



File No: DC 25-01 Code Updates

Proposal: The City of Millersburg is revising its Development Code to make changes required by the Federal Emergency Management Agency (FEMA). These changes are required to comply with Pre-Implementation Compliance Measures (PICMs) (see background).

The City is also proposing some changes that are not related to the FEMA requirement. These nine (9) changes include proposed changes to RV covers (walls on them specifically), further refinements to the new ground mounted solar sections, changes to partition requirements, changes to legal non-conforming structure standards, revisions to signs on chain link fencing, minor clarification to the standards for fowl and rabbits, additions for middle housing mandates by the State, and clarification to lot to width standards for new partitions and subdivisions.

I. BACKGROUND

- A. Applicant: City of Millersburg
- B. Location: City Wide
- C. Review Type: The proposed Development Code Amendment (DC) requires a hearing before the Planning Commission whereby the Commission makes a recommendation to the City Council. A subsequent hearing before the City Council is required for a final action, including the adoption of an ordinance. Any appeal of the City Council's decision relating to this matter will be considered by the Oregon Land Use Board of Appeals (LUBA).
- D. Public Notice and Hearing: A notice was posted in City Hall. A separate notice was sent to the Department of Land Conservation and Development (DLCD) on May 23, 2025. The notice was posted at City Hall and in the newspaper on June 10, 2025, and June 17, 2025. Public Hearing notices were mailed to every home in the 100 year and 500 year FEMA floodplain.¹ Information related to the hearing is posted on the City's website here - <https://www.millersburgoregon.gov/planning/page/land-use-applications-and-applications-under-review>.
- E. Review Criteria: Millersburg Development Code Section 5.11.030. The amendments also require compliance with Oregon Administrative Rules section 660-012.
- F. Current Zoning: All zones will have some effect from the proposed changes. No zoning map changes are proposed.
- G. Background: A good Land Use Development Code is never completed. It should grow and change with the community's needs. FEMA is requiring participating communities to make changes to the National Flood Insurance Program (NFIP) in Oregon. FEMA explains that the changes are needed to protect the habitat of

¹ Pursuant to tax records provided by Linn County.

several species of fish and the Southern Resident killer whales to comply with the Endangered Species Act (ESA). FEMA outlined these changes in the draft NFIP-ESA Implementation Plan, which FEMA will fully implement in 2027. Until then, FEMA is requiring communities to begin implementing interim measures, known as Pre-Implementation Compliance Measures (PICMs), to protect habitat and achieve what FEMA is calling 'no net loss.' FEMA has developed these measures to address the 2016 National Marine Fisheries Service (NMFS) Biological Opinion (BiOp). These measures are intended to occur as the agency undertakes a National Environmental Policy Act (NEPA) review to assess the effects of FEMA's proposed NFIP-ESA integration efforts.

The City is also proposing some changes that are not related to the FEMA requirement. These nine (9) changes include proposed changes to RV covers (walls on them specifically), further refinements to the new ground mounted solar sections, changes to partition requirements, changes to legal non-conforming structure standards, revisions to signs on chain link fencing, minor clarification to the standards for fowl and rabbits, additions for middle housing mandates by the State, and clarification to lot-to-width standards for new partitions and subdivisions.

A table is shown below including all changes proposed at a glance. The actual proposed changes are attached in a separate document.

Disclaimer: It should be noted that some of these changes are required by the Federal Government and the State. Some of these are counter to Millersburg's traditional values and priorities, as expressed by our residents and Council over many years. We continually communicate to the State that we are making these changes under protest (see findings section). City Staff have attended multiple public meetings and open houses where residents of Millersburg have expressed what they want and don't want to see in the City. Staff have continually heard that increasing density in existing neighborhoods, and in our current residentially zoned areas, should be avoided. We understand that our residents rely on vehicles for transportation and that having places to park cars (and RV's) is important to our residents. In order to reach its housing and climate goals and address what the State is calling a housing crisis, the State would prefer to see high density in all neighborhoods and as little vehicle use as possible.

Unfortunately, many State proposals to address homelessness, climate change, and housing are made at the expense of home rule, and the costs are borne by Oregon cities. The State needs to recognize that while these changes may be a good fit for communities like Portland or Eugene, they are not in keeping with the goals and character of a community like Millersburg. As long as the people of Oregon continue to elect those who do not value home rule, then the rights of the people to govern themselves will continue to erode.

DC 25-01 CODE UPDATE PROPOSED CHANGES
(as of June 4, 2025)

Code Update Summary Table			
	Section	Topic	Proposed Update
PICM Dev Code Updates			
1	2.12	PICM Floodplain Overlay updates	FEMA mandates changes
Development Code Changes			
2	3.15	RV cover walls	Continued from previous update. Propose no more than 3 walls permitted, and none closer than 4 feet from the ground.
3	2.06-2.11 & 3.30	Ground mounted solar updates	Revised so solar systems could be used over parking areas in non-residential areas but only in an ancillary capacity to a primary use.
5	4.01-4.05	Partition standards	Revise code to no longer require partitions with further-dividable parcels to follow Subdivision criterion. Additional changes made to make clear and objective.
6	3.21.100	Changes to legal non-conforming standards	Added the ability to reconstruct a damaged structure that had a nonconforming standard, with the nonconformity intact.
7	3.07.080	Signs on chain link	Deleted old ban on all signs mounted on chain link.
8	3.21.040(3)	Fowl and rabbit standards	Clarified that no permit is needed for Fowl and rabbits
9	Ch 4.1 and 4.2	Middle housing land divisions	Adding some text directing the reader to State requirements
10	4.2.030	Lot to width ratio clarification	Clarified text to match image

II. CRITERION

CITY OF MILLERSBURG DEVELOPMENT CODE

5.11.030 Decision Criteria. Amendments to the Comprehensive Plan or Development Code text shall be approved if the evidence can substantiate the following:

- (1) There are no negative impacts of the proposed amendment on land use and development patterns within the city, as measured by:**
- a. Traffic generation and circulation patterns;**
 - b. Demand for public facilities and services;**
 - c. Level of park and recreation facilities;**
 - d. Economic activities;**
 - e. Protection and use of natural resources; and**
 - f. Compliance of the proposal with existing adopted special purpose plans or programs.**

ANALYSIS: Table 2 below contains an analysis for each of the text amendments proposed.

Table 2 Criteria 1 Analysis		
	Topic	Analysis
1	PICM	<p>This Federally mandated change will require that most changes to the FEMA floodplain assure there will be no net loss to fish habitat in the floodplain. A model code from FEMA has been incorporated into the existing Millersburg Floodplain Overlay (which was also a model code from FEMA). These changes may negatively impact the ability for a property owner to develop within a FEMA floodplain if impacts to fish habitat cannot be mitigated. However, the new text does include pathways to mitigate impacts; the amendment does not preclude all new development in a FEMA floodplain.</p> <p>The new text will not allow more development or more intense development than is permitted by the Code today. Less development may result, but not more development. Therefore, there should be no increase to traffic, public services, or park use.</p>

		<p>In most cases, mitigation costs money. In some cases the only mitigation may be to avoid impacts altogether by not developing property. For this reason there may be negative economic images to property owners based on these changes. While this means the criteria is not fully satisfied, and this could be used as a reason to deny the project, it should be noted that this change is required by the Federal and State government. If the City were to deny the amendments then FEMA would likely remove the City as a participating agency. By extension, the citizens of Millersburg would no longer be permitted to participate in federally-backed flood insurance, nor would the City be allowed to use FEMA services in the event of flooding. The City is allowed to approve a Code text amendment even if it is not consistent with the criteria as long as that is made clear in the record. This staff report satisfies this requirement.</p> <p>Regarding any possible impacts to natural resources, the proposed text amendments will further protect natural resources by assuring further protection of possible fish habitat within the floodplain.</p> <p>There should be no impacts to any special studies such as the Transportation System Plan or any other specific City-wide studies.</p>
2	RV cover walls	<p>This proposed amendment adds new standards for adding walls to RV covers. This is intended to prevent someone from adding full walls to create a metal-sided shop, garage, or storage area that would not otherwise have been permitted. The proposed regulations will not result in any additional development because the changes do not make it easier or harder to build an RV cover. As such, there will be no negative impacts to the categories listed in this criteria.</p>
3	Ground Mounted Solar updates	<p>In the last Code update, in January of 2025, the City added regulations for ground mounted solar. Based on some public input, the City Council asked that we make some revisions in the next Code update, which is why this is back. The last update allowed ground mounted solar systems only in residential zones. This update adds them as a permitted use in other zones, but only when ancillary to the primary use. Allowing them in parking areas and over basins in non-residential zones will not result in the</p>

		<p>construction of systems where there would not already be other impacts. Additionally, these will not be habitable, or require any utilities except electricity. They will not generate any traffic or later demand for park space. They may create more economic opportunities, but should not have any negative effects on the economy. These would only be permitted in areas that are already planned for a development disturbance; as such, they should not impact any natural resources or impact any special studies or master plans that the City has created. The changes to the ground mounted solar sections should not have any negative impacts to the categories listed in the criteria.</p>
4	Partition Standards	<p>To curtail serial partitions the City added several standards, one of which required any partition with a proposed parcel that could be divided again to be processed as a subdivision. Specifically, this required the partition to use the subdivision criteria and standards. Though well intended, this requirement has been problematic to implement. First, the criteria for partitions and subdivisions are almost identical. Second, most of the subdivision standards simply do not apply to partitions. Third, there was some concern about this possibly changing the definitions of the two divisions, which is actually defined in State law. As such, staff is proposing to remove the standard that requires a partition with larger parcels to be processed as a subdivision. There are other Millersburg Development Code standards that will still curtail serial subdivisions, most specifically the limitation of no more than 3 homes on a shared driveway.</p> <p>Because other standards will serve the function of limiting serial partitions, the proposed change will not have any negative impacts to the categories listed. In other words, the change is not anticipated to result in more or fewer partition applications, or change in the number of parcels proposed in a partition. For this reason, we do not anticipate any negative impacts.</p>
5	Legal Nonconforming Standards	<p>The Code addresses rebuilding a destroyed structure if it is a legal but non-conforming <u>use</u>. It is silent on structures that are legal but have non-conformity with development or zoning standards. This text amendment proposes to allow any legally built structure, built after the</p>

