the issuance of the 2020 Bonds;

(b) Execute and deliver the 2020 Bonds, the Financing Agreement, the Financing Documents, and any other agreements, certificates, documents and opinions required in connection with the purchase, sale, issuance, execution, delivery and administration of the 2020 Bonds;

(c) Enter into covenants regarding the use of the proceeds of the 2020 Bonds received by the City pursuant to the Financing Agreement and the use of the Project to maintain the tax-exempt status of the 2020 Bonds designated as tax-exempt; and

(d) Execute and deliver a certificate specifying the actions taken pursuant to this Resolution, and any other agreements, certificates and documents that an Authorized Representative determines are necessary to execute and deliver the Financing Agreement and to offer and sell the 2020 Bonds in accordance with this Resolution.

**Section 7.** Defeasance. The City may defease the 2020 Bonds by setting aside, with a duly appointed escrow agent, in a special escrow account irrevocably pledged to the payment of the

principal and interest paid on the 2020 Bonds to be defeased, cash or direct obligations of the United States of America, including obligations of any federal agencies to the extent they are unconditionally guaranteed by the United States of America, in an amount which, in the opinion of a nationally recognized expert in the field of mathematical calculations relating to tax-exempt obligations, is sufficient without reinvestment to pay all principal and interest paid on the defeased 2020 Bonds until the principal payment date or any earlier redemption date. The obligations of the City with respect to the 2020 Bonds that are defeased pursuant to this Section shall be deemed paid and no longer outstanding, and shall cease to be entitled to any lien, benefit or security under this Resolution or the Financing Documents except the right to receive payment from the special escrow account.

**Section 8.** Process.

(a) None of the 2020 Bonds may be sold, and no purchase agreement for the Bonds may be executed, until at least sixty (60) days following publication of the Notice of Full Faith and Credit Bond Authorization, such notice being in substantially the same form attached to this Resolution as Exhibit A (the "Notice").

(b) Pursuant to ORS 287A.150, the Notice will be published in the *Mail Tribune*, a newspaper of general circulation within the boundaries of the City, upon adoption of this Resolution. The Notice shall provide that the estimated principal of the 2020 Bonds shall not exceed \$3,900,000.

(c) The Notice shall also specify the last date on which petitions from qualified electors of the City may be submitted.

(d) If petitions for an election, containing valid signatures of not less than five percent (5%) of the City's qualified electors, are received within the time indicated in the Notice, the question of issuing such 2020 Bonds shall be placed on the ballot at the next legally available election date. If such petitions are received, no such amount of 2020 Bonds may be sold until this Resolution and the question of whether to issue such 2020 Bonds is approved by a majority of the electors living within the boundaries of the City who vote on that question. Any such petitions will be subject to ORS 287A.150.

**Section 9.** Appointment of Special Counsel and Municipal Advisor. The City hereby appoints Orrick, Herrington & Sutcliffe LLP of Portland, Oregon, as Special Counsel to the City with respect to the 2020 Bonds, and D.A. Davidson & Co. as Placement Agent to the City with respect to the 2020 Bonds.

**Section 10.** Resolution to Constitute Contract. In consideration of the purchase and acceptance of any or all of the 2020 Bonds by the owners, the provisions of this Resolution shall be part of the contract of the City with the owners and shall be deemed to be and shall constitute a contract between the City and the owners pursuant to ORS 287A.360, or any successor statute. The covenants, pledges and representations contained in this Resolution, or in the closing documents executed in connection with the 2020 Bonds, including without limitation the City's covenants and pledges contained in Section 3, Section 5 and Section 6, and the other covenants and agreements to be performed by or on behalf of the City shall be contracts for the equal benefit, protection and security of the owners, all of which shall be of equal rank without preference, priority or distinction

of any of such 2020 Bonds over any other thereof, except as expressly provided in or pursuant to this Resolution.

Effective Date of Resolution. This Resolution shall become effective immediately upon its passage by the Council and approval of the Mayor.

PASSED by the City Council of the City of Medford and signed by me in authentication of its passage this \_\_\_ day of April 2020.

ATTEST: \_\_\_\_\_

\_\_\_\_\_  
Mayor

EXHIBIT A

(FORM OF NOTICE OF FULL FAITH AND CREDIT BOND AUTHORIZATION)

NOTICE IS HEREBY GIVEN that the City Council of the City of Medford, Oregon (the “City”), adopted Resolution No. [ ] (the “Resolution”) on April 16, 2020, authorizing the issuance of full faith and credit bonds (the “Bonds”). The bonds will be issued to (i) acquire, install, upgrade and improve street lighting throughout the City, and (ii) pay costs of issuance of the Bonds (the “Project”), as more fully described in the Resolution.

The City Council has delegated to the City Manager, Chief Financial Officer or Acting Chief Financial Officer or their respective designees the authority to establish the terms, conditions and covenants regarding the Bonds and the revenues which are necessary or desirable to effect the sale of the Bonds.

The City estimates that the Bonds will be issued in a principal amount not to exceed \$[3,900,000]. Bond principal and interest are payable from the City’s general non-restricted revenues and other funds that are lawfully available for that purpose, including the proceeds of the Bonds and revenues from an ad valorem tax authorized to be levied under the City’s permanent rate limit under sections 11 and 11b, Article XI of the Oregon Constitution, and revenues derived from other taxes and fees, if any, levied by the City in accordance with and subject to limitations imposed under applicable law or contract, that are not dedicated or restricted or obligated by law or contract to an inconsistent expenditure or use. The City pledges its full faith and credit and taxing powers as contemplated by ORS 287A.315. The owners of the Bonds will not have a lien or security interest in the Project financed with the proceeds of the Bonds.

If written petitions, signed by not less than five percent (5%) of the City’s qualified electors, are filed at the Office of the City Recorder on or before June [ ], 2020 (the 61st day after the date of publication of the notice), the question of issuing full faith and credit bonds in an estimated principal amount of not to exceed \$[3,900,000] shall be placed on the ballot at the next legally available election date. Any such petition shall be subject to ORS 287A.150.

The Office of the City Recorder is located at 411 W. 8th Street, Room 310, Medford, Oregon 97501. Information on procedures for filing petitions may also be obtained at such address or by telephone at (541) 774-2088.

The Resolution is available for inspection at the Office of the City Recorder.

The Bonds will be issued and sold pursuant to Oregon Revised Statutes 287A.150 and ORS 287A.300; this Notice is published pursuant to ORS 287A.150.

BY ORDER OF THE CITY COUNCIL: APRIL 16, 2020.

Published: April [ ], 2020 in the *Mail Tribune*.



**AGENDA ITEM COMMENTARY**

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**DEPARTMENT:** Planning  
**PHONE:** (541) 774-2380

**AGENDA SECTION:** Ordinances and Resolutions

**MEETING DATE:** April 16, 2020

**STAFF CONTACT:** Matt Brinkley, AICP, CFM, Planning Director

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**COUNCIL BILL 2020-50**

An ordinance reinstating Sections 9.701, 9.702, 9.703, 9.704, 9.705, 9.706, and 9.707, of the Medford Municipal Code pertaining to the floodplain, which were repealed on December 19, 2019.

**SUMMARY AND BACKGROUND**

Council is requested to consider authorizing staff to use repealed Sections 9.701 through 9.707 of the Municipal Code related to Flood Damage Prevention Regulations and Flood Insurance Rate Maps until a new ordinance is adopted. These sections were inadvertently repealed on December 19, 2019, by Council Bill 2019-133.

Until 2015, the floodplain management responsibilities were conducted and funded by the Building Safety Department. In order to comply with Oregon Revised Statute 455.210(3)(c), which prohibits local communities from using building permit monies for anything other than administration and enforcement of State Building Code, floodplain management and implementation was turned over to the Planning Department during the 2015-2017 biennial budget. The Planning Department has executed the floodplain management program since then, through use of the regulations found in Chapter 9.

The repeal of these sections was consistent with the State Building Code Division's policy of eliminating parts of the building code that are not customarily enforced or implemented by Building Officials. However, these specific sections are important to work conducted by the Planning Department in order to administer the floodplain program for the City. These regulations are not found anywhere else in the Municipal Code at this time. The Planning Department is working on drafting new model code for consideration in the future and needs to rely on the repealed language until that time.

**PREVIOUS COUNCIL ACTIONS**

On December 19, 2019, Council Bill 2019-133 was approved, adopting the 2019 Oregon Structural Specialty Code, the 2019 Oregon Mechanical Specialty Code, and the 2019 Oregon Zero Energy Ready Commercial Code and approved updates to MMC Chapter 9. The updates inadvertently eliminated various sections including Sections 9.701 through 9.707.

On April 2, 2020, Council Bill 2020-44 was approved, amending and re-inserting Sections 9.350-9.352, 9.550, 9.570 -9.572, and 9.800 that were also removed from the December Council Bill.

**ANALYSIS**

The request is for Council to authorize the use of these repealed sections in order for the Planning Department to administer the City's floodplain program and ensure continued compliance with the



**AGENDA ITEM COMMENTARY**

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National Flood Insurance Program (NFIP) and Community Rating System (CRS) programs. This solution was suggested to staff by the State Floodplain Coordinator, Celinda Adair, who has encountered similar situations in other communities. Legal staff has also been consulted on the situation and concurs with the approach.

The interim use will maintain the City's enforcement and implementation capabilities while providing Planning staff time to draft and evaluate new model code language. Staff is scheduled to discuss the code options with City Council during G3 meetings in April. Staff has sent the draft code language to Celinda Adair for review and staff is awaiting her comments. Once staff has direction from City Council on what language to use moving forward, staff will develop a hearing schedule.

