

**CITY OF ORTING
WASHINGTON
ORDINANCE NO. 2017-1010**

**AN ORDINANCE OF THE CITY OF ORTING,
WASHINGTON, AMENDING ORDINANCE NOS. 2017-1006
AND 2017-1009, AND ORTING MUNICIPAL CODE TITLE
14, CHAPTER 1, RELATING TO FLOOD PLANNING
MANAGEMENT AND FLOOD DAMAGE PREVENTION;
PROVIDING FOR SEVERABILITY; AND DECLARING AN
EMERGENCY**

WHEREAS, the City of Orting is a non-charter optional municipal code city as provided in Title 35A RCW, incorporated under the laws of the state of Washington; and

WHEREAS, in order to ensure the City of Orting's on-going participation in the National Flood Insurance Program (NFIP), the City is required to administer and enforce floodplain management regulations codified at Title 14 of the Orting Municipal Code, and to ensure that those regulations meet the standards set out in the NFIP uniform regulations, 44 CFR 59, *et. seq.*; and

WHEREAS, the Federal Emergency Management Agency (FEMA) recently completed a Flood Insurance Study to re-evaluate the flood hazards present in Orting, and throughout Pierce County, and to provide updated digital floodplain maps depicting the regulatory floodway; and

WHEREAS, as a condition of the City's continued participation in the NFIP, FEMA requires the City to amend its existing floodplain management regulations to ensure they meet the standards set out in 44 CFR 59, *et. seq.*, and to adopt the updated Flood Insurance Rate Map (FIRM) by ordinance, no later than March 7, 2017; and

WHEREAS, the City's Planning Department has determined that changes to the City's current floodplain management regulations (Title 14 OMC) are required to ensure compliance with FEMA's mandatory minimums for participation in the NFIP; and

WHEREAS, the State Environmental Policy Act (SEPA) responsible official has determined that the proposed amendments to Title 14 OMC do not reflect significant changes, and further SEPA analysis is not required for these local code amendments; and

WHEREAS, a draft version of Ordinance 2017-1006 was submitted to the Washington State Department of Commerce for expedited review on February 2, 2017; and

WHEREAS, a duly noticed public hearing was held on February 22, 2017; and

WHEREAS, the City Council adopted Ordinance 2017-1006 on February 22, 2017, which amended the City's existing floodplain management regulations and adopt the updated Flood Insurance Rate Map (FIRM); and

WHEREAS, FEMA reviewed the adopted Ordinance 2017-1006 and found that additional amendments to the City's regulations are needed to meet the standards set out in 44 CFR 59, *et. seq.*; and

WHEREAS, the City Council adopted Ordinance 2017-1009 on March 1, 2017, which amended the City's existing floodplain management regulations pursuant to FEMA's requested amendments thereto, pursuant to the standards set out in 44 CFR 59, *et seq.*; and

WHEREAS, FEMA reviewed the adopted Ordinance 2017-1009 and found that additional amendments to the City's regulations are needed to meet the standards set out in 44 CFR 59, *et. seq.*; and

WHEREAS, this Ordinance includes the amendments recommended by FEMA and which the City Council has determined fall within the scope of the public hearing held on February 22, 2017; and

WHEREAS, the City Council has considered this ordinance, together with all public comment, and has determined that the proposed regulations are in accord with the Comprehensive Plan, will not adversely affect the public health, safety, or general welfare, and are in the best interest of the citizens of the City; and

WHEREAS, the potential adverse impacts upon the public health, safety and welfare, public property and the public peace, justify the declaration of an emergency, pursuant to RCW 35A.12.130;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORTING, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. OMC Title 14, Chapter 1, Section 5, Amended. Orting Municipal Code Title 14, Chapter 1, Section 5, is hereby amended to read as follows:

14-1-5: DEFINITIONS

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application. Other pertinent definitions are included in titles 12, 13, and 15 of this code.

APPURTENANT STRUCTURE: A structure which is on the same parcel of property as the principle structure to be insured and the use of which is incidental to the use of the principle structure.

APPEAL: A request for a review of the city of Orting's interpretation of any provision of this chapter or a request for a variance.

AREA OF SHALLOW FLOODING: A designated AO or AH zone on the flood insurance rate map (FIRM). The base flood depths range from one foot (1') to three feet (3'); a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. AO is characterized as sheet flow and AH indicates ponding.