		<p>City incorporated, to re-build in the event it is destroyed. There is no percentage limit like there is with use cases, because an illegal use is in the wrong place, a standards violation is not. The year limitation of 1974, the year the City incorporated, is used because the Code changed at that point and because any structure that is over 50 years should comply with current code standards.</p> <p>This is important when viewed in the right context. A City has the right to change. Change is sometimes hard. When a Code requirement changes, the idea is that all new development will conform, and all older, non-conforming development will catch up whenever there is an opportunity to have them do so. As the City has changed over the 50 City history, the people of the City have elected representatives to have them create the community they want to live in. This is done by implementing regulations to craft and mold the City. Any structure built after the City formed has been made with City regulations. Homes built before the City formed did not. It should also be noted that there are not many homes, older than 50 years, that are violating any standards, except perhaps the Chapter 3.12- Design Standard's for Homes on Individual Lots. Conformity with this section would not be challenging, even if an owner wanted to rebuild a pre-City home in the same style as the original.</p> <p>Regarding this criteria, impacts are caused by the home, and those that live within a home. This change addresses rebuilding a home. Any new home on the site would replace the home that was damaged. No new impacts would result. Any structure that was larger or would have more units would have to build according to the new standards.</p>
6	Signs on chain-link fences	<p>The current code does not allow signs on fences at all. The change proposes to remove that limitation. Temporary signs on fences would still be regulated through the temporary sign code (Municipal Code), and permanent signs of fences would still be regulated through the Development Code. Any permanent signs would be required to comply with all the other existing rules for signs in general. The change would now allow temporary and permanent signs on fences.</p>

		Signs on fences do not create traffic impacts. Should they impact visibility, the Code already has regulations to address corner sight-clearance. Facilities, park activity, natural resources, or compliance with City special studies are not affected by signs on fences. Signs may play a role in economic activities, but this actually allows more flexibility in sign placement, not less. This change will not trigger any negative impacts listed in the criteria.
7	Fowl and rabbit clarification	This proposed amendment is intended to address a small, potentially misleading, section. Permits are not required to keep fowl or rabbits, but there are standards. The Code text implied that a permit was required, it has been changed to clarify that animal keeping is by rite. This change is essentially a scrivener's error and will not have any possible negative impacts on the categories listed in the criteria because it will not allow more or less animal keeping. Because there is no change in the intensity, there would be no change to the impacts.
8	Middle Housing Subdivisions	The State has permitted any property to divide the property containing any "middle housing unit." Even if there were no changes to the City Code, the City is required to comply with this because it is State law. Staff proposes to add some text to the Code to explain that these are indeed permitted (pursuant to State law) and that the reader should look to the State Code for the requirements of such a land division. A middle housing unit in Millersburg is a duplex. The State required the City to allow duplexes on any residential lot last year. The impacts of a duplex is not at issue here, this change only addresses the division of the land. A middle housing land division is not permitted unless the duplex has already been built (or the building permits for a duplex have been issued). Therefore, the impacts are driven by the duplex, not the land division. As such, there would be no impacts created by the land division.
9	Lot to width ratios	This proposed amendment is intended to address a typo to clarify that standards for the Commercial Office Zone are in the CO Zone, not the GC or LI. Staff has always applied the CO standards to the CO Zone. Therefore, there would be no negative impacts because the standards already exist

FINDING: Based on the analysis above, the project meets the required criteria.

(2) A demonstrated need exists for the proposed amendment.

ANALYSIS: The PICM amendments are required by the Federal and State Governments. Regarding the other changes, Staff has been tracking many small revisions needed where 1) the Code did not fully address the City's needs, 2) something was inadvertently left out, 3) the State has mandated changes, or 4) something was not as clear as it should have been. The need for the change is clear. These were all places where the Code was underperforming in some way and needed to be fixed. Staff decided to bring this Code update forward now for several reasons. Some of these changes are needed sooner than others. In general though, the change is proposed now because staff had amassed a large enough number of changes to justify the time and expense needed to change the Code.

FINDING: Based on the analysis above, the project meets the required criteria.

(3) The proposed amendment complies with all applicable Statewide Planning Goals and Administrative Rule requirements.

ANALYSIS: The State Planning Goals act as the foundation for Land Use planning in the State of Oregon. The Oregon Administrative Rules (OAR) and Oregon Revised Statutes (ORS) help implement those Goals. On a local level the State Goals are implemented by City Comprehensive Plans, and Comprehensive Plans are implemented by Zoning Codes. When the current Development Code was adopted in 2020, it was found to be fully consistent with the State Goals and OARs and ORSs as well as the City's Comprehensive Plan.

The State has 19 Planning Goals. Some do not apply to the City of Millersburg, these include Goal 4, Forest Land, Goal 17 Coastal Shorelands, Goal 18 Beaches and Dunes, and Goal 19 Ocean Resources. Goals applicable to Millersburg include:

- | | |
|--|--|
| Goal 1 Citizen Involvement | Goal 10 Housing |
| Goal 2 Land Use Planning | Goal 11 Public Facilities and Services |
| Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces | Goal 12 Transportation |
| Goal 6 Air, Water and Land Resources Quality | Goal 13 Energy Conservation |

Goal 7 Areas Subject to Natural Hazards

Goal 14 Urbanization

Goal 8 Recreational Needs

Goal 16 Estuarine Resources

Goal 9 Economic Development

Goal 1 is the Citizen Involvement Goal. The proposed Code update featured two workshops, both of which were open to the public and two planned public hearings where public testimony is permitted. The Comprehensive Plan explains that Goal 1 is met using the public hearing process. As such, all of the proposed Code revisions meet the requirements of Goal 1.

Similarly, each of these proposed changes further implements Goal 2. Goal 2 requires that cities have a process for Land Use actions, zoning, and that the City regularly re-review the processes to tweak and make revisions that better serve the community. This change implements the re-evaluation called for in Goal 2. Each of the changes, then, implements Goal 2. Additional analysis is also included in the table where appropriate.

Goal 12 is the Transportation Goal. Goal 12 is also often referred to as the Transportation Planning Rule (TPR). All Code amendments must demonstrate consistency with the TPR, as such a separate section of this staff report is dedicated to showing consistency with the TPR, see Section III.

Table 3 below contains an analysis for each of the changes proposed as they relate to the remaining applicable State Planning Goals.

Table 3 State Planning Goal Analysis		
	Topic	Analysis
1	PICM Floodplain Overlay updates	<p>The City is obligated to adopt these changes despite any consistency concerns. The following analysis is provided for reference.</p> <p>The State would argue that this change implements Goal 5, Natural Resources because it helps preserve habitat areas for fish. Goal 7 is the Natural Hazard Goal, however, this change does not actually address increased functionality of the flood plain. The changes actually just address habitat preservation, so Goal 7 would not really apply.</p> <p>It can certainly be said that this hurts the intent of Goal 9, the Economy of the State, because it further limits</p>

		<p>development possibilities within industrial flood plain areas of Millersburg, without mitigation. However, mitigation is a possibility, and the areas that feature flood plains near ATI are primarily built out.</p> <p>It also does not help implement Goal 8, Recreation, Goal 10, Housing, and Goal 14, Urbanization because it prioritizes habitat preservation over any other activity, including recreation and housing. Trails are planned through flood plain areas in Millersburg. Additional mitigation will likely be required now if and when those trails are developed. Though, because mitigation is possible, it could be argued that this amendment is still consistent with Goal 8.</p> <p>This amendment has no relationship with the remaining Goals.</p> <p>This proposed revision is not consistent with the State Goals listed above; however, the adoption is mandatory despite consistency.</p>
2	RV cover walls	<p>The State Goals do not directly apply to this change (except Goals 1 and 2 as mentioned previously for all revisions). This would clarify the Code text by explaining how walls could be added to RV covers. This has no relationship with any of the State Goals. The proposed revisions are, therefore, not inconsistent with the Goals.</p>
3	Ground Mounted solar updates	<p>The proposed regulations regarding ground mounted solar implements Goal 9, Economic Development. These new rules allow solar on non-residential sites as long as they are ancillary to the primary use. At its core, Goal 9 requires cities to have available land for new business. By not allowing ground mounted solar systems in non-residential areas as a primary use, this will allow vacant land to be held for business that would provide jobs or services to the public; in other words, the rules save areas for the highest and best use.</p>
4	Partition standards	<p>The proposed amendment would change the criteria and standards that would be used to process partitions. The change will not have a significant difference in how partitions are processed. The change may make it easier to process partitions, however, this was not seen as a barrier to applications being submitted. It is not anticipated that amendment will have any effect on the</p>

		<p>volume of applications.</p> <p>Besides implementing Goal 2, which is discussed above, the change does implement Goal 10, Housing by making the process a little more simplified, and thus implements Goal 11, Public Facilities and ultimately, Goal 14, Urbanization and Goal 9 Economy of the State because it will potentially lead to more parcels which usually means more development.</p> <p>The proposed revisions are consistent with the Goals.</p>
5	Changes to legal non-conforming standards	<p>This change would permit a structure to be rebuilt after it is damaged, even if the structure does not conform to any development or zoning standard. The structure could be rebuilt as it was despite the nonconformity. This change has no relationship with any Planning Goal except Goal 2, which is discussed above. The proposed revisions are, therefore, not inconsistent with the Goals.</p>
6	Signs on fences	<p>Signs are currently not permitted on fences; this change would allow them to be legally placed on fences. Other sign regulations would still apply to any sign placed on a fence. This kind of amendment has no relationship with any State Planning Goals. The proposed revisions are, therefore, not inconsistent with the Goals.</p>
7	Fowl and rabbit standards	<p>The State Goals do not directly apply to this change (except Goals 1 and 2 as mentioned previously for all revisions). This would clarify the Code text, which is not directly addressed in any of the State Goals. The proposed revisions are, therefore, not inconsistent with the Goals.</p>
8	Middle Housing land divisions	<p>In 2019 the State passed HB2001 which required cities to allow more than one dwelling unit within a single-family home, this is generally called middle housing. The requirements for cities are scaled depending on the population, for Millersburg we are only required to permit duplexes. In 2021 the State further reduced all city's rights to govern themselves by passing SB459 which mandated that cities must allow a duplex lot/parcel to be divided in half so that the structure <i>and the ground its on</i> could be owned by two different owners. This forced Millersburg to allow 5,000-square-foot lots even if the minimum lot size is 10,000 square feet. The State's significant overreach subverts the City's minimum lot size, despite policies built into the Comprehensive Plan that specifically preserve</p>

		<p>most of the residential area in Millersburg as 10,000-square-foot lots. The law also prohibits any HOA restrictions from applying that would prevent middle housing or middle housing land divisions.</p> <p>The amendment proposed here simply points the reader to the State requirements for a middle housing subdivision.</p> <p>Because this is mandated by State law, and is in effect on the City whether we change the Millersburg Code or not, the consistency with State Planning Goals is irrelevant and does not apply.</p>
9	Lot to width ratio clarification	<p>The State Goals do not directly apply to this change (except Goals 1 and 2 as mentioned previously for all revisions). This would clarify the Code text by adding in text form information that is already contained on a graphic in the Code. Such a change has no relationship with any State Goals except Goals 1 and 2 and mentioned previously. The proposed revisions are consistent with the Goals.</p>

FINDING: Based on the analysis above, some of the proposed changes do not meet the criteria because they are not consistent with State Goals, however, these inconsistencies must be adopted pursuant to State law.