**FINANCIAL AND/OR RESOURCE CONSIDERATIONS**

Failure to implement and enforce these flood damage prevention regulations, could result in regulatory compliance issues through the National Flood Insurance Program (NFIP) and impact the City's rating in the Community Rating System (CRS) program. The City of Medford holds a Class 6 rating which provides citizens and business owners in the community with a twenty (20) percent premium discount on flood insurance. Planning Department staff have been working closely with the state floodplain manager and FEMA to achieve an even higher rating that would further reduce floodplain insurance premiums with a twenty-five (25) percent discount. Staff strongly recommends that the City maintain this course of action and momentum.

**TIMING ISSUES**

Council Bill 2019-133 was effective December 19, 2019, which repealed various sections of the MMC including the City's Flood Damage Prevention Regulations and Flood Insurance Rate Maps. The continued implementation of these sections of the code are important to maintain the City's participation and requirements under the National Flood Insurance Program (NFIP) and Community Rating System (CRS) programs.

The floodplain sections will go before Council on May 21, 2020.

**COUNCIL OPTIONS**

- Approve the ordinance as presented.
- Modify the ordinance as presented.
- Decline to approve the ordinance and provide direction to staff.

**STAFF RECOMMENDATION**

Staff recommends approval of the ordinance providing authorization to administer repealed Sections 9.701 through 9.707 of the Municipal Code.

**SUGGESTED MOTION**

I move to approve the ordinance authorizing use of repealed Sections 9.701 to 9.707 of the Municipal Code until a new ordinance is adopted.



**EXHIBITS**

Ordinance

Exhibit A: Sections 9.701 - 9.707

ORDINANCE NO. 2020-50

AN ORDINANCE reinstating Sections 9.701, 9.702, 9.703, 9.704, 9.705, 9.706, and 9.707, of the Medford Municipal Code pertaining to the floodplain, which were repealed on December 19, 2019.

Section 1. Section 9.701 of the Medford Municipal Code is added to read follows:

**FLOOD DAMAGE PREVENTION REGULATIONS AND FLOOD INSURANCE RATE MAPS**

**(The following Sections 9.701 through 9.707 shall be effective May 3, 2011)**

**9.701. Flood Damage Prevention—Purpose.**

The purposes of Sections 9.701–9.707 are to:

- (1) Protect human life, health and property;**
- (2) Minimize damage to public facilities and utilities, such as water purification and sewage treatment plants, water and gas mains, electric, telephone and sewer lines, and streets and bridges located in floodplains;**
- (3) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas;**
- (4) Minimize expenditure of public money for costly flood-control projects;**
- (5) Minimize the need for rescue, emergency services, and relief associated with flooding and generally undertaken at the expense of the general public;**
- (6) Minimize prolonged business interruptions, unnecessary disruption of commerce, access and public service during times of flood;**
- (7) Ensure that potential buyers are notified that property is in an Area of Special Flood Hazard;**
- (8) Ensure that those who occupy the Areas of Special Flood Hazard assume responsibility for their actions, and;**
- (9) Manage the alteration of Areas of Special Flood Hazard, stream channels and shorelines to minimize the impact of development on the natural and beneficial functions.**

Section 2. Section 9.702 of the Medford Municipal Code is added to read follows:

**9.702. Flood Damage Prevention Methods.**

To accomplish its purposes, Sections 9.701–9.707 include methods and provisions to:

- (1) Require development that is vulnerable to floods, including structures and facilities necessary for the general health, safety and welfare of citizens, to be protected against flood damage at the time of initial construction;**
- (2) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion;**

**Control filling, grading, dredging and other development which may increase flood damage or erosion;**

**(3) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or that may increase flood hazards to other lands;**

**(4) Preserve and restore natural floodplains, stream channels, and natural protective barriers which carry and store floodwaters, and;**

**(5) Coordinate with and supplement provisions of State of Oregon Specialty Codes enforced by the State of Oregon Building Codes Division.**

Section 3. Section 9.703 of the Medford Municipal Code is added to read follows:

**9.703. Flood Damage Prevention — Definitions.**

**When used in Sections 9.701–9.707, the terms below shall have the meanings herein ascribed. Unless specifically defined below, words or phrases used in Sections 9.701–9.707 shall be interpreted according to the meaning they have in common usage.**

**Appeal.** A request for review of the Floodplain Administrator’s interpretation of provisions of Sections 9.701–9.707.

**Basement.** Any area of a building having its floor sub-grade (below ground level) on all sides.

**Certification, No-Rise.** A certification by a registered professional civil engineer that demonstrates, through hydrologic and hydraulic analyses performed in accordance with standard engineering practice, that an encroachment will not result in any increase in flood levels affecting adjoining property during the occurrence of the Base Flood discharge.

**Construction, New.** A structure for which the “Start of Construction” commenced after May 3, 2011 and includes subsequent substantial improvements to the structure.

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

**ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of a building.**

**Crawlspace, Below-Grade.** An enclosed area below the Base Flood Elevation in which the interior grade is not more than two feet below the lowest adjacent exterior grade, and the height, measured from the interior grade of the crawlspace to the top of the crawlspace foundation, does not exceed four feet at any point.

**Damage, Substantial.** 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% of its market value before the damage occurred.

**Datum.** The vertical datum is a base measurement point (or set of points) from which all elevations are determined. Historically, that common set of points was the National Geodetic Vertical Datum of 1929 (NAVD29). The vertical datum now used by the federal government as a basis for measuring heights is the North American Vertical Datum of 1988 (NAVD88).

**Development.** Any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials located within the Area of Special Flood Hazard. Work exempt from Oregon Residential Specialty Code, Section R105.2 requires a Floodplain Development Permit unless specifically exempted by definition in Sections 9.701–9.707. Development does not include signs, markers, aids, etc. placed by a public agency to serve the public.

**Dwelling, Manufactured or Manufactured Home.** A structure, transportable in one or more Sections, built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “Manufactured Dwelling” does not include a “Recreational Vehicle.”

**Elevation, Water Surface.** The height, in relation to a specific datum, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

**Encroachment.** The advancement or infringement of uses, fill, excavation, buildings, permanent structures, stream habitat restoration, or other development into a Floodway, which may impede or alter the flow capacity of a floodplain.

**Building, Elevated.** A non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

**Facility, Critical.** See “Facility, Essential”.

**Facility, Essential or Critical:**

- a. Hospitals and other medical facilities having surgery and emergency treatment areas;
- b. Fire and police stations;
- c. Tanks or other structures containing, housing or supporting water or fire-suppression materials or equipment required for the protection of essential or hazardous facilities or special occupancy structures;
- d. Emergency vehicle shelters and garages;
- e. Structures and equipment in emergency-preparedness centers;
- f. Standby power generating equipment for essential facilities; and,
- g. Structures and equipment in government communication centers and other facilities required for emergency response.

**Flood or Flooding.** A general and temporary condition of partial or complete inundation of normally dry land areas from (1) The overflow of inland or tidal waters; or (2) The unusual and rapid accumulation or runoff of surface waters from any source.

**Flood, Base.** The flood having a 1.0% chance of being equaled or exceeded in any given year.

**Flood Elevation, Base (BFE).** The water surface elevation during the base flood in relation to a specified datum. The Base Flood Elevation is depicted on the Flood Insurance Rate Maps to the nearest foot and in the Flood Insurance Study to the nearest 0.1 foot. Same as "Design Flood Elevation".

**Flood Hazard, Area of Special.** The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year (the area in which a base flood occurs). Zones designating Areas of Special Flood Hazard on Flood Insurance Rate Maps always include the letters A or V. Also known as the Special Flood Hazard Area.

**Flood Insurance Rate Map (FIRM).** An official map of a community, issued by the Federal Insurance Administration, delineating the Areas of Special Flood Hazard and/or risk premium zones applicable to the community.

**Flood Insurance Rate Map, Digital (DFIRM).** A map that depicts flood risk and zones, and flood risk information. The DFIRM presents the flood risk information in a format suitable for electronic mapping applications.

**Flood Insurance Study (FIS).** The official report by the Federal Insurance Administration evaluating flood hazards and containing flood profiles, Regulatory Floodway boundaries and water surface elevations of the Base Flood.

**Floodway.** The channel of a river or other watercourse and those portions of the floodplain adjoining the channel required to discharge the Base Flood without cumulatively increasing the water surface elevation more than one foot. For the City

of Medford, Bear Creek is the only watercourse with a Regulatory Floodway defined herein.

**Floor, Lowest.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a structure's lowest floor, provided that the enclosed area is built and maintained in accordance with the applicable design requirements of the Specialty Codes and Sections 9.701–9.707. The lowest floor of a manufactured dwelling is the bottom of the longitudinal chassis frame beam in A zones.

**Grade, Highest Adjacent.** The highest natural elevation of the ground surface prior to construction, adjacent to the proposed walls of a structure. Refer to the Elevation Certificate (FEMA Form 81-31) for more information.

**Improvement, Substantial.** 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 Market Value of the structure is:

- a. the real market value of the structure prior to the start of the initial repair or improvement; or
- b. in the case of damage, the real market value of the structure prior to the damage occurring.

The term "Substantial Improvement" does not include either:

- a. a 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. alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a Historic Structure.

**Letter of Map Change (LOMC).** An official Federal Emergency Management Agency determination, by letter, to amend or revise effective Flood Insurance Rate Maps and Flood Insurance Studies. LOMCs are issued in the following categories:

**Letter of Map Amendment (LOMA).** A revision based on technical data showing that a property was inadvertently included in a designated Special Flood Hazard Area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property is not located in a Special Flood Hazard Area;

**Letter of Map Revision (LOMR).** A revision based on technical data showing, due to manmade alterations, changes to flood zones, flood elevations, or floodplain and

**Regulatory Floodway delineations.** One common type of LOMR, a LOMR-F, is a determination that a structure or parcel has been elevated by fill above the Base Flood Elevation and is excluded from the Special Flood Hazard Area;

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

**Mean Sea Level.** For purposes of the National Flood Insurance Program, the North American Vertical Datum of 1988 or other datum, to which Base Flood Elevations shown on a community's Flood Insurance Rate Map are referenced.