AREA OF SPECIAL FLOOD HAZARD: The land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year.

BASE FLOOD: The flood having a one percent (1%) chance of being equaled or exceeded in any given year. The area subject to the base flood is the Special Flood Hazard Area designated on Flood Insurance Rate Maps as Zones "A" or "V" including AE, AO, AH, A1-99 and VE.

BASE FLOOD ELEVATION: the elevation of the base flood above the datum of the effective FIRM.

BASEMENT: Any area of a building having its floor subgrade (below ground level) on all sides.

CHANNEL MIGRATION AREA: The area within the lateral extent of likely stream channel movement due to stream bank destabilization and erosion, rapid stream incision, aggradations, avulsions, and shifts in location of stream channels.

CRITICAL FACILITY: A facility necessary to protect the public health, safety and welfare during a flood. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency operations installations, water and wastewater treatment plants, electric power stations, and installations which produce, use, or store hazardous materials or hazardous waste (other than consumer products containing hazardous substances or hazardous waste intended for household use).

DEVELOPMENT: Any manmade change to improved or unimproved real estate in the Regulatory Floodplain, including, but not limited to, buildings or other structures, mining, dredging, grading, paving, excavating or drilling operations, or storage of materials or equipment, subdivision of land, removal of more than 5% of the native vegetation on the property, or any other activity which results in the removal of substantial amounts of vegetation or in the alteration of natural site characteristics located within the area of special flood hazard.

DEVELOPMENT PERMIT: Any city permit involving approval of development.

DRY FLOODPROOFING: Any combination of structural and non-structural measures that prevent flood waters from entering a structure.

ELEVATED BUILDING: A nonbasement building built to have the lowest floor elevated above the ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

ELEVATION CERTIFICATE: The official form (FEMA Form 81-31086-0-33) used to track development and provide elevation information necessary to ensure compliance with provisions of this ordinance and determine the proper flood insurance premium rate with Section B completed by Community Officials.

EXISTING CONSTRUCTION: For the purposes of determining insurance rates, structures for which the “start of construction” commenced before the effective date of the flood insurance rate map or before January 1, 1975, for flood insurance rate maps effective before that date ~~September 27, 1985~~. This term may also be referred to as “existing structures.”

EXISTING MANUFACTURED HOME PARK OR SUBDIVISION: 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) was completed before the effective date of the floodplain management regulations adopted by the city of Orting on ~~September 27, 1985~~.

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION: The preparation of additional sites by 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).

FEMA: The Federal Emergency Management Agency, the agency responsible for administering the National Flood Insurance Program.

FISH AND WILDLIFE HABITAT CONSERVATION AREA: Lands needed to maintain species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created. These areas are designated by the City of Orting, pursuant to the Washington State Growth Management Act (Ch 36.70A RCW).

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM): The official map of a community, on which the federal emergency management agency (FEMA) has delineated the areas of flood hazards and regulatory floodway.

FLOOD HAZARD BOUNDARY MAP (FHBM): The official map of a community, issued by FEMA, where the boundaries of the special flood hazard area have been identified as zone A.

FLOOD INSURANCE RATE MAP (FIRM): The official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY: The official report provided by the federal insurance administration that includes flood profiles, the flood boundary-floodway map, and the water surface elevation of the base flood.

FLOOD OR FLOODING: A general and temporary condition of partial or complete inundation of normally dry land areas from:

- A. The overflow of inland or tidal waters; and/or
- B. The unusual and rapid accumulation of runoff of surface waters from any source.

FLOODPLAIN: Any land area susceptible to being inundated by water from any source.

FLOODPROOFING: Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOOD PROTECTION ELEVATION (FPE): The elevation above the datum of the effective FIRM to which new and substantially improved structures must be protected from flood damage.

FLOODWAY: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot (1').

~~**FUNCTIONALLY DEPENDANT USE:** A use that must be located or carried out close to water, e.g. docking or port facilities necessary for the unloading of cargo or passengers or shipbuilding and ship repair.~~

HIGHEST ADJACENT GRADE: The highest natural elevation of the ground surface prior to construction next to the proposed wall of a structure.