(4) The amendment is appropriate as measured by at least one of the following criteria:

- a. It corrects identified error(s) in the provisions of the Plan.
- b. It represents a logical implementation of the Plan.
- c. It is mandated by changes in Federal, State, or local law.
- d. It is otherwise deemed by the City Council to be desirable, appropriate, and proper.

ANALYSIS: There are 9 revisions proposed. The table below shows details explaining which changes relate to the specific criteria listed above.

Table 4- Criteria 4 Analysis		
	Topic	Analysis
A	7, 9	These revisions correct some kind of error identified in the Code.
B	4, 8	These changes are proposed to better implement the Code.

C	1	Revisions mandated by State law.
D	2, 3, 5, 6	These changes are intended to better implement the direction of the City Council.

FINDING: Based on the analysis above, the project meets the required criteria.

III. OAR 660-012 THE TRANSPORTATION PLANNING RULE

As the State set out to implement Goal 12, the Transportation Goal, they created a host of rules and legislation to support the Goal. Oregon Administrative Rule (OAR) 660-012 is where the bulk of the implementing requirements are located. This section of OARs is also known as the Transportation Planning Rule or TPR for short. This set of rules generally explains that when an amendment to the Development Code would 'significantly' affect an existing or planned transportation facility, the City must assure that the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the streets in the plan remain at acceptable levels. Modelling is typically used to show if the changes will continue to meet the acceptable levels. While cities define these levels, the OARs explains what constitutes a "significant affect." These are listed in OAR 660-012-0060.

The proposed amendment does not meet the requirements listed. None of the amendments are proposing to change a classification of an existing or planned transportation facility (read: street); no street standards are proposed to be changed; nor will the proposed amendments change the level of traffic such that street classifications would change.

The analysis reviewing the requirement to allow a duplex on every lot was done previously, when the State mandated those changes. The middle housing requirement, as discussed previously, will not actually result in an increase of traffic because the change only allows division of duplexes that already exist. It is true that this change could essentially double the density of new subdivisions if every home were built as a duplex. As such, it meets the threshold requirement listed above. However, these impacts would be reviewed at the time they were proposed, with the subdivision.

Further, ORS 197A.420(7) (formerly 197.758) explains that "a local government that amends its comprehensive plan or land use regulations relating to allowing additional middle housing is not required to consider whether the amendments significantly affect an existing or planned transportation facility." So, while the effects of the duplex amendment on Millersburg's transportation system cannot be known until it is evoked, the State has exempted the requirement to study the impact when the regulation is changed. In other words, the only one of the 27 Code amendment changes that could have potentially triggered a TPR review is, indeed, exempt from a TPR review.

No other proposed change has any direct relationship with increasing or decreasing traffic. The PICM changes only stand to decrease traffic because it may be more difficult to develop in flood plain areas.

In summary, the proposed Code update is fully consistent with all State, regional, and local transportation plans.

IV. ADDITIONAL FINDINGS

The following additional findings are included for the record.

- The City's Housing Needs Analysis (HNA) was completed in January of 2022. It was acknowledged in a Comprehensive Plan Amendment in 2022. Changes that may impact housing are addressed above in the analysis for criteria 3, mostly because any housing impacts also implement Goal 10, Housing. The HNA reflected many of the same concepts as Goal 10. The HNA concepts were refined into policies for the Comprehensive Plan's new Housing Chapter. These Code amendments are fully consistent with the HNA and the Comprehensive Plan Policies. These include, but are not limited to, Policy 2 which requires different types of housing (duplex changes), Policy 3 that requires design compatible with the neighborhood (RV walls and lot to width clarification), Policy 6 and 22 that require streamlined processing (all changes that address how the Code functions), Policy 10 that requires preservation of the neighborhood quality (again, RV walls), Policy 14 that requires housing at different price points (duplexes), and Policy 17 which address the need for aging in place through more affordable units (duplexes).
- Based on staff's analysis, all proposed amendments are fully consistent with the City's Comprehensive Plan and serve to better implement the policies of the Plan because they add additional clarity, address errors, and employ standards that support policies in the Plan.
- Staff would like to add that most of the State mandated amendments are being made under protest. The City does not subscribe to any further encroachment on Home Rule. Specifically, we do not think the State should have the right to require changes that may alter the character of the community. City constituents elect City Council members, who in turn carefully craft Development Code requirements that sculpt the kind of community the people want to live in. Local representation can be responsive to what constituents want to see in their communities. State representation is too far removed to effectively listen and respond to city constituents in regard to Land Use policy and regulations. This is why Land Use is better left to the local governments to implement. The State's continual erosion of Home Rule with regulations that directly affect the character of communities, against their wishes, is counter to the intent of our State's constitution. The middle housing requirements in this Code update are particularly egregious in eroding this. The City ardently tries to preserve

its 10,000 square foot minimum lot area in the RL zone, but this change will permit 5,000 square foot lots, forcing development at half the size that the community desires. None of our studies, like the transportation plan, the master water plan or the master sewer plan took that kind of density into account. Allowing an older, established home to become a duplex is one thing, but this legislation opens the door for large subdivisions of nothing but duplexes which is wildly inconsistent with the vision of the community and the City's Comprehensive Plan policies.

V. STAFF RECOMMENDATION TO THE PLANNING COMMISSION

Based on the above findings of fact, the proposed text Code amendment satisfies the applicable criteria. Staff recommends that the Planning Commission recommend approval of Application No. DC 25-01 to the City Council.

VI. SUGGESTED MOTION FOR PLANNING COMMISSION

I motion that the Planning Commission recommend approval of DC 25-01 to the City Council because all applicable criteria are met and all findings of fact are included in the staff report.

VII. STAFF RECOMMENDATION TO THE CITY COUNCIL *(assuming the Planning Commission recommends approval)*

Based on the above findings of fact the proposed amendment satisfies the applicable criteria. The Planning Commission and staff recommend that the City Council approve Application No. DC 25-01 and adopt Ordinance No. 216-25.

VIII. EXHIBITS

- A. Proposed text changes
- B. Public Hearing Notice

CHAPTER 2.12. FLOODPLAIN OVERLAY ZONE (FPO)

2.12.010 Purpose.

The purpose of the Floodplain Overlay Zone is to promote public health, safety, and general welfare, and to minimize public and private losses due to flooding in flood hazard areas by provisions designed to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in special flood hazard areas;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas so as to minimize blight areas caused by flooding;
- (7) Notify potential buyers that the property is in a special flood hazard area;
- (8) Notify those who occupy special flood hazard areas that they assume responsibility for their actions;
- (9) Participate in and maintain eligibility for flood insurance and disaster relief;
- (10) Implement the floodplain policies in the City of Millersburg Comprehensive Plan~~;~~;
- (11) Preserve natural and beneficial floodplain functions.

2.12.020 Methods of Reducing Flood Losses.

In order to accomplish its purposes, this Chapter includes methods and provisions for:

- (1) Restricting or prohibiting development which is dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- (2) Requiring that development vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- (4) Controlling filling, grading, dredging, and other development which may increase flood damage;
- (5) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas.
- (6) Employing a standard of “no net loss” of natural floodplain functions.

2.12.030 Definitions.

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage.

Area of shallow flooding (Flood). A designated Zone AO, AH, AR/AO or AR/AH on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard (Flood). The land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. It is shown on the Flood Insurance Rate Map (FIRM) as Zone A, AO, AH, A1-30, AE, A99, AR. "Special flood hazard area" is synonymous in meaning and definition with the phrase "area of special flood hazard".

Base flood (Flood). The flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) (Flood). The elevation to which floodwater is anticipated to rise during the base flood.

Development (Flood). Any human-made change to improved or unimproved real estate, including, but not limited to, buildings or structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Fill (Flood). The placement of any material on the land for the purposes of increasing its elevation in relation to that which exists. Fill material includes, but is not limited to, the following: soil, rock, concrete, bricks, wood stumps, wood, glass, garbage, plastics, metal, etcetera. **For purposes of Section 2.12, the placement of fill is considered "development."**

Fish Accessible Space (Flood). The volumetric space available to fish to access.

Fish Egress-able Space (Flood). The volumetric space available to fish to exit or leave from.

Flood or Flooding (Flood). A general and temporary condition of partial or complete inundation of normally dry land areas from:

The overflow of inland or tidal waters.

The unusual and rapid accumulation or runoff of surface waters from any source.

Mudslides (i.e., mudflows) which are proximately caused by flooding as defined above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined above.

Flood elevation study (Flood). An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

Flood Insurance Rate Map (FIRM) (Flood). The official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood Insurance Study (FIS) (Flood). See "Flood elevation study".

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

Floodway(Flood). 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 a designated height. Also referred to as "Regulatory Floodway."

Functionally dependent use (Flood). A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long term storage or related manufacturing facilities.

Green Infrastructure (Flood). Use of natural or human-made hydrologic features to manage water and provide environmental and community benefits. Green infrastructure uses management approaches and technologies that use, enhance, and/or mimic the natural hydrologic cycle processes of infiltration, evapotranspiration, and reuse. At a large scale, it is an interconnected network of green space that conserves natural systems and provides assorted benefits to human populations. At a local scale, it includes a range of measures that use plant or soil systems, permeable pavement, or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate or evapotranspire stormwater and reduce flows to sewer systems or surface waters. Green infrastructure practices can be used to achieve no net loss of pervious surface function by creating infiltration of stormwater in an amount equal to or greater than the infiltration lost by the placement of new impervious surface.