**Specialty Codes.** The combined specialty codes adopted under ORS 446.062, 446.185, 447.020(2), 455.020(2), 455.496, 455.610, 455.680, 460.085, 460.360, 479.730(1) or 480.545, but does not include regulations adopted by the State Fire Marshal pursuant to ORS Chapter 476 or ORS 479.015 to 479.200 and 479.210 to 479.220. The combined specialty codes are often referred to as building codes.

**Structure.** A walled and roofed building, a manufactured dwelling, a modular or temporary building, or a gas or liquid storage tank that is principally above ground.

**Structure, Accessory.** Same as definition of "Building, accessory" under Section 10.012.

**Structure, Historic.** A structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or to a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior; or,
- d. Individually listed on a local inventory of historic places and determined as eligible by 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.

**Use, Water-Dependent.** A facility that cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a dam or irrigation

canal. The term does not include long-term storage, manufacture, sales, or service facilities.

**Variance.** A grant of relief from a requirement of Sections 9.701–9.706 by permitting construction in a manner that would otherwise be prohibited by said Sections.

**Vehicle, Recreational.** A vehicle that is:

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

**Violation.** The failure of a structure or other development to be fully compliant with the floodplain management regulations of Sections 9.701–9.707. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance is presumed to be in violation until such time as that documentation is provided.

**Watercourse.** A lake, river, creek, stream, wash, arroyo, channel or other topographic feature in, on, through, or over which water flows at least periodically.

Section 4. Section 9.704 of the Medford Municipal Code is added to read follows:

**9.704. Flood Damage Prevention — General Provisions.**

***A. Applicability.***

Sections 9.701–9.707 shall apply to all Areas of Special Flood Hazard within the jurisdiction of the City of Medford. Nothing in Sections 9.701–9.707 is intended to allow uses or structures that are otherwise prohibited by the Land Development Code or Specialty Codes.

***B. Basis for Area of Special Flood Hazard.***

The Area of Special Flood Hazard identified by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Study (FIS) for the City of Medford dated May 3, 2011, with accompanying Flood Insurance Rate Maps (FIRM) or Digital Flood Insurance Rate Maps (DFIRM), are adopted by reference and declared a part of Sections 9.701–9.707. The FIS and the FIRM are on file at the offices of the City of Medford, 200 South Ivy Street.

***C. Coordination with Specialty Codes Adopted by the State of Oregon Building Codes Division.***

Pursuant to the requirement established in ORS 455 that the City administers and enforces the State of Oregon Specialty Codes, the City of Medford does hereby acknowledge that the Specialty Codes contain certain provisions that apply to the

design and construction of buildings and structures located in Areas of Special Flood Hazard. Therefore, Sections 9.701–9.707 is intended to be administered and enforced in conjunction with the Specialty Codes.

***D. Requirement for a Floodplain Development Permit.***

A Floodplain Development Permit shall be required prior to initiating development activities in any Areas of Special Flood Hazard established in Section 9.704(B).

***E. Interpretation.***

In the interpretation and application of Sections 9.701–9.707, all provisions shall be:

- (1) Considered as minimum requirements; and,
- (2) *Deemed neither to limit nor repeal any other powers granted under state statutes, including state Specialty Codes.*

***F. Warning and Disclaimer of Liability.*** The degree of flood protection required by Sections 9.701–9.707 is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by manmade or natural causes. This Section does not imply that land outside Areas of Special Flood Hazard or uses permitted within such areas will be free from flooding or flood damages. This Section shall not create liability on the part of the City of Medford or any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on Sections 9.701–9.707 or an administrative decision lawfully made hereunder.

Section 5. Section 9.705 of the Medford Municipal Code is added to read follows:

**9.705. Flood Damage Prevention Regulations Administration.**

***A. Designation of Floodplain Administrator.***

The Building Official is hereby appointed as the Floodplain Administrator who is responsible for administering and implementing the provisions of Sections 9.701–9.707.

***B. Duties and Responsibilities of the Floodplain Administrator.***

Duties of the Floodplain Administrator shall include, but not be limited to:

- (1) Review all proposed development to determine whether it will be located in Areas of Special Flood Hazard or other flood-prone areas;
- (2) Review applications for new development or modifications of any existing development in Areas of Special Flood Hazard for compliance with the requirements of Sections 9.701–9.707;
- (3) Review proposed development to ensure that necessary permits have been received from governmental agencies from which approval is required by Federal or state law. Copies of such permits shall be maintained on file;

- (4) Review all development permit applications to determine if proposed development is located in the Regulatory Floodway, and if so, ensure that the encroachment standards of SubSection 9.706.B, Development in Regulatory Floodways, are met.**
- (5) When Base Flood Elevation data have not been established in SubSection 9.704.B, Basis for Area of Special Flood Hazard, the Floodplain Administrator shall obtain, review and reasonably utilize any Base Flood Elevation and Floodway data available from a Federal, state or other authoritative source in order to administer the provisions of Sections 9.701–9.707;**
- (6) When Base Flood Elevations are not available from an authoritative source, the Floodplain Administrator shall require Base Flood Elevations to be developed in accordance with Paragraph 9.706(A)(2);**
- (7) When a determination is needed of the exact location of boundaries of the Areas of Special Flood Hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Floodplain Administrator shall make a determination. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the determination per Section 10.051;**
- (8) Issue Floodplain Development Permits when the provisions of Sections 9.701–9.707 have been met, or deny the same in the event of noncompliance;**
- (9) Ensure that applications for building permits comply with the requirements of Sections 9.701–9.707;**
- (10) Obtain, verify and record the actual elevation in relation to the vertical datum used on the effective Flood Insurance Rate Map, or, in relation to the highest adjacent grade where no Base Flood Elevation is available, of the lowest floor level, including basement, of all new construction or substantially improved buildings and structures, including manufactured dwellings;**
- (11) Obtain, verify and record the actual elevation of finished construction, in relation to the vertical datum used on the effective Flood Insurance Rate Map, or highest adjacent grade where no Base Flood Elevation is available, to which any new or substantially improved non-residential buildings or structures have been flood proofed. When flood proofing is utilized for a structure, the Floodplain Administrator shall obtain certification of elevation to which the structure was flood proofed from a registered professional engineer or land surveyor;**
- (12) Ensure that all records and certifications pertaining to the provisions of Sections 9.701–9.707 are permanently maintained in the City of Medford Building Safety Department and available for public inspection;**
- (13) Make periodic inspections of Areas of Special Flood Hazard to establish that development activities are being performed in compliance with Sections 9.701–9.707, and to verify that existing buildings and structures maintain compliance with Sections 9.701–9.707;**
- (14) Inspect areas where buildings and structures in Areas of Special Flood Hazard have been damaged, regardless of the cause of damage, and notify owners that permits may be required prior to repair, rehabilitation, demolition, relocation, or reconstruction of the building or structure; and,**
- (15) Make substantial improvement and substantial damage determinations for all structures located in Areas of Special Flood Hazard.**

**C. Floodplain Development—Permit Procedures.**

Application for a Floodplain Development Permit shall be made to the Floodplain Administrator or designee on forms furnished by the Floodplain Administrator or designee prior to starting development activities. Specifically, the following information is required:

**(1) Application Stage.**

- a. Plans drawn to scale, with elevations of the project area, and the nature, location, and dimensions of existing and proposed structures, earthen fill placement, storage of materials or equipment, and drainage facilities;
- b. Delineation of Areas of Special Flood Hazard, Regulatory Floodway boundaries including Base Flood Elevations, or flood depth in AO zones, where available;
- c. For all proposed structures, elevation of the lowest enclosed area in relation to the highest adjacent grade and the Base Flood Elevation (or flood depth in AO zones), including crawlspace or basement, elevation of the top of the proposed garage slab, if any, and elevation of the next highest floor.
- d. Locations and sizes of all flood openings, if required, in any proposed building;
- e. Elevation to which a non-residential structure will be flood-proofed;
- f. Certification from a registered professional engineer that any proposed non-residential flood-proofed structure will meet the flood-proofing criteria of the National Flood Insurance Program (NFIP) and Specialty Codes;
- g. Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development;
- h. Proof that application has been made for necessary permits from other governmental agencies from which approval is required by Federal or state law.

**(2) Construction Stage.**

- a. Copies of all necessary permits from other governmental agencies from which approval is required by Federal or state law shall be provided prior to start of construction.
- b. Development activities shall not begin without an approved Floodplain Development Permit;
- c. For all new construction and substantial improvements, the Floodplain Development permit holder shall provide to the Floodplain Administrator an as-built certification of the floor elevation or flood-proofing level immediately after the lowest floor or flood-proofing is placed and prior to further vertical construction; and,
- d. Any deficiencies identified by the Floodplain Administrator shall be corrected by the Floodplain Development Permit holder immediately and prior to work proceeding. Failure to submit certification or failure to make the corrections shall be cause for the Floodplain Administrator to issue a stop-work order for the project.

