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OAKLAND
2009 JUL -2 PM 7:17

CITY OF OAKLAND

AGENDA REPORT

TO: Office of the City Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: July 7, 2009

RE: **A Report And An Ordinance Amending Ordinance No. 10956 C.M.S. To Continue The Eligibility Of The City Of Oakland To Participate In The National Flood Insurance Program (NFIP) Of The Federal Emergency Management Agency (FEMA)**

SUMMARY

The City's Floodplain Management Program was last revised in 1988 by Ordinance No. 10956 C.M.S. After an interlude of more than twenty (20) years, the Federal Emergency Management Agency (FEMA) recently completed an extensive revision to the National Flood Insurance Program (NFIP) Floodplain regulations and the companion Flood Insurance Rate Maps (FIRMs) for Alameda County's creeks and estuaries. FEMA will release the revised FIRMs on August 3, 2009, and Oakland must now amend its floodplain ordinance by then in order to continue to participate in the NFIP. Suspension from the NFIP will prevent Oakland property owners whose buildings will be within the newly expanded flood zone boundaries from obtaining flood insurance at the reduced rates available through FEMA.

FISCAL IMPACT

Amending the City's floodplain ordinance to comply with FEMA's newly revised floodplain regulations will avoid the potential fiscal exposure the City may have from litigation by property owners for increased insurance costs and decreases in the economic value of their improved property due to their inability to obtain flood insurance from NFIP at significantly reduced rates.

BACKGROUND

The City has been participating in the NFIP since 1970 when it adopted Resolution No. 51118 C.M.S., which first made Oakland property owners eligible to purchase reduced-rate insurance to cover floods and mudslides in designated flood zones. Oakland's Floodplain Management Program was last modified in 1988 by Ordinance No. 10956 C.M.S. After twenty-one (21) years, FEMA recently completed revisions to the procedures and regulations concerning floodplain development and levy protection (applicable to the Oakland Airport and nearby properties).

FEMA has also been digitizing its Flood Insurance Rate Maps (FIRMs) throughout the country and has revised the floodplain boundaries in Alameda County for the first time since 1982 for properties adjacent to creeks and estuaries adjoining San Francisco Bay, which incorporate estimates of rising sea level due to Global Warming.

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KEY ISSUES AND IMPACTS

Flood Zone Boundaries and Federal Insurance

The revised FIRMs for Alameda County will be effective on August 3, 2009. FEMA uses this publication date as the suspense date for local jurisdictions to revise their individual Floodplain Management Programs to comply with recent FEMA revisions to the NFIP. Local FEMA staff recently reviewed the proposed amendments to Ordinance 10956 C.M.S. and have concurred that the changes will accomplish this. Adopting the amending ordinance by August 3rd will ensure that the City can continue its participation in the NFIP. Consequently, property owners will remain eligible to purchase flood and mudslide insurance through FEMA at reduced rates. This has increased importance because FEMA's revision of the FIRMs has expanded the flood zone boundaries in Oakland, which will impact more existing (and future) buildings.

Flood Zone Development

A significant revision by FEMA to the NFIP regulations is the requirement that all new obstructions in a flood zone be designed to limit the interference with the flow of flood water (foundation pass-through gates, etc.). In addition, property owners will be required to submit a Letter of Map Revision (LOMR) to FEMA whenever the high-water elevation is modified (increase or decrease) due to physical alterations. In cases where the flood risk is reduced, FEMA will issue an amendment to the FIRM and reduce (or eliminate) the flood insurance rate.

SUSTAINABLE OPPORTUNITIES

Economic

Amending the floodplain ordinance to comply with FEMA's revised regulations for property development in designated flood zones will assure property owners that the City will continue to participate in the National Flood Insurance Program, which will enhance property values and maintain reduced flood insurance costs for eligible property owners.

Environmental

Revising floodplain regulations and flood zone boundaries (100 year storm event) will help reduce property losses and health and safety hazards and minimize disruption of commerce and governmental services.