HISTORIC STRUCTURE: Any structure that is:

A. Listed individually in the national register of historic places or preliminarily determined by the secretary of the interior as meeting the requirements for individual listing on the national register;

B. Certified or preliminarily determined by the secretary of the interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district;

C. Individually listed on a state inventory of historic places in the 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 in communities with historic preservation programs that have been certified either:

1. By an approved state program as determined by the secretary of the interior, or
2. Directly by the secretary of the interior in states without approved programs.

HYPORHEIC ZONE: A saturated layer of rock or sediment beneath and/or adjacent to a stream channel that contains some proportion of channel water or that has been altered by channel water infiltration.

IMPERVIOUS SURFACE: A hard surface area which either prevents or retards the entry of water into the soil mantle as under natural conditions prior to development, and/or a hard surface area which causes water to run off the surface in greater quantities or at an increased rate of flow from the flow present under natural conditions prior to development. Common impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, parking lots or storage areas, concrete

or asphalt paving, gravel roads, packed earthen materials, and oiled, macadam or other surfaces which similarly impede the natural infiltration of stormwater. Open, uncovered retention/detention facilities shall not be considered as impervious surfaces.

INCREASED COST OF COMPLIANCE: A flood insurance claim payment up to \$30,000 directly to a property owner for the cost to comply with floodplain management regulations after a direct physical loss caused by a flood. Eligibility for an ICC claim can be through a single instance of “substantial damage” or as a result of a “cumulative substantial damage.”

LOWEST FLOOR: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor; provided, that such enclosure will comply with standards for residential structures at 14-1-9(B)(1).

MANUFACTURED HOME: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term “manufactured home” does not include a “recreational vehicle.”

MANUFACTURED HOME PARK OR SUBDIVISION: A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home lots for rent or sale.

MEAN SEA LEVEL: For purposes of the national flood insurance program, the national geodetic vertical datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community’s flood insurance rate map are referenced.

MITIGATION CONTRIBUTION: A cash donation or other valuable consideration offered by the applicant in lieu of: a) a required dedication of land for public park, recreation, open space, public facilities, or schools; or b) road improvements needed to maintain adopted levels of service or to ameliorate identified impacts and accepted on the public’s behalf as a condition of approval of a subdivision, plat or binding site plan. Voluntary contributions may be accepted by the city.

NATIVE VEGETATION: Plant species that are indigenous to the local geography and that reasonably could be expected to naturally occur on the site.

NATURAL FLOODPLAIN FUNCTIONS: The contribution that a flood-plain makes to support habitat, including, but not limited to providing flood storage and conveyance, reducing flood velocities, reducing sedimentation, filtering nutrients and impurities from runoff, processing organic wastes, moderating temperature fluctuations, and providing breeding and feeding grounds, shelter, and refugia, for aquatic or riparian species.

NEW CONSTRUCTION: For floodplain management purposes, structures for which the “start of construction” commenced on or after the effective date hereof and includes any subsequent improvements to such structures.

PARTICIPATING COMMUNITY: Also known as an eligible community, means a community in which FEMA has authorized the sale of flood insurance.

PROTECTED AREA: Comprised of those lands that lie within the boundaries of the floodway, the riparian habitat zone, and the channel migration zone. Because of the impact that development can have on flood heights and velocities and habitat, special rules apply in the Protected Area.

RECREATIONAL VEHICLE: A vehicle, which is:

A. Built on a single chassis;

B. Four hundred (400) square feet or less when measured at the largest horizontal projection;

C. Designed to be self-propelled or permanently towable by a light duty truck; and

D. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use and is road ready.

REGULATORY FLOODPLAIN: The area of the special flood hazard area plus the protected area.

RIPARIAN HABITAT ZONE: The water body and adjacent land areas that are likely to support aquatic and riparian habitat.

SPECIAL FLOOD HAZARD AREA (SFHA): The land subject to inundation by the base flood. Special Flood Hazard Areas are designated on Flood Insurance Rate Maps with the letters "A" or "V" including AE, AO, AH, A1-99 and VE. The Special Flood Hazard Area is also referred to as the area of special flood hazard or SFHA subject to a 1% or greater chance of flooding in a given year.