**(3) Certificate of Occupancy.**

**a. In addition to the requirements of the Specialty Codes pertaining to Certificate of Occupancy, and prior to the final inspection, the owner or authorized agent shall submit the following documentation for finished construction that has been signed and sealed by a registered surveyor or engineer:**

- i. For elevated buildings and structures in Areas of Special Flood Hazard (all A zones), the elevation of the lowest floor, including basement or, where no Base Flood Elevation is available, the height above highest adjacent grade of the lowest floor; and,**
- ii. For non-residential buildings and structures that have been flood proofed, the elevation to which the building or structure was flood proofed.**

**b. Failure to submit certification or failure to correct violations shall be cause for the Floodplain Administrator to withhold a Certificate of Occupancy until such deficiencies are corrected.**

**(4) Expiration of Floodplain Development Permit. A Floodplain Development Permit shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions for periods of not more than 180 days each shall be requested in writing.**

***D. Watercourse Alterations.***

**(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 must submit certification by a registered professional engineer that the flood-carrying capacity of the watercourse will not be diminished.**

**(2) The applicant shall be responsible for obtaining all necessary permits from governmental agencies from which approval is required by Federal or state law, including, but not limited to, Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 USC 1334); the Endangered Species Act of 1973 (16 USC 1531–1544); and State of Oregon Department of State Lands regulations.**

**(3) If the altered or relocated watercourse is part of an Area of Special Flood Hazard, the applicant shall notify other affected jurisdictions and Oregon Department of Land Conservation and Development (the NFIP Coordinating Agency for Oregon) prior to any alteration or relocation of the watercourse. Evidence of notification must be submitted to the Floodplain Administrator and to the Federal Emergency Management Agency as set forth in Section 9.705(E) below.**

**(4) The applicant shall be responsible for ensuring necessary maintenance for the altered or relocated portion of the watercourse is provided so that the flood-carrying capacity will not be diminished.**

**(5) The applicant shall meet the requirements to submit technical data in Section 9.705(E) below, when an alteration of a watercourse results in the expansion, relocation or elimination of the Special Flood Hazard Area.**

***E. Requirement to Submit New Technical Data.***

**(1) Within six months of project completion, an applicant who obtains an approved Conditional Letter of Map Revision from the Federal Emergency Management Agency (FEMA), or whose development alters a watercourse that is part of an Area of Special Flood Hazard, or modifies floodplain boundaries or Base Flood Elevations, shall obtain from FEMA a Letter of Map Revision reflecting the as-built changes to the Flood Insurance Rate Map.**

**(2) It is the responsibility of the applicant to have technical data prepared in a format required for a Conditional Letter of Map Revision or Letter of Map Revision and to submit such data to FEMA on the appropriate application forms. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.**

**(3) Applicants shall be responsible for all costs associated with obtaining a Conditional Letter of Map Amendment or Letter of Map Revision from FEMA.**

**(4) When the applicant has demonstrated that the project will or has met all applicable requirements of this Section, the Floodplain Administrator may sign the Community Acknowledgement Form, which is part of the Conditional Letter of Map Amendment or Letter of Map Revision application.**

***F. Non-Conversion of Enclosed Areas Below the Lowest Floor.***

**To ensure that enclosed areas below the lowest floor continue to be used solely for parking vehicles, limited storage, or access to the building, and not be finished for use as human habitation, the Floodplain Administrator shall:**

**(1) Determine which applicants for new construction and/or substantial improvements have fully enclosed areas below the lowest floor that are five feet or higher; and**

**(2) Require those applicants to enter into a “Non-Conversion Deed Declaration for Construction Within Flood Hazard Areas” or equivalent, with the City of Medford. The deed declaration shall be recorded with Jackson County. The deed declaration shall be in a form acceptable to the Floodplain Administrator and City Attorney.**

Section 6. Section 9.706 of the Medford Municipal Code is added to read follows:

**9.706. Flood Damage Prevention Regulations Flood Hazard Reduction Provisions.**

***A. Site Improvements and Subdivisions.***

**All plans and permits for new site improvements, subdivisions, and manufactured home parks shall be consistent with the need to minimize flood damage and ensure that building sites will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes such things as historical data, high water marks, and photographs of past flooding.**

**(1) Building lots shall have adequate buildable area outside of Floodways.**

**(2) Where Base Flood Elevation data has not been provided or is not available from another authorized source, it shall be generated for land division proposals and other proposed developments.**

**(3) New site improvements, subdivisions, and manufactured home parks shall have public utilities and facilities, such as sewer, gas, electric and water systems, located and constructed to minimize or eliminate damage and infiltration of floodwaters. Replacement public utilities and facilities, such as sewer, gas, electric and water systems, likewise, shall be sited and designed to minimize or eliminate damage and infiltration of floodwaters.**

**(4) New and replacement onsite waste disposal systems and sanitary sewerage systems shall be located and constructed to avoid functional impairment, or discharges from them, during flooding.**

**(5) Subdivisions and manufactured home parks shall have adequate drainage provided to reduce exposure to flood hazards. In AO and AH zones, drainage paths shall be provided to guide floodwater around and away from all proposed and existing structures.**

***B. Development in Regulatory Floodway***

**(1) Encroachments are prohibited in the Regulatory Floodway unless a registered professional civil engineer provides a No-Rise Certification.**

**(2) Any fill permitted to be placed in the Regulatory Floodway shall be designed to be stable under conditions of flooding, including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and flood-related erosion and scour.**

**(3) Before the City will permit an encroachment in the Regulatory Floodway that will cause any increase in the base flood elevation, applicants shall obtain a Conditional Letter of Map Revision from the Federal Emergency Management Agency, unless the development causes a temporary encroachment and the conditions in (4), below, are satisfied.**

**(4) Temporary encroachments in the Regulatory Floodway for the purposes of capital improvement projects (including bridges) require a Floodplain Development Permit. A conditional or final Letter of Map Revision shall not be required. Up to a one-foot rise in the base flood elevation shall be allowed due to temporary encroachments associated with capital improvement projects, when:**

- a. The project is limited as to duration, with the days and dates that the structure or other development will be in the Regulatory Floodway specified in the Floodplain Development Permit;**
- b. Accessory structures (i.e. construction trailers) are restricted from the Regulatory Floodway;**
- c. The project limits placement of equipment and material in the Regulatory Floodway to that which is absolutely necessary for the purposes of the project;**
- d. The project includes a flood warning system sufficient to allow equipment to be evacuated from the Regulatory Floodway and placed outside the Area of Special Flood Hazard in the event of imminent flood;**
- e. The project applicant identifies any insurable structures affected by temporary changes to the Area of Special Flood Hazard or Base Flood Elevation and notifies owners of any increased risk of flooding; and,**
- f. The project applicant is provided with written notification that they may be liable for any flood damages resulting from the temporary encroachment.**

***C. Zones with Base Flood Elevations but No Regulatory Floodway.***

(1) In areas within Zone AE on the community's FIRM where no Regulatory Floodway has been designated, the floodway is the channel of the stream. Encroachments shall be prohibited in the channel or floodway unless all the provisions of 9.706.B are satisfied.

(2) In Areas of Special Flood Hazard, encroachments shall be prohibited 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.

(3) Applicants of proposed projects that increase the Base Flood Elevation more than one foot shall obtain from FEMA a Conditional Letter of Map Revision (CLOMR) before the project may be permitted. As soon as possible, but no later than six months after project completion, an application for a Letter of Map Revision (LOMR) shall be submitted by the applicant to FEMA. The applicant is responsible for paying any costs associated with the CLOMR and LOMR process.

***D. Areas of Special Flood Hazard without Base Flood Elevations.***

(1) When Areas of Special Flood Hazard have been provided, but Base Flood Elevation or floodway data have not been identified by FEMA in a Flood Insurance Study and/or Flood Insurance Rate Maps, the Floodplain Administrator shall obtain, review, and utilize scientific or historic Base Flood Elevation and Regulatory Floodway data available from a Federal, state, or other source, in order to administer these regulations. If Base Flood Elevations are not available, SubSection (3) below shall apply.

(2) Where the Floodplain Administrator has obtained Base Flood Elevation data, Section 9.706(C) and 9.706(E) through (K) shall apply.

(3) In Areas of Special Flood Hazard without Base Flood Elevation data no encroachments shall be located in an Area of Special Flood Hazard within an area equal to the width of the stream or 50 feet, whichever is greater, measured from the ordinary high water mark of the stream, unless a Base Flood Elevation is developed by a licensed professional engineer.

***E. Building Design and Construction***

Buildings and structures, including manufactured dwellings, within the scope of the Building Codes, including repair of substantial damage and substantial improvement of such existing buildings and structures, shall be designed and constructed in accordance with the flood-resistant construction provisions of these codes.

***F. Below-Grade Crawlspace.***

Below-grade crawlspaces are allowed subject to the following standards as illustrated in FEMA Technical Bulletin 11-01, "Crawlspace Construction for Buildings Located in Special Flood Hazard Areas":

(1) The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and

hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in SubSection (2) below. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas.

(2) The crawlspace is an enclosed area below the Base Flood Elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one foot above the lowest adjacent exterior grade.

(3) Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.

(4) Any building utility systems within the crawlspace must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.

(5) The interior grade of a crawlspace below the BFE must not be more than two feet below the lowest adjacent exterior grade.

(6) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed four feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.

(7) There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles, or gravel/crushed stone drainage by gravity or mechanical means.

(8) The velocity of floodwaters at the site should not exceed five feet per second for any crawlspace. For velocities in excess of five feet per second, other foundation types should be used.

#### ***G. Recreational Vehicles.***

In all Areas of Special Flood Hazard, Recreational Vehicles that are an allowed use or structure under the land development code must:

(1) Be placed on the site for fewer than 180 consecutive days; or,

(2) Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached structures or addition.

#### ***H. Essential Facilities.***

Construction of new essential facilities shall be located outside the limits of the Area of Special Flood Hazard, except that construction of new essential facilities shall be permissible within the Area of Special Flood Hazard if no feasible alternative site is available. Flood proofing and sealing measures must be taken to ensure that toxic substances or priority organic pollutants as defined by the Oregon Department of Environmental Quality will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the Base Flood Elevation shall be provided to all essential facilities to the maximum extent possible.