Social Equity

Adoption of these proposed amendments will benefit all Oakland property owners and residents.

DISABILITY AND SENIOR CITIZEN ACCESS

There is no direct impact or benefit to seniors or citizens with disabilities.

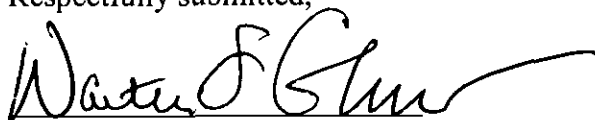
RECOMMENDATION AND RATIONALE

Staff recommends that the City Council accept this report and adopt the proposed ordinance.

ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the City Council adopt the proposed ordinance amending the City's Floodplain Management Program Ordinance No. 10956 C.M.S., to comply with FEMA's recent revisions to the National Flood Insurance Program regulations and to the Flood Insurance Rate Maps for Oakland.

Respectfully submitted,

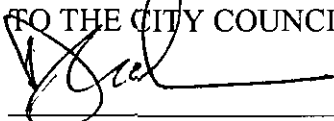


Walter S. Cohen, Director
Community and Economic Development Agency

Prepared by:

Raymond M. Derania
Building Official and City Engineer
Building Services Division

APPROVED AND FORWARDED
TO THE CITY COUNCIL:



Office of the City Administrator

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Introduced by

Councilmember

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OAKLAND CITY COUNCIL

Approved for Form and Legality

City Attorney

ORDINANCE No. _____ C.M.S.

AN ORDINANCE AMENDING ORDINANCE NO. 10956 C.M.S. TO CONTINUE THE ELIGIBILITY OF THE CITY OF OAKLAND TO PARTICIPATE IN THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP) OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

WHEREAS, flood hazard areas within the corporate limits of the City of Oakland are subject to periodic inundation which can result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and/or impairment of the tax base; and

WHEREAS, these flood losses are caused by development improvements to real property that are inadequately elevated, flood-proofed, or protected from flood damage; and

WHEREAS, the cumulative effects of floodway obstructions in areas of special flood hazards that are attributable to development improvements are increased flood level heights and flood flow velocities, which result in increased flood damage and property losses; and

WHEREAS, the Federal Emergency Management Agency (FEMA) requires that communities who elect to participate in the National Flood Insurance Program (NFIP) adopt a Floodplain Management ordinance which enables property owners to obtain flood insurance; and

WHEREAS, the Council of the City of Oakland previously adopted Resolution No. 51118 C.M.S. in 1970 and Ordinance No. 10956 C.M.S., entitled "Flood Damage Prevention Ordinance", in 1988 which qualified the City to participate in the NFIP and assured its compliance with conditions precedent to such participation; and

WHEREAS, FEMA has recently revised the NFIP Floodplain Management criteria; and

WHEREAS, pursuant to said revisions of the Floodplain Management criteria, the City of Oakland is required by FEMA to amend Ordinance No. 10956 C.M.S. to comply with the newly revised requirements of the NFIP Floodplain Management criteria and the changes thereto of the Federal Insurance Administrative regulations to assure the continued participation of the City in the NFIP; and

WHEREAS, FEMA will release revisions to the Flood Insurance Rate Maps (FIRMs) for the City of Oakland on August 3, 2009, at which time the City is required to have adopted said amendments to Ordinance 10956 C.M.S.; and

WHEREAS, pursuant to California Government Code Sections 65302, 65560, and 65800, local jurisdictions may adopt ordinances and establish regulations intended to promote the public health, safety, and general welfare; and

WHEREAS, the requirements of the California Environmental Quality Act (CEQA) of 1970, the Guidelines as prescribed by the Secretary for Resources, and the provisions of the Statement of Objectives Criteria and Procedures for Implementation of the California Environmental Quality Act have been satisfied and in accordance with Sections 15061(b)(3), 15301 (Existing Facilities), 15302 (Replacement or Reconstruction), and 15308 (Actions by Regulatory Agencies for Protection of the Environment) of the California Code of Regulations this project is exempt from the provisions of the California Environmental Quality Act; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Article I. Findings

The Council of the City of Oakland finds and determines that foregoing recitals are true and correct and hereby adopts and incorporates them into this Ordinance.