Habitat Restoration Activities (Flood). Activities with the sole purpose of restoring habitats that have temporary impacts and long-term benefits to habitat. Such projects cannot include ancillary structures such as a storage shed for maintenance equipment, must demonstrate that no rise in the BFE would occur as a result of the project.

Highest adjacent grade (Flood). The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure (Flood). Any structure that is:

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;

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;

Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

By an approved state program as determined by the Secretary of the Interior or

Directly by the Secretary of the Interior in states without approved programs.

Hydraulically Equivalent Elevation (Flood). A location (e.g., a site where no net loss standards are implemented) that is approximately equivalent to another (e.g., the impacted site) relative to the same 100-year water surface elevation contour or base flood elevation. This may be estimated based on a point that is along the same approximate line perpendicular to the direction of flow.

Hydrologically Connected (Flood). The interconnection of groundwater and/or surface water such that they constitute one water supply and use of either results in an impact to both.

Impervious Surface (Flood). A surface that is resistant to infiltration by water and thereby increases the amount and rate of surface water runoff.

Low Impact Development (LID) (Flood). An approach to land development (or redevelopment) that works to manage stormwater as close to its source as possible. It employs principles such as preserving and recreating natural landscape features and minimizing effective imperviousness to create functional and appealing site drainage. Low Impact Development refers to designing and implementing practices that can be employed at the site level to control stormwater and help replicate the predevelopment hydrology of the site. Low impact development helps achieve no net loss of pervious surface by infiltrating stormwater in an amount equal to or greater than the infiltration lost by the placement of new impervious surface. LID is a subset of green infrastructure.

Lowest floor (Flood). 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 is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

Manufactured dwelling (Flood). 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 attached to the required utilities. The term "manufactured dwelling" does not include a "recreational vehicle" and is synonymous with "manufactured home".

Manufactured dwelling park or subdivision (Flood). A parcel (or contiguous parcels) of land divided into two or more manufactured dwelling lots for rent or sale.

Mean Higher-High Water (Flood). The average of the higher-high water height of each tidal day observed over the National Tidal Epoch.

Mean sea level (Flood). 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.

New construction (Flood). For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by the City of Millersburg and includes any subsequent improvements to such structures.

No Net Loss (Flood). A standard where adverse impacts must be avoided or offset through adherence to certain requirements so that there is no net change in the function from the existing condition when a development application is submitted to the State, Tribal, or local jurisdiction. The floodplain functions of floodplain storage, water quality, and vegetation must be maintained.

Offsite (Flood). Mitigation occurring outside of the project area.

Onsite (Flood). Mitigation occurring within the project area.

Ordinary High Water Mark (Flood). The line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

Pervious Surface (Flood). A surface that readily allows water to infiltrate or percolate into the ground.

Qualified Professional (Flood). Appropriate subject matter expert that is defined by the community.

Reach (Flood). A section of a stream or river along which similar hydrologic conditions exist, such as discharge, depth, area, and slope. It can also be the length of a stream or river (with varying conditions) between

major tributaries or two stream gages, or a length of river for which the characteristics are well described by readings at a single stream gage.

Recreational Vehicle (Flood). A vacation trailer, vehicle, or portable unit, as defined in ORS 801.180, 801.350, and 801.565, which is either self-propelled, towed, or carried by a motor vehicle, which is:

Built on a single chassis;

400 square feet or less when measured at the largest horizontal projection;

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

For the purpose of this definition, a recreational vehicle also includes a street legal trailer used for transporting motorized or non-motorized recreational vehicles including, but not limited to, boats, snowmobiles, ATV's, and motorcycles.

A recreational vehicle does not meet the definition for a manufactured home or mobile home.

Riparian (Flood): Of, adjacent to, or living on, the bank of a river, lake, pond, or other water body.

Riparian Buffer Zone (RBZ) (Flood): The outer boundary of the riparian buffer zone is measured from the ordinary high water line of a fresh waterbody (lake; pond; ephemeral, intermittent, or perennial stream) reach to 170 feet horizontally on each side of the stream or 170 feet inland from the MHHW. The riparian buffer zone includes the area between these outer boundaries on each side of the stream, including the stream channel. Where the RBZ is larger than the special flood hazard area, the no net loss standards shall only apply to the area within the special flood hazard area. Where the waterbody is not located within a SFHA, the RBZ does not apply.

Riparian Buffer Zone Fringe (Flood): The area outside of the RBZ and floodway but still within the SFHA.

Silviculture (Flood): The art and science of controlling the establishment, growth, composition, health, and quality of forests and woodlands.

Special flood hazard area (SFHA) (Flood). See "Area of special flood hazard" for this definition.

Start of construction (Flood). 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 180 days from the date of the permit. 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 dwelling on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure (Flood). For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured dwelling.

Substantial damage (Flood). Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement (Flood). Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of

construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

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

Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Undeveloped Space (Flood). The volume of flood capacity and fish-accessible/egress-able space from the existing ground to the BFE that is undeveloped. Any form of development including, but not limited to, the addition of fill, structures, concrete structures (vaults or tanks, pilings, levees and dikes, or any other development that reduces food storage volume and fish accessible/egress-able space must achieve no net loss.

Variance (Flood). A grant of relief by the City of Millersburg from the terms of a flood plain management regulation.

Violation (Flood). The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

2.12.040 Application of Special Flood Hazard Areas.

This code shall apply to all special flood hazard areas within the jurisdiction of the City of Millersburg and does not apply elsewhere. The degree of flood protection required by this Code 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 Code 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 Code shall not create liability on the part of the City of Millersburg, any officer or employee thereof, or the Federal Insurance Administration for any flood damages that result from reliance on this Code or any administrative decision lawfully made thereunder.

2.12.050 Basis for Establishing the Special Flood Hazard Areas.

The special flood hazard areas identified by the Federal Insurance Administration in a scientific and engineering report entitled the "The Flood Insurance Study for the City of Millersburg, Oregon," dated June 15, 1982, including any amendments or revisions, with accompanying Flood Insurance Rate Maps. The Flood Insurance Study and FIRM panels are on file at the Millersburg City Hall, 4222 NE Old Salem Road, ~~Albany~~ Millersburg OR 97321.

2.12.060 Coordination with State of Oregon Specialty Codes.

Pursuant to the requirement established in ORS Chapter 455 that the City of Millersburg administers and enforces the State of Oregon Specialty Codes, the City of Millersburg does hereby acknowledge that the Oregon Specialty Codes contain certain provisions that apply to the design and construction of buildings and structures located in areas of special flood hazard. Therefore, this code is intended to be administered and enforced in conjunction with the Oregon Specialty Codes.

2.12.070 Compliance and Penalties.

All development within special flood hazard areas is subject to the terms of this ordinance and required to comply with its provisions and all other applicable regulations.

2.12.080 Abrogation and Severability.

- (1) This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions **granted to the City of Millersburg or which the City of Millersburg is a party**. However, where this ordinance and another ordinance **or such**, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.
- (2) This ordinance and the various parts thereof are hereby declared to be severable. If any section clause, sentence, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Ordinance.

2.12.090 Interpretation.

In the interpretation and application of this ordinance, 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.

2.12.100 Warning and Disclaimer of Liability.

- (1) The degree of flood protection required by this ordinance 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 man-made or natural causes. This ordinance 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.
- (2) This ordinance shall not create liability on the part of the City of Millersburg, any officer or employee thereof, or the Federal Insurance Administrator for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

2.12.110 Administration.

- (1) The City Manager is hereby appointed to be the Floodplain Administration to administer, implement, and enforce this ordinance by granting or denying development permits in accordance with its provisions. The Floodplain Administrator may delegate authority to implement these provisions.
- (2) Duties of the floodplain administrator, or their designee, shall include, but not be limited to:
 - a. Review all development permits to determine that:
 - i. The permit requirements of this ordinance have been satisfied;
 - ii. All other required local, state, and federal permits have been obtained and approved.
 - iii. Review all development permits to determine if the proposed development is located in a floodway. If located in the floodway assure that the floodway provisions of this ordinance in Section 2.12.~~2302~~**40** are met; and

- iv. Review all development permits to determine if the proposed development is located in an area where Base Flood Elevation (BFE) data are available either through the Flood Insurance Study (FIS) or from another authoritative source. If BFE data are not available, then ensure compliance with the provisions of Section 2.12.~~150~~160; and
 - v. Provide to building officials the Base Flood Elevation (BFE) applicable to any building requiring a development permit.
 - vi. Review all development permit applications to determine if the proposed development qualifies as a substantial improvement as defined in Section 2.12.030.
 - vii. Review all development permits to determine if the proposed development activity is a watercourse alteration. If a watercourse alteration is proposed, ensure compliance with the provisions in Section 2.12.~~130(A)-~~140(1).
 - viii. Review all development permits to determine if the proposed development activity includes the placement of fill or excavation.
 - ix. Determine whether the proposed development activity complies with the no net loss standards in Section 2.12.290.
- b. Information Maintenance. The following information shall be obtained and maintained and shall be made available for public inspection as needed:
- i. Obtain, record, and maintain the actual elevation (in relation to mean sea level) of the lowest floor (including basements) and all attendant utilities of all new or substantially improved structures where Base Flood Elevation (BFE) data is provided through the Flood Insurance Study (FIS), Flood Insurance Rate Map (FIRM), or obtained in accordance with Section 2.12.~~150~~.
 - ii. Obtain and record the elevation (in relation to mean sea level) of the natural grade of the building site for a structure prior to the start of construction and the placement of any fill and ensure that the requirements of Section 2.12.~~230 and Section 2.12.100(B)1.b,~~ 110 are adhered to.
 - iii. Upon placement of the lowest floor of a structure (including basement) but prior to further vertical construction, obtain documentation, prepared and sealed by a professional licensed surveyor or engineer, certifying the elevation (in relation to mean sea level) of the lowest floor (including basement).
 - iv. Where base flood elevation data are utilized, obtain As-built certification of the elevation (in relation to mean sea level) of the lowest floor (including basement) prepared and sealed by a professional licensed surveyor or engineer, prior to the final inspection.
 - v. Maintain all Elevation Certificates (EC) submitted to City of Millersburg;
 - vi. Obtain, record, and maintain the elevation (in relation to mean sea level) to which the structure and all attendant utilities were floodproofed for all new or substantially improved floodproofed structures where allowed under this ordinance and where Base Flood Elevation (BFE) data is provided through the FIS, FIRM, or obtained in accordance with Section 2.12.~~150~~110.
 - vii. Maintain all floodproofing certificates required under this ordinance;
 - viii. Record and maintain all variance actions, including justification for their issuance;
 - ix. Obtain and maintain all hydrologic and hydraulic analyses performed as required under Section 2.12.~~230~~110.

