

ORIGINAL

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. 6013

AN ORDINANCE amending the Bellevue Land Use Code related to ensuring consistency with FEMA's National Flood Insurance Program minimum floodplain management requirements; specifically amending Land Use Code sections 20.25H.175, 20.25H.177, 20.25H.180 of the Bellevue Land Use Code; providing for severability and establishing an effective date.

WHEREAS, the City of Bellevue has participated in the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP) since 1978; and

WHEREAS, the United States Congress created the NFIP to minimize the rising disaster relief costs and to reduce the loss of life and property caused by flooding; and

WHEREAS, the NFIP is a voluntary program that provides reasonably-priced flood insurance to participating communities; and

WHEREAS, participation in the NFIP requires communities to regulate development in the floodplain consistent with federal and state floodplain management requirements; and

WHEREAS, the Washington State Department of Ecology (Ecology) is the designated State Coordinating Agency for the NFIP; and

WHEREAS, in 2009 and 2010 Ecology in its role as the State Coordinating Agency reviewed the City's floodplain management regulations contained in Part 20.25H (Section IX Areas of Special Flood Hazards) of the Bellevue Land Use Code (LUC), and found the regulations inconsistent with certain state and federal floodplain management requirements; and

WHEREAS, the City desires to maintain its eligibility and participation in the NFIP to allow its citizens to realize the benefits associated with NFIP participation; and

WHEREAS, the purpose of this ordinance is to ensure consistency with the federal NFIP and state floodplain management requirements as required by FEMA and the Washington State Department of Ecology. The amendments do not impact the functions and values of the Area of Special Flood Hazard because there is no resulting change in the functions and values protected, the area protected, or the method of protection under the City's critical areas ordinance; therefore, the inclusion of best available science is unnecessary as required under RCW 36.70A.172; and

WHEREAS, the Environmental Coordinator for the City of Bellevue determined that this proposal will not result in any probable, significant, adverse impacts and as such a final threshold determination of non-significance (DNS) was issued on May 13, 2010; and

WHEREAS, the Planning Commission held public hearings on May 26, 2010 and June 7, 2011 for the proposed FEMA Consistency Land Use Code Amendment (LUCA) contained herein; and

WHEREAS, the Planning Commission recommends APPROVAL of the FEMA Consistency LUCA, now, therefore;

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 20.25H.175 of the Bellevue Land Use Code is hereby amended as follows:

20.25H.175 Designation of critical area.

A. Designation of Critical Area.

Areas of special flood hazard shall include:

1. Land Subject to One-Hundred-Year Flood. The land in the floodplain subject to the flood having a one percent chance or greater of being equaled or exceeded in any given year as determined by customary methods of statistical analysis defined in the City of Bellevue Storm and Surface Water Engineering Standards, January 2011, or as hereafter amended. Also referred to as the 100-year flood.

2. Areas Identified on the Flood Insurance Rate Map(s). Those areas identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for King County" dated April 19, 2005, with an accompanying flood insurance map(s) and any revisions thereto. The Flood Insurance Study and accompanying map(s) are hereby adopted by reference, declared part of this part, and are available for public review at the City of Bellevue.

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Section 2. Section 20.25H.177 of the Bellevue Land Use Code is hereby amended as follows:

20.25H.177 Definitions.

For purposes of the regulations for the area of special flood hazard, the following definitions apply:

"Base flood elevation (BFE)" means the flood having a one percent chance of being equaled or exceeded in any given year as determined by customary methods of statistical

analysis defined in the Storm and Surface Water Utility Code, Chapter 24.06 BCC. Also referred to as the 100-year flood.

“Basement” means any area of the building having its floor subgrade (below ground level) on all sides.

“Development” means any man-made change to improved or unimproved real estate in the area of special flood hazard, including but not limited to, building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

“Encroachment” means any alteration or development within the regulatory floodway that would result in any increase in the flood levels during the occurrence of the base flood discharge.

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

“Floodway” means the channel of a river or stream and overbank areas adjacent to the channel. The floodway carries the bulk of floodwater downstream and is usually the area where water velocities and forces are the greatest and most destructive. The floodway and the adjacent land areas must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

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“Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this part found in LUC 20.25H.180.D.1.a.

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“Regulatory Floodway ” means the floodway delineated on the flood insurance rate map (FIRM).

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“Substantial Damage” means damage of any origin sustained by a structure where the cost of restoring the structure to its before damage condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

“Substantial improvement ” includes the following: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (1) before the improvement or repair is started, or (2) if the structure has been damaged, and is being restored, before the damage occurred. For the purpose of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or (2) any alteration of a structure listed on the National Register of Historic Places.