Article II. California Environmental Quality Act

The Council of the City of Oakland finds and determines that this Ordinance complies with the California Environmental Quality Act (CEQA), base on the following, each of which provides a separate and independent basis:

- CEQA Guidelines Section 15061(b)(3), and
- CEQA Guidelines Section 150301(existing facilities), and
- CEQA Guidelines Section 150302(replacement or reconstruction).

Article III. Amendments

Ordinance No. 10956 C.M.S. is hereby amended to add, delete, or otherwise modify certain sections as set forth below. Section numbers and titles are indicated in **bold** type face; additions are indicated by underscoring type face; and deletions are indicated by ~~strike-through~~ type face. Portions of the Ordinance not cited herein below or not shown in underscoring or ~~strike-through~~ type face are not changed.

SECTION 1. Section 2.0 – Definitions of the Ordinance is hereby amended by the addition of the following new text in the appropriate alphabetical order:

Section 2.0 DEFINITIONS

"Development" means any man-made change to improved or unimproved real property, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the date of adoption of this floodplain ordinance.

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Historic structure" means any structure that is either:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register.
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district.
3. Listed in or determined eligible for listing in the California Register of Historical Resources, individually or as a contributor to a district.
4. Listed on the City of Oakland's Local Register of Historical Resources, as defined in Policy 3.8 of the Historic Preservation Element of the Oakland General Plan.

"Recreational vehicle" means a vehicle which is:

1. Built on a single chassis.
2. 400 square feet or less when measured at the largest horizontal projection.
3. Designed to be self-propelled or permanently towable by a light-duty truck.
4. Designed primarily for use as temporary living quarters for recreational, camping, travel, or seasonal use and not for use as a permanent dwelling.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent of the market value of the structure before the damage occurred.

SECTION 2. Section 3.0 - General Provisions of the Ordinance is hereby amended by the replacement of existing text with the following substitutions:

Section 3.2. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.

The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) or the Federal Insurance Administration in ~~the a scientific and engineering report entitled~~ Flood Insurance Study (FIS), for the City of Oakland, dated September 30, 1982, ~~with an accompanying~~ entitled "Flood Insurance Rate Maps and Flood Boundary and Floodway Maps (FBFMs) Study, City of Oakland, California, Alameda County", dated October 16, 1982, with accompanying Flood Insurance Rate Maps (FIRMs), dated September 30, 1982, and all subsequent amendments and/or revisions thereto is ~~are~~ hereby adopted by reference and ~~declared to be a incorporated as~~ part of this ordinance. This Flood Insurance Study ~~is on file at the Office of Public Works, City Hall. This Flood Insurance Study is the minimum area of applicability (FIS) and attendant mapping is the minimum area of applicability of this ordinance and may be supplemented by studies for other areas which allow implementation of this ordinance and~~ may be supplemented by studies for other areas which allow implementation of this ordinance and which are recommended to the City of Oakland by the Floodplain Administrator. The FIS and Flood Insurance Rate Maps (FIRMs) are on file at the Office of the City Engineer of the City of Oakland, and such other locations as determined by the Floodplain Administrator.

SECTION 3. Section 4.0 - Administration of the Ordinance is hereby amended by the replacement of existing text with the following substitution:

Section 4.3. DUTIES AND RESPONSIBILITIES.

C. Whenever a watercourse is to be altered or relocated:

1. Notify adjacent communities and the California Department of Water Resources prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the ~~Federal Insurance Administration~~ Emergency Management Agency (FEMA).