***I. Tanks.***

New and replacement tanks in an Area of Special Flood Hazard shall either be elevated above the Base Flood Elevation on a supporting structure designed to prevent flotation, collapse or lateral movement during conditions of the base flood, or be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy assuming the tank is empty, during conditions of the Design Flood.

New and replacement tank inlets, fill openings, outlets and vents shall be placed a minimum of two feet above Base Flood Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tank during conditions of the Design Flood.

***J. Fences and Walls***

New and replacement fencing in an Area of Special Flood Hazard shall be designed to collapse under conditions of the Base Flood or to allow the passage of water by having flaps or openings in the areas at or below the Base Flood Elevation sufficient to allow flood water and associated debris to pass freely.

***K. Other Development, including Accessory Structures, in High Hazard Areas.***

All development in high hazard areas (all A zones) for which provisions are not specified in Sections 9.701–9.707 or building codes, shall:

- (1) Be located and constructed to minimize flood damage;
- (2) Be designed so as not to impede flow of floodwaters under Base Flood conditions;
- (3) If located in a Regulatory Floodway, meet the limitations of Section 9.706.B;
- (4) Be anchored to prevent flotation, collapse, or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;
- (5) Be constructed of flood damage-resistant materials;
- (6) Have electric service and or mechanical equipment elevated above the Base Flood Elevation (or depth number in AO zones), except for minimum electric service required to address life safety and electric code requirements;
- (7) Relief from elevation or dry flood-proofing standards may be granted for new and replacement, or substantially improved accessory structures containing no more than 200 square feet; larger than 200 square feet, building codes apply. Such a structure must meet (1) through (6) of this SubSection, and, in addition, shall meet the following standards:

- a. It shall not be used for human habitation and may be used solely for parking of vehicles or storage of items having low damage potential when submerged;
- b. Toxic material, oil or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality shall not be stored below Base Flood Elevation, or where no Base Flood Elevation is available, lower than three feet above grade, unless confined in a tank installed in compliance with this Section;
- c. It shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater. Designs for complying with this requirement must be certified by a licensed professional engineer or architect, or:
  - i. Provide a minimum of two openings with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
  - ii. The bottom of all openings shall be no higher than one foot above the higher of the exterior or interior grade or floor immediately below the opening; and,
  - iii. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwater in both directions without manual intervention.

Section 7. Section 9.707 of the Medford Municipal Code is added to read follows:

**9.707. Flood Damage Prevention Variance.**

*Variances from the provisions of Sections 9.701–9.706 may be permitted when there are practical difficulties or unnecessary hardships created in carrying out the provisions. The basis for a variance shall be the physical circumstances or characteristics of a lot; a variance shall not be based on the inhabitants or owners of the property, their economic or financial circumstances, or the condition or situation of structures on the property. The burden is on the applicant to show that the variance is warranted and meets the approval criteria set out herein.*

The provisions of this Section are not the same as, nor to be confused with, provisions for Exceptions in the Land Development Code.

A variance may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the Statewide Inventory of Historic Properties without regard to the procedures set forth in this Section.

**A. Variance—Procedure.**

(1) An application for a variance from the Flood Damage Prevention regulations must be submitted to the Floodplain Administrator on the form provided by the City and

shall include, at a minimum, the same information required for a Floodplain Development Permit, and an explanation of the basis for the request for a variance.

(2) Variance requests will be heard by the Planning Commission and be processed in the manner of a Class-C application, using the Class-C procedural requirements in Chapter 10, Article II of the Municipal Code. City will use the same referral agency notification list as is used for Exceptions (Section 10.146).

(3) Upon consideration of the approval criteria in SubSection B, below, and the purposes of this Section, and finding that the approval criteria can be met, the City approving authority may approve the request and attach such conditions to the granting of a variance as it deems necessary to further the purposes of these regulations.

(4) The Floodplain Administrator shall maintain a permanent record of all variances and report any variances to the Federal Emergency Management Agency upon request.

***B. Variance—Approval Criteria.***

(1) A variance shall not be issued within a Floodway if any increase in flood levels during the Base Flood discharge would result.

(2) A variance shall only be issued upon the:

- a. Determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
- b. Showing of good and sufficient cause;
- c. Determination that failure to grant a variance from these regulations would result in exceptional hardship to the applicant; and,
- d. Determination that the granting of a variance would not result in increased flood heights, additional threats to public safety, or extraordinary public expense; or create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(3) In approving a variance, the City approving authority shall consider all technical evaluations, all relevant factors, standards specified in other Sections of this Code, and the:

- a. Danger that materials may be swept onto other lands to the injury of others;
- b. Danger to life and property due to flooding or erosion damage;
- c. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- d. Importance of the services provided by the proposed facility to the community;
- e. Necessity to the facility of a waterfront location, where applicable;
- f. Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- g. Compatibility of the proposed use with existing and anticipated development;
- h. The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;
- i. Safety of access to the property in times of flood for ordinary and emergency vehicles;

**j. Expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters, expected at the site; and,**

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

**(4) A variance may be issued for a water-dependent use provided that:**

**a. the criteria of subsections (1) through (3) of this Section are met; and,**

**b. the structure or other development is protected by methods that minimize flood damages during the Base Flood and that create no additional threats to public safety.**

***C. Variance—Decision.***

**The decision to either grant or deny a variance shall be in writing and shall set forth the reasons for such approval or denial. If the variance is granted, the property owner shall be put on notice, along with the written decision, that the permitted building will have its lowest floor below the Base Flood Elevation and that the cost of flood insurance likely will be commensurate with the increased flood damage risk.**

PASSED by the Council and signed by me in authentication of its passage this \_\_ day of April, 2020.

ATTEST: \_\_\_\_\_  
City Recorder

\_\_\_\_\_  
Mayor

APPROVED: \_\_\_\_\_, 2020.

\_\_\_\_\_  
Mayor

NOTE: Matter in **bold** is new. Matter ~~struck-out~~ is existing law to be omitted. Three asterisks (\*\*\*) indicate existing law which remains unchanged by this ordinance but was omitted for the sake of brevity.

FLOOD DAMAGE PREVENTION REGULATIONS AND FLOOD INSURANCE RATE MAPS

(The following Sections 9.701 through 9.707 shall be effective May 3, 2011)

9.701. Flood Damage Prevention—Purpose.

The purposes of Sections 9.701–9.707 are to:

- (1) Protect human life, health and property;
- (2) Minimize damage to public facilities and utilities, such as water purification and sewage treatment plants, water and gas mains, electric, telephone and sewer lines, and streets and bridges located in floodplains;
- (3) Help maintain a stable tax base by providing for the sound use and development of flood-prone areas;
- (4) Minimize expenditure of public money for costly flood-control projects;
- (5) Minimize the need for rescue, emergency services, and relief associated with flooding and generally undertaken at the expense of the general public;
- (6) Minimize prolonged business interruptions, unnecessary disruption of commerce, access and public service during times of flood;
- (7) Ensure that potential buyers are notified that property is in an Area of Special Flood Hazard;
- (8) Ensure that those who occupy the Areas of Special Flood Hazard assume responsibility for their actions, and;
- (9) Manage the alteration of Areas of Special Flood Hazard, stream channels and shorelines to minimize the impact of development on the natural and beneficial functions.

9.702. Flood Damage Prevention Methods.

To accomplish its purposes, Sections 9.701–9.707 include methods and provisions to:

- (1) Require development that is vulnerable to floods, including structures and facilities necessary for the general health, safety and welfare of citizens, to be protected against flood damage at the time of initial construction;
- (2) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, or which increase flood heights, velocities, or erosion; Control filling, grading, dredging and other development which may increase flood damage or erosion;
- (3) Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or that may increase flood hazards to other lands;
- (4) Preserve and restore natural floodplains, stream channels, and natural protective barriers which carry and store floodwaters, and;
- (5) Coordinate with and supplement provisions of State of Oregon Specialty Codes enforced by the State of Oregon Building Codes Division.

9.703. Flood Damage Prevention — Definitions.

When used in Sections 9.701–9.707, the terms below shall have the meanings herein ascribed. Unless specifically defined below, words or phrases used in Sections 9.701–9.707 shall be interpreted according to the meaning they have in common usage.

**Appeal.** A request for review of the Floodplain Administrator’s interpretation of provisions of Sections 9.701–9.707.

**Basement.** Any area of a building having its floor sub-grade (below ground level) on all sides.

**Certification, No-Rise.** A certification by a registered professional civil engineer that demonstrates, through hydrologic and hydraulic analyses performed in accordance with standard engineering practice, that an encroachment will not result in any increase in flood levels affecting adjoining property during the occurrence of the Base Flood discharge.

**Construction, New.** A structure for which the “Start of Construction” commenced after May 3, 2011 and includes subsequent substantial improvements to the structure.

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

**Crawlspace, Below-Grade.** An enclosed area below the Base Flood Elevation in which the interior grade is not more than two feet below the lowest adjacent exterior grade, and the height, measured from the interior grade of the crawlspace to the top of the crawlspace foundation, does not exceed four feet at any point.

**Damage, Substantial.** 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% of its market value before the damage occurred.

**Datum.** The vertical datum is a base measurement point (or set of points) from which all elevations are determined. Historically, that common set of points was the National Geodetic Vertical Datum of 1929 (NAVD29). The vertical datum now used by the federal government as a basis for measuring heights is the North American Vertical Datum of 1988 (NAVD88).

**Development.** Any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials located within the Area of Special Flood Hazard. Work exempt from Oregon Residential Specialty Code, Section R105.2 requires a Floodplain Development Permit unless specifically exempted by definition in Sections 9.701–9.707. Development does not include signs, markers, aids, etc. placed by a public agency to serve the public.

**Dwelling, Manufactured or Manufactured Home.** A structure, transportable in one or more Sections, built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term “Manufactured Dwelling” does not include a “Recreational Vehicle.”