- x. Record and maintain all Substantial Improvement and Substantial Damage calculations and determinations as required under Section 2.12.~~100(G)~~110.
 - xi. Maintain for public inspection all records pertaining to the provisions of this ordinance.
- (3) Community Boundary Alteration. The Floodplain Administrator shall notify the Federal Insurance Administrator in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed authority or no longer has authority to adopt and enforce floodplain management regulations for a particular area, to ensure that all Flood Hazard Boundary Maps (FHBMs) and Flood Insurance Rate Maps (FIRM) accurately represent the community's boundaries. Include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority.
- (4) Watercourse Alterations. Notify adjacent communities, the Department of Land Conservation and Development, and other appropriate state and federal agencies, prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration. This notification shall be provided by the applicant to the Federal Insurance Administration as a Letter of Map Revision (LOMR) along with either:
 - a. A proposed maintenance plan to assure the flood carrying capacity within the altered or relocated portion of the watercourse is maintained; or
 - b. Certification by a registered professional engineer that the project has been designed to retain its flood carrying capacity without periodic maintenance.

The applicant shall be required to submit a Conditional Letter of Map Revision (CLOMR) when required under Section 2.12.~~100(E)~~ 110(5). Ensure compliance with all applicable requirements in Section 2.12.~~100(E)~~ 110(5) and Section 2.12.~~130(A)~~.
- (5) Requirements to Submit New Technical Data. A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Section 44 of the Code of Federal Regulations (CFR), Sub-Section 65.3. The community may require the applicant to submit such data and review fees required for compliance with this section through the applicable FEMA Letter of Map Change (LOMC) process.
- (6) The Floodplain Administrator shall require a Conditional Letter of Map Revision prior to the issuance of a floodplain development permit for:
 - a. Proposed floodway encroachments that increase the base flood elevation; and
 - b. Proposed development which increases the base flood elevation by more than one foot in areas where FEMA has provided base flood elevations but no floodway.
- (7) An applicant shall notify FEMA within six months of project completion when an applicant has obtained a Conditional Letter of Map Revision (CLOMR) from FEMA. This notification to FEMA shall be provided as a Letter of Map Revision (LOMR).
- (8) Substantial Improvement and Substantial Damage Assessments and Determinations. Conduct Substantial Improvement (SI) (as defined in Section 2.0) reviews for all structural development proposal applications and maintain a record of SI calculations within permit files in accordance with Section 2.12.1010(~~82~~)2ii. Conduct Substantial Damage (SD) (as defined in Section 2.0) assessments when structures are damaged due to a natural hazard event or other causes. Make SD determinations whenever structures within the special flood hazard area, as established in Section 2.12.040, are damaged to the extent that the cost of restoring the

structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

2.12.120 Establishment of a Development Permit.

- (1) Floodplain Development Permit Required. A development permit shall be obtained before construction or development begins, more specifically before building permits are issued within any area horizontally within the special flood hazard area established in Section 2.12.040. The development permit shall be required for all structures, including manufactured dwellings, and for all other development, as defined in Section 2.12.030, including fill and other development activities.
- (2) Application for a Development Permit. Application for a development permit is a Type I process, made on forms furnished by the Floodplain Administrator 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. In riverine flood zones, the proposed elevation (in relation to mean sea level), of the lowest floor (including basement) and all attendant utilities of all new and substantially improved structures; in accordance with the requirements of Section ~~2.12.100(b)~~ 2.12.180.
 - b. Proposed elevation in relation to mean sea level to which any non-residential structure will be floodproofed.
 - c. Certification by a registered professional engineer or architect licensed in the State of Oregon that the floodproofing methods proposed for any non-residential structure meet the floodproofing criteria for non-residential structures in Section ~~2.12.100(b)~~ 2.12.140.
 - d. Description of the extent to which any watercourse will be altered or relocated.
 - e. Base Flood Elevation data for subdivision proposals or other development when required per Sections ~~2.12.100(B)1, and 2.12.140~~ 2.12.150.
 - f. Substantial improvement calculation for any improvement, addition, reconstruction, renovation, or rehabilitation of an existing structure.
 - g. The amount and location of any fill or excavation activities proposed.

2.12.125 Floodplain Development Permit Exemptions.

The following development activities are exempt for the requirement for a Floodplain Development Permit in any SFHA:

- (1) Grading, excavation, fill or paving less than 50 cubic yards (cumulative).
- (2) Open barbless wire, pipe, rail, chain link, or wood fences that meet the design guidelines in this Article.
- (3) Agricultural activities, not including structures.
- (4) Short-term storage of equipment or materials that in time of flooding could either be removed from the area, or would not cause harm to property, humans, animals or the environment by becoming buoyant or hazardous.
- (5) Signs, markers, aids, etc., placed by a public agency to serve the public.
- (6) Customary dredging to maintain existing channel capacity consistent with State or Federal laws

and permits.

- (7) Replacement of utility facilities that are necessary to serve established and permitted uses, and that are of equal or lesser size and impact.
- (8) Subsurface public utility projects that will not ultimately result in modification to existing topography.
- (9) Transportation facility rehabilitation and maintenance projects that will not result in modifications to existing topography.

2.12.130 Variance Procedure.

- (1) The issuance of a variance is for floodplain management purposes only. Flood insurance premium rates are determined by federal statute according to actuarial risk and will not be modified by the granting of a variance.
- (2) *Conditions for Variances.*
 - a. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the provisions of Section 2.12.120(B2)3c. and ~~5c.; and, Section 2.12.120(C).~~ As the lot size increases beyond one-half acre, the technical justification required for issuing a variance increases.
 - b. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - c. Variances shall not be issued within any floodway if any increase in flood levels during the base flood discharge would result.
 - d. Variances shall only be issued upon:
 - I. A showing of good and sufficient cause;
 - II. A determination that failure to grant the variance would result in exceptional hardship to the applicant;
 - III. 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 laws or ordinances.
 - IV. **Demonstration that the development will result in net loss of the following three proxies for floodplain functions in the SFHA: undeveloped space, pervious space, or trees 6 inches diameter at breast height (dbh) or greater (see Section 2.12.290 and associated options in Table 1).**
 - e. Variances may be issued ~~by a community~~ for new construction, ~~and~~ substantial improvements, and for other development necessary for the conduct of a functionally dependent use provided that the standards of Section 2.12.140 are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- (3) *Variance Notification.* Any applicant to whom a variance is granted shall be given written notice that the issuance of a variance to construct a structure below the Base Flood Elevation will result in increased premium rates for flood insurance and that such construction below the base flood elevation increases risks to life and property. Such notification and a record of all variance actions, including justification for their issuance shall be maintained in accordance with Section 2.12.1010(B2)2ii.

(Ord. No. 195-22, Exh. A, 7-12-2022)

2.12.140 General Standards.

In all special flood hazard areas, the following standards shall be adhered to:

- (1) **Alteration of Water Courses.** Require that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained. Require that maintenance is provided within the altered or relocated portion of said watercourse to ensure that the flood carrying capacity is not diminished. Require compliance with Sections 2.12.1010(D4) and (E5).
- (2) **Anchoring.**
 - a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
 - b. All manufactured dwellings shall be anchored per Section 2.12.2010.
- (3) **Construction Materials and Methods.**
 - a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
 - b. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (4) **Utilities and Equipment.**
 - a. **Water Supply, Sanitary Sewer, and On-site Waste Disposal Systems**
 - I. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
 - II. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
 - III. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding consistent with the Oregon Department of Environmental Quality.
 - b. **Electrical, Mechanical, Plumbing and Other Equipment.** Electrical, heating, ventilating, air-conditioning, plumbing, duct systems, and other equipment and service facilities shall be elevated at or above the base flood level or shall be designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during conditions of flooding. In addition, electrical, heating, ventilating, air-conditioning, plumbing, duct systems, and other equipment and service facilities, if replaced as part of a substantial improvement shall meet all the requirements of this section.
 - c. **Tanks**
 - I. Underground tanks shall be anchored to prevent flotation, collapse and lateral movement under conditions of the base flood.
 - II. Above-ground tanks shall be installed at or above the base flood level or shall be anchored to prevent flotation, collapse, and lateral movement under conditions of the base flood.
- (5) **No Net Loss.** All requirements of Section 2.12.290 are met.

2.12.150 Subdivision Proposals and Other Proposed Developments.

- (1) All new subdivision proposals and other proposed new developments (including proposals for manufactured dwelling parks and subdivisions) greater than 50 lots or five acres, whichever is the lesser, shall include within such proposals, Base Flood Elevation data.
- (2) All new subdivision proposals and other proposed new developments (including proposals for manufactured dwelling parks and subdivisions) shall:
 - a. Be consistent with the need to minimize flood damage.
 - b. Have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.
 - c. Have adequate drainage provided to reduce exposure to flood hazards.
 - d. **Comply with the no net loss standards in Section 2.12.290.**

2.12.160 Use of Other Base Flood Data.

- (1) When Base Flood Elevation data has not been provided in accordance with Section 2.12.040 the local floodplain administrator shall obtain, review, and reasonably utilize any Base Flood Elevation data available from a federal, state, or other source, in order to administer Sections 2.12.~~1310~~ to 2.12.~~160270~~. All new subdivision proposals and other proposed new developments (including proposals for manufactured dwelling parks and subdivisions) must meet the requirements of Section 2.12.~~1450~~.
- (2) Base Flood Elevations shall be determined for development proposals that are 5 acres or more in size or are 50 lots or more, whichever is lesser in any A zone that does not have an established base flood elevation. Development proposals located within a riverine unnumbered A Zone shall be reasonably safe from flooding; the test of reasonableness includes use of historical data, high water marks, FEMA provided Base Level Engineering data, and photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

2.12.170 Structures Located in Multiple or Partial Flood Zones.

In coordination with the State of Oregon Specialty Codes:

- (1) When a structure is located in multiple flood zones on the community's Flood Insurance Rate Maps (FIRM) the provisions for the more restrictive flood zone shall apply.
- (2) When a structure is partially located in a special flood hazard area, the entire structure shall meet the requirements for new construction and substantial improvements.