START OF CONSTRUCTION: Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within one hundred eighty (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 and grading; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundation 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 the building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE: A walled and roofed building including a gas or liquid storage tank that is principally aboveground, as well as a manufactured home.

SUBSTANTIAL DAMAGE: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred. Substantial damage also means

flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25% of the value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT:

A. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) 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 purposes 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.

B. 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 has been previously identified by the local code enforcement official and which is solely necessary to assure safe living conditions; or
2. Any alteration of a “historic structure” provided that the alteration would not preclude the structure’s continued designation as a “historic structure.”

VARIANCE: A grant of relief from the requirements of this chapter.

VIOLATION: The failure of a structure or other development to be fully compliant with this chapter. A structure or other development without the elevation certificate, or other certifications, or other evidence of compliance required in this chapter is presumed to be a violation until such time as that documentation is provided.

WATER DEPENDENT: A structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations.

WATER TYPING: A system for classifying water bodies according to their size and fish habitat characteristics. The Washington Department of Natural Resources’ Forest Practices Water Typing classification system (222-16 WAC) is hereby adopted by reference. The system defines four water types:

A. Type “S” = Shoreline: Streams that are designated “shorelines of the State,” including marine shorelines

B. Type “F” = Fish: Streams that are known to be used by fish or meet the physical criteria to be potentially used by fish.

C. Type “Np” = Non-Fish Perennial streams

D. Type “Ns” = Non-Fish Seasonal streams

ZONE: One or more areas delineated on the FIRM. The following zones may be used on the adopted FIRM. The Special Flood Hazard Area (SFHA) is comprised of the A and V Zones.

A: SFHA where no base flood elevation is provided.

A#: Numbered A Zones (e.g., A7 or A14), SFHA with a base flood elevation.

AE: SFHA with a base flood elevation.

AO: SFHA subject to inundation by shallow flooding usually resulting from sheet flow on sloping terrain, with average depths between one and three feet. Average flood depths are shown.

AH: SFHA subject to inundation by shallow flooding (usually areas of ponding) with average depths between one and three feet. Base flood elevations are shown.

B: The area between the SFHA and the 500-year flood of the primary source of flooding. It may also be an area with a local, shallow flooding problem or an area protected by a levee.

C: An area of minimal flood hazard, as above the 500- year flood level of the primary source of flooding. B and C Zones may have flooding that does not meet the criteria to be mapped as a Special Flood Hazard Area, especially ponding and local drainage problems.

D: Area of undetermined but possible flood hazard.

V: The SFHA subject to coastal high hazard flooding including waves of 3’ or greater in height. There are three types of V Zones: V, V#, and VE, and they correspond to the A Zone designations.

X: The area outside the mapped SFHA.

Shaded X: the same as a Zone B, above.

Section 2. OMC Title 14, Chapter 1, Section 6, Amended. Orting Municipal Code Title 14, Chapter 1, Section 6, is hereby amended to read as follows:

14-1-6: GENERAL PROVISIONS:

A. Lands To Which This Chapter Applies. This chapter shall apply to the Regulatory Floodplain, which is comprised of the Special Flood Hazard Area and all Protected Areas within the City.

B. Basis for Establishing the Special Flood Hazard Area. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for Pierce County and incorporated Areas” dated March 7, 2017 and any revisions thereto, with an accompanying Flood Insurance Rate Map (FIRM) and any revisions thereto are hereby adopted by reference and declared to be part of this ordinance. The Flood

Insurance Study and the FIRM Special Flood Hazard Area (SFHA) is the area subject to flooding by the base flood and subject to the provisions of this ordinance. The Flood Insurance Study and the FIRM are on file at City Offices at 110 Train Street SE.

Upon receipt of a floodplain development permit application, the (floodplain administrator) shall compare the elevation of the site to the base flood elevation. A development project is not subject to the requirements of this ordinance if it is located on land that can be shown to be

1. Outside the Protected Area and
2. Higher than the base flood elevation.

The Administrator shall inform the applicant that the project may still be subject to the flood insurance purchase requirements unless the owner receives a Letter of Map Amendment from FEMA.

C. Flood Hazard Data

1. The base flood elevation for the SFHAs of City of Orting shall be as delineated on the 100-year flood profiles in the adopted Pierce County Flood Insurance Study and FIRM.