**Elevation, Water Surface.** The height, in relation to a specific datum, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

**Encroachment.** The advancement or infringement of uses, fill, excavation, buildings, permanent structures, stream habitat restoration, or other development into a Floodway, which may impede or alter the flow capacity of a floodplain.

**Building, Elevated.** A non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

**Facility, Critical.** See “Facility, Essential”.

**Facility, Essential or Critical:**

- a. Hospitals and other medical facilities having surgery and emergency treatment areas;
- b. Fire and police stations;
- c. Tanks or other structures containing, housing or supporting water or fire-suppression materials or equipment required for the protection of essential or hazardous facilities or special occupancy structures;
- d. Emergency vehicle shelters and garages;
- e. Structures and equipment in emergency-preparedness centers;
- f. Standby power generating equipment for essential facilities; and,
- g. Structures and equipment in government communication centers and other facilities required for emergency response.

**Flood or Flooding.** A general and temporary condition of partial or complete inundation of normally dry land areas from (1) The overflow of inland or tidal waters; or (2) The unusual and rapid accumulation or runoff of surface waters from any source.

**Flood, Base.** The flood having a 1.0% chance of being equaled or exceeded in any given year.

**Flood Elevation, Base (BFE).** The water surface elevation during the base flood in relation to a specified datum. The Base Flood Elevation is depicted on the Flood Insurance Rate Maps to the-nearest foot and in the Flood Insurance Study to the nearest 0.1 foot. Same as "Design Flood Elevation".

**Flood Hazard, Area of Special.** The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year (the area in which a base flood occurs). Zones designating Areas of Special Flood Hazard on Flood Insurance Rate Maps always include the letters A or V. Also known as the Special Flood Hazard Area.

**Flood Insurance Rate Map (FIRM).** An official map of a community, issued by the Federal Insurance Administration, delineating the Areas of Special Flood Hazard and/or risk premium zones applicable to the community.

**Flood Insurance Rate Map, Digital (DFIRM).** A map that depicts flood risk and zones, and flood risk information. The DFIRM presents the flood risk information in a format suitable for electronic mapping applications.

**Flood Insurance Study (FIS).** The official report by the Federal Insurance Administration evaluating flood hazards and containing flood profiles, Regulatory Floodway boundaries and water surface elevations of the Base Flood.

**Floodway.** The channel of a river or other watercourse and those portions of the floodplain adjoining the channel required to discharge the Base Flood without cumulatively increasing the water surface elevation more than one foot. For the City of Medford, Bear Creek is the only watercourse with a Regulatory Floodway defined herein.

**Floor, Lowest.** The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a structure's lowest floor, provided that the enclosed area is built and maintained in accordance with the applicable design requirements of the Specialty Codes and Sections 9.701–9.707. The lowest floor of a manufactured dwelling is the bottom of the longitudinal chassis frame beam in A zones.

**Grade, Highest Adjacent.** The highest natural elevation of the ground surface prior to construction, adjacent to the proposed walls of a structure. Refer to the Elevation Certificate (FEMA Form 81-31) for more information.

**Improvement, Substantial.** 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 Market Value of the structure is:

- a. the real market value of the structure prior to the start of the initial repair or improvement; or
- b. in the case of damage, the real market value of the structure prior to the damage occurring.

The term "Substantial Improvement" does not include either:

- a. a 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. alteration of a Historic Structure, provided that the alteration will not preclude the structure's continued designation as a Historic Structure.

**Letter of Map Change (LOMC).** An official Federal Emergency Management Agency determination, by letter, to amend or revise effective Flood Insurance Rate Maps and Flood Insurance Studies. LOMCs are issued in the following categories:

**Letter of Map Amendment (LOMA).** A revision based on technical data showing that a property was inadvertently included in a designated Special Flood Hazard Area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property is not located in a Special Flood Hazard Area;

**Letter of Map Revision (LOMR).** A revision based on technical data showing, due to manmade alterations, changes to flood zones, flood elevations, or floodplain and Regulatory Floodway delineations. One common type of LOMR, a LOMR-F, is a determination that a structure or parcel has been elevated by fill above the Base Flood Elevation and is excluded from the Special Flood Hazard Area;

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

**Mean Sea Level.** For purposes of the National Flood Insurance Program, the North American Vertical Datum of 1988 or other datum, to which Base Flood Elevations shown on a community's Flood Insurance Rate Map are referenced.

**Specialty Codes.** The combined specialty codes adopted under ORS 446.062, 446.185, 447.020(2), 455.020(2), 455.496, 455.610, 455.680, 460.085, 460.360, 479.730(1) or 480.545, but does not include regulations adopted by the State Fire Marshal pursuant to ORS Chapter 476 or ORS 479.015 to 479.200 and 479.210 to 479.220. The combined specialty codes are often referred to as building codes.

**Structure.** A walled and roofed building, a manufactured dwelling, a modular or temporary building, or a gas or liquid storage tank that is principally above ground.

**Structure, Accessory.** Same as definition of "Building, accessory" under Section 10.012.

**Structure, Historic.** A structure that is:

- a. Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or to a district preliminarily determined by the Secretary to qualify as a registered historic district;
- c. Individually listed on a state inventory of historic places and determined as eligible by states with historic preservation programs which have been approved by the Secretary of the Interior; or,
- d. Individually listed on a local inventory of historic places and determined as eligible by 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.

**Use, Water-Dependent.** A facility that cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a dam or irrigation canal. The term does not include long-term storage, manufacture, sales, or service facilities.

**Variance.** A grant of relief from a requirement of Sections 9.701–9.706 by permitting construction in a manner that would otherwise be prohibited by said Sections.

**Vehicle, Recreational.** A vehicle that is:

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

**Violation.** The failure of a structure or other development to be fully compliant with the floodplain management regulations of Sections 9.701–9.707. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance is presumed to be in violation until such time as that documentation is provided.

**Watercourse.** A lake, river, creek, stream, wash, arroyo, channel or other topographic feature in, on, through, or over which water flows at least periodically.

#### 9.704. Flood Damage Prevention — General Provisions.

##### *A. Applicability.*

Sections 9.701–9.707 shall apply to all Areas of Special Flood Hazard within the jurisdiction of the City of Medford. Nothing in Sections 9.701–9.707 is intended to allow uses or structures that are otherwise prohibited by the Land Development Code or Specialty Codes.

##### *B. Basis for Area of Special Flood Hazard.*

The Area of Special Flood Hazard identified by the Federal Emergency Management Agency (FEMA) in its Flood Insurance Study (FIS) for the City of Medford dated May 3, 2011, with accompanying Flood Insurance Rate Maps (FIRM) or Digital Flood Insurance Rate Maps (DFIRM), are adopted by reference and declared a part of Sections 9.701–9.707. The FIS and the FIRM are on file at the offices of the City of Medford, 200 South Ivy Street.

##### *C. Coordination with Specialty Codes Adopted by the State of Oregon Building Codes Division.*

Pursuant to the requirement established in ORS 455 that the City administers and enforces the State of Oregon Specialty Codes, the City of Medford does hereby acknowledge that the Specialty Codes contain certain provisions that apply to the design and construction of buildings and structures located in Areas of Special Flood Hazard. Therefore, Sections 9.701–9.707 is intended to be administered and enforced in conjunction with the Specialty Codes.

##### *D. Requirement for a Floodplain Development Permit.*

A Floodplain Development Permit shall be required prior to initiating development activities in any Areas of Special Flood Hazard established in Section 9.704(B).

##### *E. Interpretation.*

In the interpretation and application of Sections 9.701–9.707, all provisions shall be:

- (1) Considered as minimum requirements; and,
- (2) *Deemed neither to limit nor repeal any other powers granted under state statutes, including state Specialty Codes.*

*F. Warning and Disclaimer of Liability.* The degree of flood protection required by Sections 9.701–9.707 is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by manmade or natural causes. This Section does not imply that land outside Areas of Special Flood Hazard or uses permitted within such areas will be free from flooding or flood damages. This Section shall not create liability on the part of the City of Medford or any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on Sections 9.701–9.707 or an administrative decision lawfully made hereunder.

9.705. Flood Damage Prevention Regulations Administration.

*A. Designation of Floodplain Administrator.*

The Building Official is hereby appointed as the Floodplain Administrator who is responsible for administering and implementing the provisions of Sections 9.701–9.707.