Section 3. Section 20.25H.180 of the Bellevue Land Use Code is hereby amended as follows:

20.25H.180 Development in the area of special flood hazard.

No use, development or activity may occur in an area of special flood hazard except as specifically allowed by this part. All use, development or activity which is allowed is subject to the performance standards of this subsection and shall not result in a rise in the BFE. The requirements of this section may not be modified through a critical areas report.

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C. General Performance Standards.

Where use or development is allowed pursuant to LUC 20.25H.055, the following general performance standards apply.

1. Intrusion Over the Area of Special Flood Hazard Allowed. Any structure may intrude over the area of special flood hazard if:

- a. The intrusion is located above existing grade, and does not alter the configuration of the area of special flood hazard;
- b. The intrusion is at an elevation and orientation which maintains the existing vegetation of the area of special flood hazard in a healthy condition. Solar access to vegetation must be maintained at least 50 percent of daylight hours during the normal growing season; and
- c. The intrusion does not encroach into the regulated floodway except in compliance with 20.25H.180.C.5.

Development not meeting the requirements of this subsection C.1 may be allowed pursuant to LUC 20.25H.055 and only in accordance with the requirements set forth in the

remainder of this section C.

2. Elevation Certificate Following Construction. Following construction of a structure within the area of special flood hazard, where the base flood elevation is provided, the applicant shall obtain an elevation certificate. The elevation certificate shall be completed by a surveyor licensed in the state of Washington and shall be submitted to City of Bellevue, Utilities Department. The Director shall obtain and transmit to the Director of the Utilities Department the elevation in relation to City of Bellevue vertical datum (NAVD 88) of the lowest floor, including basement, and attendant utilities of a new or substantially improved structure permitted by this part. All records shall be maintained for public inspection in accordance with 44 C.F.R 60.3(b)(5)(iii) and the City of Bellevue record retention policy.

3. Construction Materials and Methods.

a. Site Design. All structures, utilities, and other improvements shall be located on the buildable portion of the site out of the area of special flood hazard unless there is no buildable site out of the area of special flood hazard. For sites with no buildable area out of the area of special flood hazard, structures, utilities, and other improvements shall be placed on the highest land on the site, oriented parallel to flow rather than perpendicular, and sited as far from the stream and other critical areas as possible. Located in flood-fringe where flood flow velocities are less than three feet per second and flood depths are less than three feet. If the Director detects any evidence of active hyporheic exchange on a site, the development shall be located to minimize disruption of such exchange.

b. Methods that Minimize Flood Damage. All new construction and substantial improvements shall be constructed using flood-resistant materials and using methods and practices that minimize flood damage.

c. Utility Protection. Electrical, heating, ventilation, plumbing, air-conditioning equipment, and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

d. Anchoring. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

4. No Rise in the Base Flood Elevation (BFE). Any allowed use or development shall not result in a rise in the BFE.

a. Post and Pile. Post and piling techniques are preferred and are presumed to produce no increase in the BFE. Demonstration of no net rise in the BFE through calculation is not required.

b. Compensatory Storage. Proposals using compensatory storage techniques to assure no rise in the BFE shall demonstrate no net rise in the BFE through the calculation by methods established in the Utilities Storm and Surface Water Engineering Standards, January 2011, Section D4-04.5, Floodplain/Floodway

Analysis, now or as hereafter amended.

5. Development in the Regulatory Floodway.

a. Encroachment into Regulatory Floodway Prohibited. Encroachments, including, but not limited to, fill, new construction, substantial improvements, and other development is prohibited, unless a registered professional engineer certifies that the proposed encroachment into the regulatory floodway shall not result in any rise in the BFE using hydrological and hydraulic analysis performed in accordance with City of Bellevue Storm and Surface Water Engineering Standards, January 2011, or as hereafter amended. All new construction and substantial improvements shall comply with this section 20.25H.180.

b. Residential Structures. A residential structure located partially within the regulatory floodway will be considered as totally within the regulatory floodway and must comply with this paragraph C.5. This paragraph does not apply to structures identified as historical places. Construction or reconstruction of residential structures is prohibited within the regulatory floodway, except when:

i. Repairs, reconstruction, or improvements to a structure do not increase the footprint; and

ii. Repairs, reconstruction, or improvements to a structure, the cost of which does not exceed 50 percent of the market value of the structure either (1) before the repair, reconstruction, or improvement is begun, or (2) if the structure has been damaged, and is being restored, before the damage occurred. Work done to comply with state or local health, sanitary, or safety codes identified by the Building Official and which are the minimum necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places shall not be included in the 50 percent market value determination.