2.12.180 Specific Standards for Riverine (Including All Non-Coastal) Flood Zones.

These specific standards shall apply to all new construction and substantial improvements in addition to the General Standards contained in Section 2.12.~~1340~~ of this ordinance.

- (1) Flood Openings. All new construction and substantial improvements with fully enclosed areas below the lowest floor (excluding basements) are subject to the following requirements. Enclosed areas below the Base Flood Elevation, including crawl spaces shall:

- a. Be designed to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters;
 - b. Be used solely for parking, storage, or building access;
 - c. Be certified by a registered professional engineer or architect or meet or exceed all of the following minimum criteria:
 - I. A minimum of two openings,
 - II. The total net area of non-engineered openings shall be not less than one (1) square inch for each square foot of enclosed area, where the enclosed area is measured on the exterior of the enclosure walls,
 - III. The bottom of all openings shall be no higher than one foot above grade.
 - IV. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they shall allow the automatic flow of floodwater into and out of the enclosed areas and shall be accounted for in the determination of the net open area.
 - V. All additional higher standards for flood openings in the State of Oregon Residential Specialty Codes Section R322.2.2 shall be complied with when applicable.
- (2) Garages. Attached garages may be constructed with the garage floor slab below the Base Flood Elevation (BFE) in riverine flood zones, if the following requirements are met:
- a. If located within a floodway the proposed garage must comply with the requirements of Section 2.12.2340.
 - b. The floors are at or above grade on not less than one side;
 - c. The garage is used solely for parking, building access, and/or storage;
 - d. The garage is constructed with flood openings in compliance with Section 2.12.170(A) to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater.
 - e. The portions of the garage constructed below the BFE are constructed with materials resistant to flood damage;
 - f. The garage is constructed in compliance with the standards in Section 2.12.130230; and
 - g. The garage is constructed with electrical, and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the base flood.
- (3) Detached garages must be constructed in compliance with the standards for accessory structures in Section 2.12.2230 or non-residential structures in Section 2.12.180(C) depending on the square footage of the garage.
- (4) No Net Loss. All requirements of Section 2.12.290 are met.

2.12.190 For Riverine (Non-Coastal) Special Flood Hazard Areas with Base Flood Elevations.

In addition to the general standards listed in Section 2.12.1340 the following specific standards shall apply in Riverine (non-coastal) special flood hazard areas with Base Flood Elevations (BFE): Zones A1-A30, AH, and AE.

- (1) Before Regulatory Floodway. In areas where a regulatory floodway has not been designated, no new construction, substantial improvement, or other development (including fill) shall be permitted within Zones A1-30 and AE on the community's Flood Insurance Rate Map (FIRM), unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and

anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community. **When determined that structural elevation is not possible and where the placement of fill cannot meet the above standard, impacts to undeveloped space must adhere to the no net loss standards in Section 2.12.290.**

(2) Residential Construction

- a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to one (1) foot above the Base Flood Elevation (BFE).
- b. Enclosed areas below the lowest floor shall comply with the flood opening requirements in Section 2.12.~~170(A)~~ 200.

(3) Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall:

- a. Have the lowest floor, including basement elevated at or above the Base Flood Elevation (BFE) together with attendant utility and sanitary facilities,
- b. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
- c. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
- d. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this section based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the Floodplain Administrator as set forth Section 2.12.~~100(B)~~2110(2)b.

(4) Non-residential structures that are elevated, not floodproofed, shall comply with the standards for enclosed areas below the lowest floor in Section 2.12.~~170(B)~~200.

(5) Applicants floodproofing non-residential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building floodproofed to the base flood level will be rated as one foot below.

2.12.200 Below Grade Crawl Spaces.

Where a structure contains a below grade crawl space, the following shall apply:

- (1) The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required flood openings stated in Section 2.12.~~1780(A1)~~. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas.
- (2) The crawlspace is an enclosed area below the Base Flood Elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of floodwaters. The bottom of each flood vent opening can be no more than one foot above the lowest adjacent exterior grade.
- (3) Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any

joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.

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

2.12.210 Manufactured Dwellings.

- (1) New or substantially improved manufactured dwellings supported on solid foundation walls shall be constructed with flood openings that comply with Section 2.12.1780(B1);
- (2) The bottom of the longitudinal chassis frame beam shall be at or above Base Flood Elevation;
- (3) New or substantially improved manufactured dwellings shall be anchored to prevent flotation, collapse, and lateral movement during the base flood. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques), and;
- (4) Electrical crossover connections shall be a minimum of 12 inches above Base Flood Elevation (BFE).

2.12.220 Recreational Vehicles.

Recreational vehicles placed on sites are required to:

- (1) Be on the site for fewer than 180 consecutive days,
- (2) Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
- (3) Meet the requirements of Section 2.12.2010, including the anchoring and elevation requirements for manufactured dwellings.

2.12.230 Accessory Structures.

Relief from elevation or floodproofing requirements for residential and non-residential structures in Riverine (Non-Coastal) flood zones may be granted for accessory structures that meet the following requirements:

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- (1) Accessory structures located partially or entirely within the floodway must comply with requirements for development within a floodway found in Section 2.12.2340.
 - (2) Accessory structures must only be used for parking, access, and/or storage and shall not be used for human habitation;
 - (3) In compliance with State of Oregon Specialty Codes, accessory structures on properties that are zoned residential are limited to one-story structures less than 200 square feet, or 400 square feet if the property is greater than two acres in area and the proposed accessory structure will be located a minimum of 20 feet from all property lines. Accessory structures on properties that are zoned as non-residential are limited in size to 120 square feet.
 - (4) The portions of the accessory structure located below the Base Flood Elevation must be built using flood resistant materials;
 - (5) The accessory structure must be adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.
 - (6) The accessory structure must be designed and constructed to equalize hydrostatic flood forces on exterior walls and comply with the requirements for flood openings in Section 2.12.1780(B1);
 - (7) Accessory structures shall be located and constructed to have low damage potential;
 - (8) Accessory structures shall not be used to store toxic material, oil, or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality unless confined in a tank installed in compliance with Section 2.12.130(D)3140(4)c.
 - (9) Accessory structures shall be constructed with electrical, mechanical, and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the base flood.

2.12.240 Floodways.

Located within the special flood hazard areas established in Section 2.12.0450 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of the floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- (1) Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless:
 - a. Certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment shall not result in any increase in flood levels within the community during the occurrence of the base flood discharge; or
 - b. A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that a Conditional Letter of Map Revision (CLOMR) is applied for and approved by the Federal Insurance Administrator, and the requirements for such revision as established under Volume 44 of the Code of Federal Regulations, section 65.12 are fulfilled as well as all applicable no net loss standards from Section 2.12.290.
- (2) If the requirements of Section 2.12.2340(A1) are satisfied, all new construction, substantial improvements, and other development shall comply with all other applicable flood hazard reduction provisions of Sections 2.12.1340 to 2.12.1670.

2.12.250 Standards for Shallow Flooding Areas.

Shallow flooding areas appear on FIRMs as AO zones with depth designations or as AH zones with Base Flood Elevations. For AO zones the base flood depths range from one to three feet above ground where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. For both AO and AH zones, adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures.

2.12.260 Standards for AH Zones.

Development within AH Zones must comply with the standards in Sections 2.12.1340, 2.12.1780 and 2.12.2450.

2.12.270 Standards for AO Zones.

In AO zones, the following provisions apply in addition to the requirements in Sections 2.12.1340 and 2.12.2450:

- (1) New construction and substantial improvement of residential structures and manufactured dwellings within AO zones shall have the lowest floor, including basement, elevated above the highest grade adjacent to the building, at minimum to or above the depth number specified on the Flood Insurance Rate Maps (FIRM) or at least two feet if no depth number is specified. For manufactured dwellings the lowest floor is considered to be the bottom of the longitudinal chassis frame beam.
- (2) New construction and substantial improvements of non-residential structures within AO zones shall either:
 - a. Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, at minimum to or above the depth number specified on the Flood Insurance Rate Maps (FIRMS) at least two feet if no depth number is specified; or
 - b. Together with attendant utility and sanitary facilities, be completely floodproofed to or above the depth number specified on the FIRM or a minimum of two feet above the highest adjacent grade if no depth number is specified, so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as stated in Section 2.12.180(c)4190(3)d.
- (3) Recreational vehicles placed on sites within AO Zones on the community's Flood Insurance Rate Maps (FIRM) shall either:
 - a. Be on the site for fewer than 180 consecutive days, and
 - b. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or
 - c. Meet the elevation requirements of Section 2.12.240190(2)a, and the anchoring and other requirements for manufactured dwellings of Section 2.12.2010.
- (4) In AO zones, new and substantially improved accessory structures must comply with the standards in Section 2.12.2230.
- (5) In AO zones, enclosed areas beneath elevated structures shall comply with the requirements in Section 2.12.1780(A1).

2.12.280 Standards for Protection of SFHA Floodplain Functions

Mitigation may be necessary to ensure no net loss in floodplain functions of water storage, water quality, and vegetation. Proxies for these floodplain functions include undeveloped space, pervious surfaces, and trees to account for a no net loss in respective floodplain functions of floodplain storage, water quality, and vegetation. Mitigation of identified impacts to these proxies must be completed to ensure compliance with no net loss standards included below. No net loss applies to the net change in floodplain functions as compared to existing conditions at the time of proposed development and mitigation must be addressed to the floodplain function that is receiving the detrimental impact. The standards described below apply to all special flood hazard areas as defined in Section 2.0.

2.12.290 NO NET LOSS STANDARDS

- (1) No net loss of the proxies as provided in 2.12.290 (4) below for the floodplain functions is required for development in the SFHA that would reduce undeveloped space, increase impervious surface, or result in a loss of trees that are 6-inches dbh or greater. No net loss can be achieved by first avoiding negative effects to floodplain functions to the degree possible, then minimizing remaining effects, then replacing and/or otherwise compensating for, offsetting, or rectifying the residual adverse effects to the three floodplain functions. Prior to the issuance of any development authorization, the applicant shall:
 - a. Demonstrate a legal right by the project proponent to implement the proposed activities to achieve no net loss (e.g., property owner agreement);
 - b. If mitigation benefits multiple parcels or is performed at an offsite location, demonstrate that financial assurances are in place for the long-term maintenance and monitoring of all projects to achieve no net loss;
 - c. Include a management plan that identifies the responsible site manager, stipulates what activities are allowed on site, and requires the posting of signage identifying the site as a mitigation area.
- (2) Compliance with no net loss for undeveloped space or impervious surface is preferred to occur prior to the loss of habitat function but, at a minimum, shall occur concurrent with the loss. To offset the impacts of delay in implementing no net loss, a 25 percent increase in the required minimum area is added for each year no net loss implementation is delayed.
- (3) No net loss must be provided within, in order of preference:
 - a. the lot or parcel that floodplain functions were removed from,
 - b. the same reach of the waterbody where the development is proposed, or
 - c. the special flood hazard area within the same hydrologically connected area as the proposed development.Table 1 presents the no net loss ratios, which increase based on the preferences listed above.