*B. Duties and Responsibilities of the Floodplain Administrator.*

Duties of the Floodplain Administrator shall include, but not be limited to:

- (1) Review all proposed development to determine whether it will be located in Areas of Special Flood Hazard or other flood-prone areas;
- (2) Review applications for new development or modifications of any existing development in Areas of Special Flood Hazard for compliance with the requirements of Sections 9.701–9.707;
- (3) Review proposed development to ensure that necessary permits have been received from governmental agencies from which approval is required by Federal or state law. Copies of such permits shall be maintained on file;
- (4) Review all development permit applications to determine if proposed development is located in the Regulatory Floodway, and if so, ensure that the encroachment standards of SubSection 9.706.B, Development in Regulatory Floodways, are met.
- (5) When Base Flood Elevation data have not been established in SubSection 9.704.B, Basis for Area of Special Flood Hazard, the Floodplain Administrator shall obtain, review and reasonably utilize any Base Flood Elevation and Floodway data available from a Federal, state or other authoritative source in order to administer the provisions of Sections 9.701–9.707;
- (6) When Base Flood Elevations are not available from an authoritative source, the Floodplain Administrator shall require Base Flood Elevations to be developed in accordance with Paragraph 9.706(A)(2);
- (7) When a determination is needed of the exact location of boundaries of the Areas of Special Flood Hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Floodplain Administrator shall make a determination. Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the determination per Section 10.051;
- (8) Issue Floodplain Development Permits when the provisions of Sections 9.701–9.707 have been met, or deny the same in the event of noncompliance;

- (9) Ensure that applications for building permits comply with the requirements of Sections 9.701–9.707;
- (10) Obtain, verify and record the actual elevation in relation to the vertical datum used on the effective Flood Insurance Rate Map, or, in relation to the highest adjacent grade where no Base Flood Elevation is available, of the lowest floor level, including basement, of all new construction or substantially improved buildings and structures, including manufactured dwellings;
- (11) Obtain, verify and record the actual elevation of finished construction, in relation to the vertical datum used on the effective Flood Insurance Rate Map, or highest adjacent grade where no Base Flood Elevation is available, to which any new or substantially improved non-residential buildings or structures have been flood proofed. When flood proofing is utilized for a structure, the Floodplain Administrator shall obtain certification of elevation to which the structure was flood proofed from a registered professional engineer or land surveyor;
- (12) Ensure that all records and certifications pertaining to the provisions of Sections 9.701–9.707 are permanently maintained in the City of Medford Building Safety Department and available for public inspection;
- (13) Make periodic inspections of Areas of Special Flood Hazard to establish that development activities are being performed in compliance with Sections 9.701–9.707, and to verify that existing buildings and structures maintain compliance with Sections 9.701–9.707;
- (14) Inspect areas where buildings and structures in Areas of Special Flood Hazard have been damaged, regardless of the cause of damage, and notify owners that permits may be required prior to repair, rehabilitation, demolition, relocation, or reconstruction of the building or structure; and,
- (15) Make substantial improvement and substantial damage determinations for all structures located in Areas of Special Flood Hazard.

*C. Floodplain Development—Permit Procedures.*

Application for a Floodplain Development Permit shall be made to the Floodplain Administrator or designee on forms furnished by the Floodplain Administrator or designee prior to starting development activities. Specifically, the following information is required:

- (1) Application Stage.
  - a. Plans drawn to scale, with elevations of the project area, and the nature, location, and dimensions of existing and proposed structures, earthen fill placement, storage of materials or equipment, and drainage facilities;
  - b. Delineation of Areas of Special Flood Hazard, Regulatory Floodway boundaries including Base Flood Elevations, or flood depth in AO zones, where available;
  - c. For all proposed structures, elevation of the lowest enclosed area in relation to the highest adjacent grade and the Base Flood Elevation (or flood depth in AO zones), including crawlspace or basement, elevation of the top of the proposed garage slab, if any, and elevation of the next highest floor.
  - d. Locations and sizes of all flood openings, if required, in any proposed building;
  - e. Elevation to which a non-residential structure will be flood-proofed;

- f. Certification from a registered professional engineer that any proposed non-residential flood-proofed structure will meet the flood-proofing criteria of the National Flood Insurance Program (NFIP) and Specialty Codes;
- g. Description of the extent to which any watercourse will be altered or relocated as a result of a proposed development;
- h. Proof that application has been made for necessary permits from other governmental agencies from which approval is required by Federal or state law.

(2) Construction Stage.

- a. Copies of all necessary permits from other governmental agencies from which approval is required by Federal or state law shall be provided prior to start of construction.
- b. Development activities shall not begin without an approved Floodplain Development Permit;
- c. For all new construction and substantial improvements, the Floodplain Development permit holder shall provide to the Floodplain Administrator an as-built certification of the floor elevation or flood-proofing level immediately after the lowest floor or flood-proofing is placed and prior to further vertical construction; and,
- d. Any deficiencies identified by the Floodplain Administrator shall be corrected by the Floodplain Development Permit holder immediately and prior to work proceeding. Failure to submit certification or failure to make the corrections shall be cause for the Floodplain Administrator to issue a stop-work order for the project.

(3) Certificate of Occupancy.

- a. In addition to the requirements of the Specialty Codes pertaining to Certificate of Occupancy, and prior to the final inspection, the owner or authorized agent shall submit the following documentation for finished construction that has been signed and sealed by a registered surveyor or engineer:
  - i. For elevated buildings and structures in Areas of Special Flood Hazard (all A zones), the elevation of the lowest floor, including basement or, where no Base Flood Elevation is available, the height above highest adjacent grade of the lowest floor; and,
  - ii. For non-residential buildings and structures that have been flood proofed, the elevation to which the building or structure was flood proofed.
- b. Failure to submit certification or failure to correct violations shall be cause for the Floodplain Administrator to withhold a Certificate of Occupancy until such deficiencies are corrected.

(4) Expiration of Floodplain Development Permit. A Floodplain Development Permit shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions for periods of not more than 180 days each shall be requested in writing.

*D. Watercourse Alterations.*

- (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 must submit certification by a registered professional engineer that the flood-carrying capacity of the watercourse will not be diminished.
- (2) The applicant shall be responsible for obtaining all necessary permits from governmental agencies from which approval is required by Federal or state law, including, but not limited to, Section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 USC 1334); the Endangered Species Act of 1973 (16 USC 1531-1544); and State of Oregon Department of State Lands regulations.
- (3) If the altered or relocated watercourse is part of an Area of Special Flood Hazard, the applicant shall notify other affected jurisdictions and Oregon Department of Land Conservation and Development (the NFIP Coordinating Agency for Oregon) prior to any alteration or relocation of the watercourse. Evidence of notification must be submitted to the Floodplain Administrator and to the Federal Emergency Management Agency as set forth in Section 9.705(E) below.
- (4) The applicant shall be responsible for ensuring necessary maintenance for the altered or relocated portion of the watercourse is provided so that the flood-carrying capacity will not be diminished.
- (5) The applicant shall meet the requirements to submit technical data in Section 9.705(E) below, when an alteration of a watercourse results in the expansion, relocation or elimination of the Special Flood Hazard Area.

*E. Requirement to Submit New Technical Data.*

- (1) Within six months of project completion, an applicant who obtains an approved Conditional Letter of Map Revision from the Federal Emergency Management Agency (FEMA), or whose development alters a watercourse that is part of an Area of Special Flood Hazard, or modifies floodplain boundaries or Base Flood Elevations, shall obtain from FEMA a Letter of Map Revision reflecting the as-built changes to the Flood Insurance Rate Map.
- (2) It is the responsibility of the applicant to have technical data prepared in a format required for a Conditional Letter of Map Revision or Letter of Map Revision and to submit such data to FEMA on the appropriate application forms. Submittal and processing fees for these map revisions shall be the responsibility of the applicant.
- (3) Applicants shall be responsible for all costs associated with obtaining a Conditional Letter of Map Amendment or Letter of Map Revision from FEMA.
- (4) When the applicant has demonstrated that the project will or has met all applicable requirements of this Section, the Floodplain Administrator may sign the Community Acknowledgement Form, which is part of the Conditional Letter of Map Amendment or Letter of Map Revision application.

*F. Non-Conversion of Enclosed Areas Below the Lowest Floor.*

To ensure that enclosed areas below the lowest floor continue to be used solely for parking vehicles, limited storage, or access to the building, and not be finished for use as human habitation, the Floodplain Administrator shall:

- (1) Determine which applicants for new construction and/or substantial improvements have fully enclosed areas below the lowest floor that are five feet or higher; and
- (2) Require those applicants to enter into a "Non-Conversion Deed Declaration for Construction Within Flood Hazard Areas" or equivalent, with the City of Medford. The deed declaration shall be recorded with Jackson County. The deed declaration shall be in a form acceptable to the Floodplain Administrator and City Attorney.

9.706. Flood Damage Prevention Regulations Flood Hazard Reduction Provisions.

*A. Site Improvements and Subdivisions.*

All plans and permits for new site improvements, subdivisions, and manufactured home parks shall be consistent with the need to minimize flood damage and ensure that building sites will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes such things as historical data, high water marks, and photographs of past flooding.

- (1) Building lots shall have adequate buildable area outside of Floodways.
- (2) Where Base Flood Elevation data has not been provided or is not available from another authorized source, it shall be generated for land division proposals and other proposed developments.
- (3) New site improvements, subdivisions, and manufactured home parks shall have public utilities and facilities, such as sewer, gas, electric and water systems, located and constructed to minimize or eliminate damage and infiltration of floodwaters. Replacement public utilities and facilities, such as sewer, gas, electric and water systems, likewise, shall be sited and designed to minimize or eliminate damage and infiltration of floodwaters.
- (4) New and replacement onsite waste disposal systems and sanitary sewerage systems shall be located and constructed to avoid functional impairment, or discharges from them, during flooding.
- (5) Subdivisions and manufactured home parks shall have adequate drainage provided to reduce exposure to flood hazards. In AO and AH zones, drainage paths shall be provided to guide floodwater around and away from all proposed and existing structures.

*B. Development in Regulatory Floodway*

- (1) Encroachments are prohibited in the Regulatory Floodway unless a registered professional civil engineer provides a No-Rise Certification.
- (2) Any fill permitted to be placed in the Regulatory Floodway shall be designed to be stable under-conditions of flooding, including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and flood-related erosion and scour.

(3) Before the City will permit an encroachment in the Regulatory Floodway that will cause any increase in the base flood elevation, applicants shall obtain a Conditional Letter of Map Revision from the Federal Emergency Management Agency, unless the development causes a temporary encroachment and the conditions in (4), below, are satisfied.