2. The base flood elevation for each SFHA delineated as a “Zone AH” or “Zone AO” shall be that elevation (or depth) delineated on the Flood Insurance Rate Map. Where base flood depths are not available in Zone AO, the base flood elevation shall be considered to be two feet above the highest grade adjacent to the structure.

3. The base flood elevation for all other SFHAs shall be as defined in 14-1-5 Sections 3.3.F and 3.5.C.

4. The Flood Protection Elevation (FPE) shall be the base flood elevation plus one foot.

5. Uses of Other Base Flood Data: When base flood elevation data has not been provided (in A or V zones) in accordance with subsection 14-1-6B of this chapter, the City shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, in order to administer subsections 14-1-9B and C of this chapter.

D. Protected Area

1. The Protected Area is comprised of those lands that lie within the boundaries of the floodway, the riparian habitat zone, and the channel migration area.

2. In riverine areas, where a floodway has not been designated in accordance with this Chapter Sections 3.3.E, 3.3.F, or 3.5.D, the Protected Area is comprised of those lands that lie within the boundaries of the riparian habitat zone, the channel migration area, and the SFHA.

~~EB. Basis For Establishing Areas Of Special Flood Hazard: The areas of special flood hazard identified in the FEMA flood insurance study (FIS) for the city of Orting, dated September 27, 1985, with accompanying flood insurance rate maps (FIRM), the FIS for Pierce County (unincorporated areas) and accompanying FIRM panels 5301380601C and 5301380602C, and other supporting data, and any subsequent revisions thereto, are hereby adopted by reference and declared to be a part of this chapter. The flood insurance studies and FIRMs are on file at Orting City Hall, 110 Train Street SE, Orting, WA 98360.~~

FE. Riparian Habitat Zone: The riparian habitat zone includes those watercourses within the SFHA and adjacent land areas that are likely to support aquatic and riparian habitat.

1. The size and location of the riparian habitat zone is dependent on the type of water body. The riparian habitat zone includes the water body and adjacent lands, measured perpendicularly from ordinary high water on both sides of the water body:

(a) Type S streams that are designated “shorelines of the State:” 250 feet

(b) Type F streams (fish bearing) streams greater than 5 feet wide and marine shorelines: 200 feet

(c) Type F streams less than 5 feet wide and lakes: 150 feet

(d) Type N (nonsalmonid-bearing) perennial and seasonal streams with unstable slopes: 225 feet

(e) All other Type N (nonsalmonid-bearing) perennial and seasonal streams: 150 feet.

2. The riparian habitat zone shall be delineated on the site plan by the applicant at the time of application for subdivision approval or floodplain development permit for all development proposals within 300 feet of any stream or shoreline.

FG. Channel Migration Area: In areas with base flood elevations (but a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones AI-30 and AE on the FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing or anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point.

1. The channel migration area shall be the channel migration zone as delineated by Pierce County, on the adopted FIRM.

GH. New Regulatory Data

1. All requests to revise or change the flood hazard data, including requests for a Letter of Map Revision and a Conditional Letter of Map Revision shall be reviewed by the Administrator.

(a) The Administrator shall not sign the Community Acknowledgement Form for any requests for development, unless the applicant for the letter documents that such development is in compliance with this ordinance.

~~(b) The Administrator shall not approve a request to revise or change a floodway delineation until FEMA has issued a Conditional Letter of Map Revision that approves the change.~~

~~2. If an applicant disagrees with the regulatory data prescribed by this chapter, he/she may submit a detailed technical study needed to replace existing data with better data in accordance with FEMA mapping guidelines or Regional Guidance for Hydrologic and Hydraulic Studies in Support of the Washington Model Ordinance for Floodplain Management under the National Flood Insurance Program and the Endangered Species Act FEMA Region X, 2010. If the data in question are shown on the published FIRM, the submittal must also include a request to FEMA for a Conditional Letter of Map Revision.~~

3. Where base flood elevation data are not available, applicants for approval of new subdivisions and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, shall include such data with their permit applications.