(4) FLOODPLAIN FUNCTION PROXIES

a. UNDEVELOPED SPACE

- i. Development proposals post mitigation shall not reduce the fish-accessible and egress-able undeveloped space within the special flood hazard area.
- ii. A development proposal with an activity that would impact undeveloped space shall achieve no net loss of fish-accessible and egress-able space.
- iii. Lost undeveloped space must be replaced with fish-accessible and egress-able compensatory volume based on the ratio in Table 1 and at the same flood level at which the development causes an impact (i.e., plus or minus 1 foot of the hydraulically equivalent elevation).

1. Hydraulically equivalent sites must be found within either the equivalent 1-foot elevations or the same flood elevation bands as the development proposal. The flood elevation bands are:
 - a. Ordinary High Water Mark to 10-year flood event
 - b. 10-year to 25-year flood event
 - c. 25-year to 50-year flood event
 - d. 50-year to 100-year flood event
 2. Hydrologically connected to the water body that is the flooding source;
 3. Designed so that there is no net increase in velocity; and,
 4. Designed to fill and drain in a manner that minimizes anadromous fish stranding to the greatest extent practicable.
- b. IMPERVIOUS SURFACES
- Impervious surface mitigation shall be performed through any of the following options:
- i. Development shall not result in a net increase in impervious surface area within the SFHA, or;
 - ii. Shall use low impact development or green infrastructure to infiltrate and treat stormwater produced by the new impervious surface, as documented by a qualified professional, or;
 - iii. If prior methods are not feasible and documented by a qualified professional, stormwater detention is required to ensure no increase in peak volume or flow and to maximize infiltration and treatment is required to minimize pollutant loading. See section 2.12.300 (3) for stormwater detention specifications.
- c. Trees
- i. Development proposals shall result in no net loss of trees 6-inches dbh or greater within the special flood hazard area. This requirement does not apply to silviculture where there is no development.
 1. Trees 6-inches dbh or greater that are removed from the RBZ, Floodway, or RBZ fringe must be replaced at the ratios in Table 1.
 2. Replacement trees must be native species that would occur naturally in the Level III ecoregion of the impact area.

2.12.300 NO NET LOSS STORMWATER MANAGEMENT

Any development proposal that cannot mitigate as specified in 2.12.290(4).b must include the following:

- (1) Water quality (pollution reduction) treatment for post-construction stormwater runoff from any net increase in impervious area, and;
- (2) Water quantity treatment (detention facilities) unless the outfall discharges into the ocean.
- (3) Detention facilities must be designed to:
 - i. Limit discharge to match the pre-development peak discharge rate (i.e., the discharge rate of the site based on its natural groundcover and grade before any development occurred) for the 10-year, 5-year, 2-year, and 50 percent of the 2-year event peak flows.

- ii. Treat stormwater to remove sediment and pollutants from impervious surfaces such that at least 80 percent of the suspended solids are removed from the stormwater prior to discharging to the receiving water body.
 - iii. Be designed to not entrap fish and drain to the source of flooding.
 - iv. Be certified by a qualified professional.
- (4) Stormwater treatment practices for multi-parcel facilities, including subdivisions, shall have an enforceable operation and maintenance agreement to ensure the system functions as designed. This agreement will include:
 - i. Access to stormwater treatment facilities at the site by the City for the purpose of inspection and repair.
 - ii. A legally binding document specifying the parties responsible for the proper maintenance of the stormwater treatment facilities. The agreement will be recorded and bind subsequent purchasers and sellers even if they were not party to the original agreement.
 - iii. For stormwater controls that include vegetation and/or soil permeability, the operation and maintenance manual must include maintenance of these elements to maintain the functionality of the feature.
 - v. The responsible party for the operation and maintenance of the stormwater facility shall have the operation and maintenance manual on site and available at all times. Records of the maintenance and repairs shall be retained and made available for inspection by the City for five years.

2.12.310 ACTIVITIES EXEMPT FROM NO NET LOSS STANDARDS

The following activities are not subject to the no net loss standards in Section 2.12.290; however, they may not be exempt from floodplain development permit requirements.

- (1) Normal maintenance of structures, such as re-roofing and replacing siding, provided there is no change in the footprint or expansion of the roof of the structure;
- (2) Normal street, sidewalk, and road maintenance, including filling potholes, repaving, and installing signs and traffic signals, that does not alter drainage patterns, use, or culverts so long as the grade is not raised by more than six inches. Exempt activities do not include expansion of paved areas;
- (3) Routine maintenance of landscaping that does not involve grading, excavation, or filling;
- (4) Routine agricultural practices such as tilling, plowing, harvesting, soil amendments, and ditch cleaning that does not alter the ditch configuration provided the spoils are removed from special flood hazard area or tilled into fields as a soil amendment;
- (5) Routine silviculture practices that do not meet the definition of development, including harvesting of trees as long as root balls are left in place and forest road construction or maintenance that does not alter drainage patterns, use, or culverts and so long as the grade is not raised by more than six inches;
- (6) Removal of noxious weeds and hazard trees, and replacement of non-native vegetation with native vegetation;
- (7) Normal maintenance of above ground utilities and facilities, such as replacing power lines and utility poles provided there is no net change in footprint;
- (8) Normal maintenance of a levee or other flood control facility prescribed in the operations and maintenance plan for the levee or flood control facility. Normal maintenance does not include repair

from flood damage, expansion of the prism, expansion of the face or toe, or addition of protection on the face or toe with rock armor;

- (9) Habitat restoration activities;
- (10) Areas that do not serve one of the three floodplain functions identified in 2.12.290 and contain no fish habitat;
- (11) Pre-emptive removal of documented susceptible trees to manage the spread of invasive species;
- (12) Projects that are covered under separate consultations under Section 4(d), 7, or 10 of the Endangered Species Act (ESA).

2.12.320 SFHA RIPARIAN BUFFER ZONE (RBZ)

- (1) The Riparian Buffer Zone is measured from the ordinary high-water line of a fresh waterbody (lake; pond; ephemeral, intermittent, or perennial stream). The riparian buffer zone includes the area between these outer boundaries on each side of the stream, including the stream channel.
- (2) Habitat restoration activities in the RBZ are considered self-mitigating and are not subject to the no net loss standards described above.
- (3) Functionally dependent uses (like docks) are subject to the no net loss standards for development in the RBZ. Ancillary features that are associated with but do not directly impact the functionally dependent use in the RBZ (including manufacturing support facilities and restrooms) are subject to the beneficial gain standard in addition to no net loss standards (see Section 2.12.330).
- (4) Any other use of the RBZ requires a greater offset to achieve no net loss of floodplain functions, on top of the no net loss standards described above, through the beneficial gain standard (see Section 2.12.330).

Table 1 No Net Loss Standards

<u>Basic Mitigate Ratios</u>	Undeveloped Space (ft ³)	Impervious Surface (ft ²)	Trees (6" < dbh ≤ 20")	Trees (20" < dbh ≤ 39")	Trees (39" < dbh)
RBZ and Floodway	2:1	1:1	3:1	5:1	6:1
RBZ-Fringe	1.5:1	1:1	2:1	4:1	5:1
<u>Mitigation multipliers</u>					
Mitigation onsite to Mitigation offsite, same reach	100%	100%	100%	100%	100%

Mitigation onsite to Mitigation offsite, different reach, same watershed (5 th field)	200%	200%	200%	200%	200%
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Notes:

1. Mitigation multipliers of 100% result in the required mitigation occurring at the same value described by the ratios above, while multipliers of 200% result in the required mitigation being doubled.
 - a. For example, if only 500 ft² of the total 1000 ft² of required pervious surface mitigation can be conducted onsite and in the same reach, the remaining 500 ft² of required pervious surface mitigation occurring offsite at a different reach would double because of the 200% multiplier.
2. RBZ impacts must be offset in the RBZ, on-site or off-site.
3. Additional standards may apply in the RBZ (See 6.4 Riparian Buffer Zone).

2.12.330 Beneficial Gain Standard

An area within the same reach as the project and equivalent to 5% of the total project area within the RBZ shall be planted with native herbaceous and shrub vegetation and designated as open space.

DC 25-01 CODE UPDATE PROPOSED CHANGES
(as of June 4, 2025)

Code Update Summary Table			
	Section	Topic	Proposed Update
PICM Dev Code Updates			
1	2.12	PICM Floodplain Overlay updates	FEMA mandates changes
Development Code Changes			
2	3.15	RV cover walls	Continued from previous update. Propose no more than 3 walls permitted, and none closer than 4 feet from the ground.
3	2.06-2.11 & 3.30	Ground mounted solar updates	Revised so solar systems could be used over parking areas in non-residential areas but only in an ancillary capacity to a primary use.
4	4.01-4.05	Partition standards	Revise code to no longer require partitions with further-dividable parcels to follow Subdivision criterion. Additional changes made to make clear and objective.
5	3.21.100	Changes to legal non-conforming standards	Added the ability to reconstruct a damaged structure that had a nonconforming standard, with the nonconformity intact.
6	3.07.080	Signs on chain link	Deleted old ban on all signs mounted on chain link.
7	3.21.040(3)	Fowl and rabbit standards	Clarified that no permit is needed for Fowl and rabbits
8	Ch 4.1 and 4.2	Middle housing land divisions	Adding some text directing the reader to State requirements
9	4.2.030	Lot to width ratio clarification	Clarified text to match image

Proposed Text Changes

1	PICM Revisions
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CHAPTER 2.12. – FLOODPLAIN OVERLAY ZONE

[Separate document]

2	RV Covers Walls
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CHAPTER 3.15. RESIDENTIAL ACCESSORY STRUCTURES

3.15.010 Single-family Residences.

Residential accessory structures for attached or detached single-family homes and duplexes, excluding Accessory Dwelling Units as defined in Chapter 3.16, shall comply with all requirements for a principal structure, except where specifically modified by this section. Accessory structures shall not be used for human habitation except as specified in this section. Accessory structures shall comply with the following standards:

(6) Standards for RV covers and carports.