(4) Temporary encroachments in the Regulatory Floodway for the purposes of capital improvement projects (including bridges) require a Floodplain Development Permit. A conditional or final Letter of Map Revision shall not be required. Up to a one-foot rise in the base flood elevation shall be allowed due to temporary encroachments associated with capital improvement projects, when:

- a. The project is limited as to duration, with the days and dates that the structure or other development will be in the Regulatory Floodway specified in the Floodplain Development Permit;
- b. Accessory structures (i.e. construction trailers) are restricted from the Regulatory Floodway;
- c. The project limits placement of equipment and material in the Regulatory Floodway to that which is absolutely necessary for the purposes of the project;
- d. The project includes a flood warning system sufficient to allow equipment to be evacuated from the Regulatory Floodway and placed outside the Area of Special Flood Hazard in the event of imminent flood;
- e. The project applicant identifies any insurable structures affected by temporary changes to the Area of Special Flood Hazard or Base Flood Elevation and notifies owners of any increased risk of flooding; and,
- f. The project applicant is provided with written notification that they may be liable for any flood damages resulting from the temporary encroachment.

*C. Zones with Base Flood Elevations but No Regulatory Floodway.*

(1) In areas within Zone AE on the community's FIRM where no Regulatory Floodway has been designated, the floodway is the channel of the stream. Encroachments shall be prohibited in the channel or floodway unless all the provisions of 9.706.B are satisfied.

(2) In Areas of Special Flood Hazard, encroachments shall be prohibited 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.

(3) Applicants of proposed projects that increase the Base Flood Elevation more than one foot shall obtain from FEMA a Conditional Letter of Map Revision (CLOMR) before the project may be permitted. As soon as possible, but no later than six months after project completion, an application for a Letter of Map Revision (LOMR) shall be submitted by the applicant to FEMA. The applicant is responsible for paying any costs associated with the CLOMR and LOMR process.

*D. Areas of Special Flood Hazard without Base Flood Elevations.*

(1) When Areas of Special Flood Hazard have been provided, but Base Flood Elevation or floodway data have not been identified by FEMA in a Flood Insurance Study and/or Flood

Insurance Rate Maps, the Floodplain Administrator shall obtain, review, and utilize scientific or historic Base Flood Elevation and Regulatory Floodway data available from a Federal, state, or other source, in order to administer these regulations. If Base Flood Elevations are not available, SubSection (3) below shall apply.

(2) Where the Floodplain Administrator has obtained Base Flood Elevation data, Section 9.706(C) and 9.706(E) through (K) shall apply.

(3) In Areas of Special Flood Hazard without Base Flood Elevation data no encroachments shall be located in an Area of Special Flood Hazard within an area equal to the width of the stream or 50 feet, whichever is greater, measured from the ordinary high water mark of the stream, unless a Base Flood Elevation is developed by a licensed professional engineer.

#### *E. Building Design and Construction*

Buildings and structures, including manufactured dwellings, within the scope of the Building Codes, including repair of substantial damage and substantial improvement of such existing buildings and structures, shall be designed and constructed in accordance with the flood-resistant construction provisions of these codes.

#### *F. Below-Grade Crawlspace.*

Below-grade crawlspaces are allowed subject to the following standards as illustrated in FEMA Technical Bulletin 11-01, "Crawlspace Construction for Buildings Located in Special Flood Hazard Areas":

(1) The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in SubSection (2) below. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas.

(2) The crawlspace is an enclosed area below the Base Flood Elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one foot above the lowest adjacent exterior grade.

(3) Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.

(4) Any building utility systems within the crawlspace must be elevated above BFE or designed so that floodwaters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from floodwaters.

- (5) The interior grade of a crawlspace below the BFE must not be more than two feet below the lowest adjacent exterior grade.
- (6) The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall must not exceed four feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.
- (7) There must be an adequate drainage system that removes floodwaters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles, or gravel/crushed stone drainage by gravity or mechanical means.
- (8) The velocity of floodwaters at the site should not exceed five feet per second for any crawlspace. For velocities in excess of five feet per second, other foundation types should be used.

#### *G. Recreational Vehicles.*

In all Areas of Special Flood Hazard, Recreational Vehicles that are an allowed use or structure under the land development code must:

- (1) Be placed on the site for fewer than 180 consecutive days; or,
- (2) Be fully licensed and ready for highway use, on its wheels or jacking system, attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached structures or addition.

#### *H. Essential Facilities.*

Construction of new essential facilities shall be located outside the limits of the Area of Special Flood Hazard, except that construction of new essential facilities shall be permissible within the Area of Special Flood Hazard if no feasible alternative site is available. Flood proofing and sealing measures must be taken to ensure that toxic substances or priority organic pollutants as defined by the Oregon Department of Environmental Quality will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the Base Flood Elevation shall be provided to all essential facilities to the maximum extent possible.

#### *I. Tanks.*

New and replacement tanks in an Area of Special Flood Hazard shall either be elevated above the Base Flood Elevation on a supporting structure designed to prevent flotation, collapse or lateral movement during conditions of the base flood, or be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy assuming the tank is empty, during conditions of the Design Flood.

New and replacement tank inlets, fill openings, outlets and vents shall be placed a minimum of two feet above Base Flood Elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tank during conditions of the Design Flood.

*J. Fences and Walls*

New and replacement fencing in an Area of Special Flood Hazard shall be designed to collapse under conditions of the Base Flood or to allow the passage of water by having flaps or openings in the areas at or below the Base Flood Elevation sufficient to allow flood water and associated debris to pass freely.

*K. Other Development, including Accessory Structures, in High Hazard Areas.*

All development in high hazard areas (all A zones) for which provisions are not specified in Sections 9.701–9.707 or building codes, shall:

- (1) Be located and constructed to minimize flood damage;
- (2) Be designed so as not to impede flow of floodwaters under Base Flood conditions;
- (3) If located in a Regulatory Floodway, meet the limitations of Section 9.706.B;
- (4) Be anchored to prevent flotation, collapse, or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;
- (5) Be constructed of flood damage-resistant materials;
- (6) Have electric service and or mechanical equipment elevated above the Base Flood Elevation (or depth number in AO zones), except for minimum electric service required to address life safety and electric code requirements;
- (7) Relief from elevation or dry flood-proofing standards may be granted for new and replacement, or substantially improved accessory structures containing no more than 200 square feet; larger than 200 square feet, building codes apply. Such a structure must meet (1) through (6) of this SubSection, and, in addition, shall meet the following standards:
  - a. It shall not be used for human habitation and may be used solely for parking of vehicles or storage of items having low damage potential when submerged;
  - b. Toxic material, oil or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality shall not be stored below Base Flood Elevation, or where no Base Flood Elevation is available, lower than three feet above grade, unless confined in a tank installed in compliance with this Section;
  - c. It shall be designed to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater. Designs for complying with this requirement must be certified by a licensed professional engineer or architect, or:
    - i. Provide a minimum of two openings with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
    - ii. The bottom of all openings shall be no higher than one foot above the higher of the exterior or interior grade or floor immediately below the opening; and,
    - iii. Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwater in both directions without manual intervention.

#### 9.707. Flood Damage Prevention Variance.

*Variations from the provisions of Sections 9.701–9.706 may be permitted when there are practical difficulties or unnecessary hardships created in carrying out the provisions. The basis for a variance shall be the physical circumstances or characteristics of a lot; a variance shall not be based on the inhabitants or owners of the property, their economic or financial circumstances, or the condition or situation of structures on the property. The burden is on the applicant to show that the variance is warranted and meets the approval criteria set out herein.*

The provisions of this Section are not the same as, nor to be confused with, provisions for Exceptions in the Land Development Code.

A variance may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the Statewide Inventory of Historic Properties without regard to the procedures set forth in this Section.

##### *A. Variance—Procedure.*

(1) An application for a variance from the Flood Damage Prevention regulations must be submitted to the Floodplain Administrator on the form provided by the City and shall include, at a minimum, the same information required for a Floodplain Development Permit, and an explanation of the basis for the request for a variance.

(2) Variance requests will be heard by the Planning Commission and be processed in the manner of a Class-C application, using the Class-C procedural requirements in Chapter 10, Article II of the Municipal Code. City will use the same referral agency notification list as is used for Exceptions (Section 10.146).

(3) Upon consideration of the approval criteria in SubSection B, below, and the purposes of this Section, and finding that the approval criteria can be met, the City approving authority may approve the request and attach such conditions to the granting of a variance as it deems necessary to further the purposes of these regulations.

(4) The Floodplain Administrator shall maintain a permanent record of all variances and report any variances to the Federal Emergency Management Agency upon request.

##### *B. Variance—Approval Criteria.*

(1) A variance shall not be issued within a Floodway if any increase in flood levels during the Base Flood discharge would result.

(2) A variance shall only be issued upon the:

- a. Determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
- b. Showing of good and sufficient cause;
- c. Determination that failure to grant a variance from these regulations would result in exceptional hardship to the applicant; and,

d. Determination that the granting of a variance would not result in increased flood heights, additional threats to public safety, or extraordinary public expense; or create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(3) In approving a variance, the City approving authority shall consider all technical evaluations, all relevant factors, standards specified in other Sections of this Code, and the:

- a. Danger that materials may be swept onto other lands to the injury of others;
- b. Danger to life and property due to flooding or erosion damage;
- c. Susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- d. Importance of the services provided by the proposed facility to the community;
- e. Necessity to the facility of a waterfront location, where applicable;
- f. Availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- g. Compatibility of the proposed use with existing and anticipated development;
- h. The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;
- i. Safety of access to the property in times of flood for ordinary and emergency vehicles;
- j. Expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters, expected at the site; and,
- k. Costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

(4) A variance may be issued for a water-dependent use provided that:

- a. the criteria of subsections (1) through (3) of this Section are met; and,
- b. the structure or other development is protected by methods that minimize flood damages during the Base Flood and that create no additional threats to public safety.

*C. Variance—Decision.*

The decision to either grant or deny a variance shall be in writing and shall set forth the reasons for such approval or denial. If the variance is granted, the property owner shall be put on notice, along with the written decision, that the permitted building will have its lowest floor below the Base Flood Elevation and that the cost of flood insurance likely will be commensurate with the increased flood damage risk.