~~4. Floodway delineation is shown in the 2017 FIRM and the Orting Shoreline Master Program. Where Therefore, floodway delineation shall be is not available in accordance with this Ordinance, (The floodway will be designated to beis one half the distance of the mapped 100 year floodplain at any point, and the prohibition on floodway development adheres, unless evidence indicates otherwise. This provision applies to any floodplain development permit, including those for substantial improvements.~~

45. Where channel migration zone data are not available in accordance with this Ordinance, the permit applicant shall either:

(a) Designate the entire SFHA as the channel migration zone or

(b) Identify the channel migration zone for the area one river mile upstream to one river mile downstream of the site in accordance with Regional Guidance for NFIP-ESA Floodplain Mapping, published by FEMA Region X

56. All new hydrologic and hydraulic flood studies conducted pursuant to this Ordinance shall consider future conditions and the cumulative effects from anticipated future land use changes in accordance with Regional Guidance for Hydrologic and Hydraulic Studies in Support of the Model Ordinance for Floodplain Management under the National Flood Insurance Program and the Endangered Species Act, FEMA Region X, 2010.

H. Floodways:

1. Encroachments, including fill, new construction, substantial improvements, and other development is prohibited unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analyses performed in

accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge.

2. Construction or reconstruction of residential structures is prohibited within designated floodways, except for (i) repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; 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:

(a) Before the repair, or reconstruction is started, or

(b) If the structure has been damaged, and is being restored, before the damage occurred.

Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or to structures identified as historic places, may be excluded in the 50 percent.

3. If OMC 14-1-6H Subsection 1 and Subsection 2 are satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of OMC 14-1-10.

I. Penalties For Noncompliance:

1. Compliance; Violation A Misdemeanor: No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor.

2. Penalty Imposed: Any person who violates this chapter or fails to comply with any of its requirements shall, upon conviction thereof, be subject to penalty as provided in section 1-4-1 of this code, for each violation, and in addition shall pay all costs and expenses involved in the case.

3. Remedial Action: Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

J. Abrogation Of Greater Restrictions: This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

K. Interpretation: In the interpretation and application of this chapter, all provisions shall be:

1. Considered as minimum requirements;
2. Liberally construed in favor of the governing body; and
3. Deemed neither to limit nor repeal any other powers granted under state statutes.

L. **Warning And Disclaimer Of Liability:** The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city, any officer or employee thereof, or FEMA, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

M. **Severability.** The provisions of this Section shall be deemed separable and the invalidity of any portion of this ordinance shall not affect the validity of the remainder.

Section 3. OMC Title 14, Chapter 1, Section 8, Amended. Orting Municipal Code Title 14, Chapter 1, Section 8, is hereby amended to read as follows:

14-1-8: ADMINISTRATION:

A. Designation Of Flood Damage Prevention Chapter Administrator: The City of Orting hereby appoints the city administrator or his/her designee to administer and implement the provisions of this chapter, and is hereinafter referred to as the Floodplain Administrator.

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

1. Review all floodplain development permits to determine that the permit requirements of this ordinance have been satisfied.

2. Review all floodplain development permits to determine that all necessary permits have been obtained from those Federal, State, or local governmental agencies from which prior approval is required, including those local, State or Federal permits that may be required to assure compliance with the Endangered Species Act and/or other appropriate State or Federal laws.

3. Review all floodplain development permits to determine if the proposed development is located in the Protected Area. If located in the Protected Area, ensure that the provisions of this Ordinance are met.

4. Ensure that all development activities within the Regulatory Floodplain of the jurisdiction of the City of Orting meet the requirements of this ordinance.

5. Inspect all development projects before, during and after construction to ensure compliance with all provisions of this chapter, including proper elevation of the structure.

6. Maintain for public inspection all records pertaining to the provisions of this chapter on a permanent basis.

7. Submit reports as required for the National Flood Insurance Program.

8. Notify FEMA of any proposed amendments to this chapter.

9. Cooperate with State and Federal agencies to improve flood and other technical data and notify FEMA of any new data that would revise the FIRM.

C. Records:

1. Where base flood elevation data have been obtained pursuant to this Ordinance, the Administrator shall obtain, record, and maintain the actual "finished construction" elevation. This information shall be recorded on a current FEMA Elevation Certificate (FEMA Form 81-31), signed and sealed by a professional land surveyor, currently licensed in the State of Washington.