SECTION 4. Section 4.3.C of the Ordinance is hereby amended by the addition of the following new text:

Section 4.3.C.3. BASE FLOOD ELEVATION CHANGES DUE TO PHYSICAL ALTERATIONS

- A. Within six months of information becoming available or project completion, whichever comes first, the Floodplain Administrator shall submit or assure that the permit applicant submits technical or scientific data to FEMA for a Letter of Map Revision (LOMR).
- B. All LOMR's for flood control projects are approved prior to the issuance of building permits. Building Permits must not be issued based on Conditional Letters of Map Revision (CLOMR's). Approved CLOMR's allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition. Such submissions are necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements are based on current data.

SECTION 5. Section 5.0 – Provision For Flood Hazard Reduction of the Ordinance is hereby amended by the replacement of existing text with following substitutions:

Section 5.3.A.

- A. ~~All preliminary subdivision proposals shall identify the flood hazard area and the elevation of the base flood.~~ All new subdivision proposals and other proposed development, including proposals for manufactured home parks and subdivisions, greater than 50 lots or 5 acres, whichever is the lesser, shall:
1. Identify the Special Flood Hazard Areas (SFHA) and Base Flood Elevations (BFE).
 2. Identify the elevations of lowest floors of all proposed structures and pads on the final plans.
 3. When the site is filled above the base flood elevation, the following as-built information for each structure shall be certified by a registered civil engineer or licensed land surveyor and provided as part of an application for a Letter of Map Revision based on Fill (LOMR-F) to the Floodplain Administrator:
 - a. Lowest floor elevation.
 - b. Pad elevation.
 - c. Lowest adjacent grade.

SECTION 6. Section 5.0 – Provision For Flood Hazard Reduction of the Ordinance is hereby amended by the addition of the following new text:

Section 5.7 STANDARDS FOR RECREATIONAL VEHICLES

- A. All recreational vehicles placed in Zones A1-30, AH, AE, V1-30 and VE as shown on the Flood Insurance Rate Map (FIRM) shall be:
1. on the site for fewer than 180 consecutive days; or shall be
 2. fully licensed and ready for highway use; or shall comply with
 3. the permit requirements set forth in Section 4.1 and the elevation and anchoring requirements for manufactured homes set forth in Section 5.1.A.
- B. A recreational vehicle shall be considered “ready for highway use” when it is on its wheels or jacking system, is served on the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

C. Recreation vehicles located on sites within Zones V1-30, V, and VE as shown on the FIRM shall comply with the requirements set forth in Section 5.7.A and Section 5.6.

Article IV. Severability

The provisions of this Ordinance are severable, and if any clause, sentence, paragraph, provision, or part of this Ordinance, of the application of this Ordinance to any person, is held to be invalid or preempted by state or federal law, such holding shall not impair or invalidate the remainder of this Ordinance. If any provision of this Ordinance is held to be inapplicable, the provisions of this Ordinance shall nonetheless continue to apply with respect to all other covered projects and applicants. It is hereby declared to be the legislative intent of the Council of the City of Oakland that this Ordinance would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from its coverage.

Article V. Effective Date

Upon final adoption by sufficient affirmative votes of the Council of the City of Oakland or by approval of a reconsideration by said Council, this ordinance shall be effective as provided in section 216 of the Charter of the City of Oakland.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID,
AND PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

DATE OF ATTESTATION _____

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OAKLAND

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NOTICE AND DIGEST

AN ORDINANCE AMENDING ORDINANCE 10956 C.M.S. TO COMPLY WITH AMENDMENTS BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) TO FLOODPLAIN MANAGEMENT CRITERIA AND TO CONTINUE THE ELIGIBILITY OF THE CITY OF OAKLAND TO PARTICIPATE IN THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP)

The ordinance will amend Ordinance 10856 C.M.S. entitled "Flood Damage Prevention Ordinance" to bring the ordinance into compliance with the Federal Emergency Management Agency (FEMA) requirements enacted since the Ordinance was adopted in 1988. Adoption of the proposed amendments will enable Oakland property owners in high risk Flood Zones to continue to purchase reduced rate Federal flood insurance for buildings and contents.