c. Substantially Damaged Residential Structures.

i. The Director may request the Washington State Department of Ecology assess the risk of harm to life and property posed by the specific conditions of the regulatory floodway, and provide the City with a recommendation on repair or replacement of a substantially damaged residential structure consistent with WAC 173-158-076, now or as hereafter amended. Property owners shall be responsible for submitting to the City any information necessary to complete the assessment when such information is not otherwise available. No repair or replacement of a substantially damaged residential structure located in the regulatory floodway is allowed without a recommendation from the Department of Ecology.

ii. Before the repair, replacement, or reconstruction is started, all requirements of this section 20.25H.180 must be satisfied. In addition, the following conditions shall be met:

(1) There is no potential safe building location for the replacement residential structure on the same property outside the regulatory floodway;

- (2) A replacement residential structure is a residential structure built as a substitute for a previously existing residential structure of equivalent use and size;
 - (3) Repairs or reconstruction or replacement of a residential structure shall not increase the total square footage of floodway encroachment;
 - (4) The elevation of the lowest floor of the substantially damaged or replacement residential structure is a minimum of one foot higher than the base flood elevation;
 - (5) New and replacement water supply systems are designed to eliminate or minimize infiltration of flood water into the system;
 - (6) New and replacement sanitary sewerage systems are designed and located to eliminate or minimize infiltration of flood water into the system and discharge from the system into the flood waters; and
 - (7) All other utilities and connections to public utilities are designed, constructed, and located to eliminate or minimize flood damage.
6. Modification of Stream Channel. Alteration of open stream channels shall be avoided, if feasible. If unavoidable, the following provisions shall apply to the alteration:
- a. Modifications shall only be allowed in accordance with the habitat improvement projects.
 - b. Modification projects shall not result in blockage of side channels.
 - c. The City of Bellevue shall notify adjacent communities, the state departments of Ecology and Fish and Wildlife, and the Federal Insurance Administration about the proposed modification at least 30 days prior to permit issuance.
 - d. The applicant shall maintain the altered or relocated portion of the stream channel to ensure that the flood-carrying capacity is not diminished. Maintenance shall be bonded for a period of five years, and be in accordance with an approved maintenance program.
7. Compensatory Storage. Development proposals must not reduce the effective base flood storage volume of the area of special flood hazard. Grading or other activity that would reduce the effective storage volume must be mitigated by creating compensatory storage on the site. The compensatory storage must:
- a. Provide equivalent elevations to that being displaced;
 - b. Be hydraulically connected to the source of flooding;
 - c. Be provided in the same construction season and before the flood season begins on September 30th;
 - d. Occur on-site or off-site if legal arrangements can be made to assure that the effective compensatory storage volume will be preserved over time;

- e. Be supported by a detailed hydraulic analysis that:
 - i. Is prepared by a licensed engineer;
 - ii. Demonstrates that the proposed compensatory storage does not adversely affect the BFE; and
- f. Meet all other critical areas rules subject to this part. If modification to a critical area or critical area buffer is required to complete the compensatory storage requirement, such modification shall be mitigated pursuant to an approved mitigation and restoration plan, LUC 20.25H.210.

D. Specific Performance Standards

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7. Reasonable Use Exception. Where a reasonable use exception is granted under LUC 20.25H.190, the following performance standards apply:

- a. Residential Construction (Single-Family and Multifamily Dwellings).
 - i. Must Be Above Base Flood Elevation. New construction of any residential structure shall have the lowest floor, including basement and attendant utilities, elevated one foot or more above the base flood elevation.
 - ii. Enclosed areas (including breakaway walls) below the BFE shall be no larger than 300 square feet.
 - iii. Must comply with the requirements for openings set forth in LUC 20.25H.180.D.1.a.

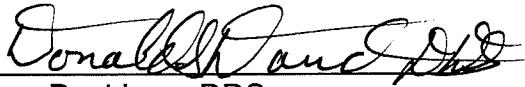
Section 4. If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining parts of this ordinance.

Section 5. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

ORIGINAL

Passed by the City Council this 1st day of August, 2011 and
signed in authentication of its passage this 1st day of August, 2011.


(SEAL)


Don Davidson, DDS
Mayor

Approved as to form:
Lori M. Riordan, City Attorney


Lacey Madole, Assistant City Attorney

Attest:


Myrna L. Basich, City Clerk

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