2. For all new or substantially improved dry floodproofed nonresidential structures, where base flood elevation data has been obtained pursuant to this Ordinance, the Administrator shall obtain, record and maintain the elevation (in relation to the datum of the effective FIRM) to which the structure was floodproofed. This information shall be recorded on a permanent basis on a current FEMA Floodproofing Certificate (FEMA Form 81-65), professional engineer, currently licensed in the State of Washington

DA. Development Permits: All required land use and building permits granted by the city shall be subject to the provisions of this chapter.

1. **Establishment; Development Permit Required:** A development permit shall be obtained before construction or development begins within any area of special flood hazard established in this chapter. The permit shall be for all structures including manufactured homes, as set forth in section of this chapter, and for all development including fill and other activities, also as set forth in section of this chapter.

2. **Application For Development Permit:** Application for a development permit shall be made on forms furnished by the city and may include, but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

a. Elevations of the area of development in relation to mean sea level (such as a contour map) for both existing and proposed development;

b. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;

c. Elevation in relation to mean sea level to which any structure has been floodproofed;

d. Elevations of the 10-, 50-, 100-, and 500-year floods, where the data are available;

e. The riparian habitat zone shall be delineated on the site plan for all development proposals within three hundred feet (300') of any stream or shoreline;

f. Certification by a registered professional surveyor that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in subsection 14-1-9B2 of this chapter;

g. Existing and proposed infrastructure. If the proposed project includes a new structure, substantial improvement, or repairs to a substantially damaged nonresidential structure that will be dry floodproofed, the application shall include the FPE for the building site and the elevation in relation to the datum of the effective FIRM to which the structure will be dry floodproofed and a certification by a registered professional engineer or licensed architect that the dry floodproofing methods meet the floodproofing criteria; and

h. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development;:

i. Description of the extent to which a stream, lake, or other water body, including its shoreline, will be altered or relocated as a result of the proposed development;

j. Designated fish and wildlife habitat conservation areas, and habitat areas identified for conservation or protection under state or federal or local laws or regulations (e.g: Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, Growth Management Act, Shorelines Management Act, Priority Habitat and Species List;

k. Existing native vegetation and proposed revegetation;

l. Documentation that the applicant will apply for all necessary permits required by Federal, State, or local law. The application shall include written acknowledgment that the applicant understands that the final certification of use or certificate of occupancy will be issued only if the applicant provides copies of the required Federal, State, and local permits or letters stating that a permit is not required. The floodplain permit is not valid if those other permits and approvals are not obtained prior to any ground disturbing work or structural improvements; and

m. Acknowledgment by the applicant that representatives of any Federal, State or local unit of government with regulatory authority over the project are authorized to enter upon the property to inspect the development.

3. Construction Stage: If the floodplain encroaches five feet (5') into the subject property line, then a flood floor elevation certificate will be required. Upon placement of the lowest floor, or floodproofing by whatever means, it shall be the duty of the permit holder to submit to the floodplain management administrator a certification of the elevation of the lowest floor or floodproofed elevation, as built in relation to mean sea level. A registered land surveyor who is authorized to certify such information in the state of Washington shall prepare said certification. Any work undertaken prior to the submission of the certification shall be at the permit holder's risk.

The Administrator shall review the lowest floor elevation and floodproofing certificate. Should these documents be found not in conformance with the requirements of this chapter the permit holder shall immediately cease further work, and shall correct the deficiencies. Failure of the permit holder to submit the surveyed lowest floor elevation and floodproofing certificates, and failure to correct said deficiencies required, shall be the cause to issue a stop work order for the project.

EB. Administration By City; Grant Or Deny Permits: The city is hereby appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

FC. Duties And Responsibilities Of City: Duties of the city shall include, but not be limited to:

1. Permit Review:

~~a. Review all development permits to determine that the permit requirements of this chapter have been satisfied.~~

~~b. Review all development permits to determine that all necessary permits have been obtained from those federal, state, or local governmental agencies from which prior approval is required.~~

~~e. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the provisions of subsection 14-1-9C of this chapter are met.~~

~~2. Uses Of Other Base Flood Data: When base flood elevation data has not been provided in accordance with subsection 14-1-6B of this chapter, the city shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, in order to administer subsections 14-1-9B and C of this chapter.~~

3. Information To Be Obtained And Maintained:

~~a. Where base flood elevation data is provided through the flood insurance study, FIRM, or required as in subsection C2 of this section, obtain and record the actual (as built) elevation (in relation~~

~~to mean sea level) of the lowest floor, including basement, of all new or substantially improved structures, and whether or not the structure contains a basement.~~

~~b. For all new or substantially improved floodproofed nonresidential structures:~~

~~(1) Verify and record the actual elevation (in relation to mean sea level); and~~

~~(2) Maintain the floodproofing certifications required in subsection A2f of this section.~~

~~e. Maintain for public inspection all records pertaining to the provisions of this chapter.~~

~~d. Submit reports as required for the national flood insurance program.~~

14. Alteration Of Watercourses:

a. Notify adjacent communities and the Washington State Department of ecology prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

~~5. Interpretation Of FIRM Boundaries: The city may make interpretations where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in subsection D of this section.~~

GF. Certificate of Occupancy

1. A certification of use for the property or a certificate of occupancy for a new or substantially improved structure or an addition shall not be issued until:

a. The permit applicant provides a properly completed, signed and sealed Elevation or Floodproofing Certificate showing finished construction data as required by the Ordinance;

b. If a mitigation plan is required by the Ordinance, all work identified in the plan has been completed according to the plan's schedule;

c. The applicant provides copies of all required Federal, State, and local permits noted in the permit application instructions; and

d. All other provisions of this chapter have been met.

2. The floodplain administrator may accept a performance bond or other security that will ensure that unfinished portions of the project will be completed after the certification of use or certificate of occupancy has been issued.

HG. Floodplain Development Permit Expiration: If there has been no start of construction, a floodplain development permit shall expire 180 days after the date of issuance. Where the applicant documents a need for an extension beyond this period due to conditions beyond the applicant's control, the floodplain administrator may authorize one or more extensions.

ID. Variance Procedure: Variances from the provisions of this chapter shall be processed as described in Title 15 OMC. Approved variances shall permit structures to be built with a lowest floor elevation below the base flood elevation and shall assert that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. The findings and conclusions of approved variances shall be recorded with the Pierce County auditor and shall run with the land.

1. Variance Considerations: In considering such variances, the hearings examiner shall consider the following factors:

- a. The danger that materials may be swept onto other lands at the risk of injury to others;
- b. The danger to life and property due to flooding or erosion damage;
- c. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- d. The importance of the services provided by the proposed facility to the community;
- e. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- f. The safety of access to the property in times of flood for ordinary and emergency vehicles;
- g. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- h. The 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.

2. Conditions For Variances:

- a. Upon a determination that the proposed repair or rehabilitation of a historic structure will not preclude the structure's continued designation as a historic structure, and the variance is the minimum necessary to preserve the historic character and design of the structure.

b. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

c. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

d. A determination that failure to grant the variance would result in exceptional hardship to the applicant.

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

f. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria of this section and otherwise complies with subsections of this chapter.

Section 4. Severability. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

Section 5. Codification of Amendments. The City Council authorizes the City Clerk to correct any non-substantive errors herein, codify the amendments, and publish the amended code.

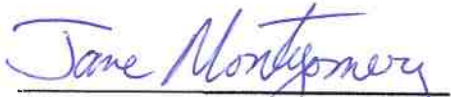
Section 6. Effective Date. This Ordinance, as an emergency ordinance necessary for the protection of the public health, safety and welfare, shall take effect and be in full force immediately upon its adoption.

ADOPTED BY THE CITY COUNCIL AT A SPECIAL MEETING THEREOF ON THE 6th DAY OF MARCH, 2017.

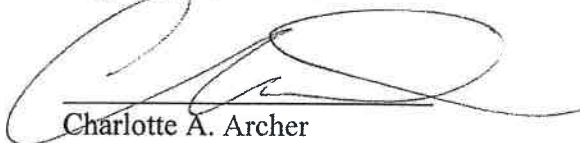
CITY OF ORTING


Joachim Pestinger, Mayor

ATTEST/AUTHENTICATED:


Jane Montgomery, City Clerk

Approved as to form:


Charlotte A. Archer
Kenyon Disend PLLC
City Attorney

Filed with the City Clerk: 3.3.17
Passed by the City Council: 3.6.17
Date of Publication: 3.8.17
Effective Date: 3.6.17