- a. Materials. Covers may be made from any building material including metal.
- b. Setbacks. All accessory structure setbacks apply. Setbacks will be taken from the eaves of the roofline, not the structure uprights.
- c. The RV cover or carport has no setback requirement from the primary structure (house) and may even be connected to the primary structure.
- d. Colors. The primary color of any metal roofing material must be neutral (earth tones) or be similar to the color, or accent color, of the primary structure.
- e. Height. The maximum height of an RV cover is 20 feet, unless the cover is setback at least 20 feet from any property line, then the height limit from the zone applies.
- f. Walls.
 - i. RV covers cannot include a wall of any kind (or solid gate or fence) that covers the front facing side of the structure where the RV enters the space. The 3 other sides may include walls consistent with the requirements of this section.
 - ii. Any wall (not including any primary structure walls if the RV cover structure is attached to a primary structure) must not be within 4 feet of the finished floor.

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- iii. Transparent screens or screening may be used on any portion of the RV cover and is not considered a 'wall' for purposes of this section.

3	Ground Mounted Solar Updates
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CHAPTER 2.06. MIXED USE ZONE (MU)

2.06.020 Permitted Uses.

The following uses, when developed under the applicable development standards in the Code, are permitted in the MU zone:

- (18) Ground Mounted Solar Systems when ancillary to a primary use, such as over parked cars.

[Note: the Commercial Office Zone was not included because it permits all uses from the GC Zone.]

CHAPTER 2.08. GENERAL COMMERCIAL ZONE (GC)

2.08.020 Permitted Uses.

The following uses, when developed under the applicable development standards in the Code, are permitted in the GC zone:

- (16) Ground Mounted Solar Systems when ancillary to a primary use, such as over parked cars.

CHAPTER 2.09. LIGHT INDUSTRIAL ZONE (LI)

2.09.020 Permitted Uses.

The following uses, when developed under the applicable development standards in the Code, are permitted in the LI zone:

- (7) Ground Mounted Solar Systems when ancillary to a primary use, such as over parked cars.

CHAPTER 2.10. GENERAL INDUSTRIAL ZONE (GI)

2.10.020 Permitted Uses.

The following uses, when developed under the applicable development standards in the Code, are permitted in the GI zone:

- (12) Ground Mounted Solar Systems when ancillary to a primary use, such as over parked cars.

CHAPTER 2.11. PUBLIC FACILITIES ZONE (PF)

2.11.020 Permitted Uses.

The following uses are permitted in the PF zone and subject to Site Design Review:

- (3) Ground Mounted Solar Systems when ancillary to a primary use, such as over parked cars.

CHAPTER 3.30. – GROUND MOUNTED SOLAR STANDARDS

3.30.010 Introduction and Purpose

The purpose of this Chapter is to regulate the development of ground mounted solar systems for residential and commercial purposes. The regulations intend to provide standards to allow smaller systems in residential areas such that they will not be a nuisance to neighbors and in non-residential areas in some limited applications. Residential Zones are intended for the development of housing, not commercial grade solar farms. Large scale systems would discourage the ultimate use of housing in residential zones. Article II prevents the use of ground mounted solar systems in other zones as a primary use where they do not represent the highest and best use of such property inside City limits.

3.30.020 General Standards

- (1) The size and scale of all ground mounted solar panels shall not be of a commercial nature.
- (2) Residential Ground mounted solar systems shall be placed in a rear or side yard on lots/parcels under 20,000 square feet. Systems in front yards on lots/parcels of this size are not permitted.
- (3) All residential ground mounted solar systems shall be less than 8 feet in height, measured to the peak of the tallest panel from the ground.
- (4) Ground mounted solar systems shall not count against lot coverage requirements when area under the panels is pervious.

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- (5) Ground mounted solar systems shall be installed so that the panels do not create glare on neighboring properties.

4	Partition Standards
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4.02.020 Scope.

The provisions of this Chapter shall apply to all partitions, ~~and~~ subdivisions ~~and middle housing land divisions~~ within the City of Millersburg. The following shall determine the appropriate process and design standards:

- (1) Partition. A land division creating two or three parcels within a calendar year shall be processed as a Partition and subject to the design and improvement standards for a Partition.
- (2) Subdivision. A land division creating four or more lots within a calendar year shall be processed as a Subdivision and subject to the design and improvement standards for a Subdivision.
- (3) ~~Serial Partition. If a Partition results in the creation of a large parcel that can be subsequently divided so that there is the potential to create more than three parcels from the original, the request shall be subject to the criteria, standards, design, and improvement standards for a Subdivision.~~ Middle Housing Land Division. A land division that allows the sale of duplexes to different owners by creating separate lots for each housing unit. All rules and regulations for Middle Housing Land Divisions are regulated by Oregon Revised Statutes 92.031 and 197.360.
- (4) Some standards listed below pertain specifically to residential or non-residential (typically commercial and industrial). If the standard does not state that it is specific to one or the other, then it is applicable to all land divisions. Maps for mixed use projects shall be treated like a non-residential map.

4.02.050 Improvement Requirements - Partition.

During the review of Partition proposals, the City shall require, as a condition of approval, the following improvements:

- (3) ~~Resultant parcels shall conform to the City's adopted code and standards including but not limited to transportation, stormwater, wastewater and water Public Facilities. Sewer, water, and storm drainage facilities may be required on and adjacent to the project.~~ The developer shall submit engineering plans or facility improvement plans to the City for review. The plans shall address the required improvements contained in this Article, and any conditions of approval,

and shall conform with City Engineering Design Standards. Improvement work shall not commence until plans are approved by the City.

5	Nonconforming
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CHAPTER 3.21. - GENERAL STANDARDS

3.21.100 - Nonconforming Uses and Standards.

A legal nonconforming use is a use on a property that is currently in use and has been in use since before the zoning did not permit the use. An example is a house in an industrial zone where residential uses are not permitted. A legal nonconforming standard is when a structure is not meeting a zoning or development standard. An example would be if a home were in a residential zone, but the home was built 3 feet from the rear property line prior to the establishment of a larger rear zoning setback.

- (1) Continuation. A nonconforming use or standard may be continued although not in conformity with the regulations for the zone in which the use is located.
- (2) Discontinuation. If a nonconforming use is discontinued for a period of more than one year, the use shall not be resumed unless the resumed use conforms with the requirements of the Code.
- (3) Restoration.

a. Uses. If a nonconforming use is damaged or destroyed by fire, other casualty, or natural disaster, and the repair or replacement of the damaged or destroyed structure or structures is less than 80% of the appraised value, such use may be restored or replaced provided physical restoration or replacement is lawfully commenced within one year of the damage or destruction. The City may administratively grant a one time, one-year extension to this requirement.

b. Standards. If a structure with a nonconforming standard is damaged or destroyed by fire, other casualty, or natural disaster, it may be restored or replaced with the nonconforming standard provided physical restoration or replacement is lawfully commenced within one year of the damage or destruction. The City may administratively grant up to two one-year extension to this requirement. This provision only applies to structures built after 1976.

6	Signs on fences & Construction signs
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3.07.080 Fence Advertising or Signage.

~~Signs on fences within the right of way are not permitted. Fences shall not be used for advertising purposes. Accordingly, no signage may be installed on fencing except for advisory purposes (such as "no trespassing") consistent with the sign code provisions in this Code. No such sign shall exceed two square feet, and no such sign shall be located closer than 20 feet from any other sign posted on the same fence.~~

7	Fowl and Rabbits
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3.21.040 Farm Uses and Livestock.

If permitted as described below, or otherwise permitted as a commercial or industrial activity, the following limitations shall apply:

- (3) *Fowl and Rabbits*. The keeping of fowl or rabbits in all residential zones ~~may be approved~~ is permitted by right subject to the following provisions:-:

8	Middle Housing Land Divisions
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ARTICLE IV. LAND DIVISIONS

CHAPTER 4.01. LAND DIVISION REQUIREMENTS

4.01.010 Applicability.

~~Sections 4.02 and 4.03~~ Article IV address specific requirements related to the division of land, including partitions, ~~and~~ subdivisions ~~and middle housing land divisions~~. These provisions concern the process of dividing land and do not alter the requirements and standards of the underlying zone(s).

Procedures related to land divisions, including property line adjustments, are contained in Article V - Review Procedures.

CHAPTER 4.02. STANDARDS

4.02.010 Purpose.

The purpose of this Chapter is to provide for the orderly, safe, and efficient division of land within the City.

4.02.020 Scope.

The provisions of this Chapter shall apply to all partitions, ~~and~~ subdivisions **and middle housing land divisions** within the City of Millersburg. The following shall determine the appropriate process and design standards:

- (1) Partition. A land division creating two or three parcels within a calendar year shall be processed as a Partition and subject to the design and improvement standards for a Partition.
- (2) Subdivision. A land division creating four or more lots within a calendar year shall be processed as a Subdivision and subject to the design and improvement standards for a Subdivision.
- (3) ~~Serial Partition. If a Partition results in the creation of a large parcel that can be subsequently divided so that there is the potential to create more than three parcels from the original, the request shall be subject to the criteria, standards, design, and improvement standards for a Subdivision.~~ Middle Housing Land Division. A land division that allows the sale of duplexes to different owners by creating separate lots for each housing unit. All rules and regulations for Middle Housing Land Divisions are regulated by Oregon Revised Statutes 92.031 and 197.360.
- (4) Some standards listed below pertain specifically to residential or non-residential (typically commercial and industrial). If the standard does not state that it is specific to one or the other, then it is applicable to all land divisions. Maps for mixed use projects shall be treated like a non-residential map.

9	Lot to Width clarification
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4.02.030 Standards for Lots or Parcels.

The following standards shall apply to Partitions and Subdivisions.

- (2) *Lot Width and Depth*. The depth of a lot or parcel shall not be more than three times the width. **The mean shall be used for lots that are a unique shape. For lots or parcels where the mean is not appropriate, a determination of consistency shall be made by the Community Development Director.** Lots or parcels created for commercial, industrial, or public uses shall be exempt from width to depth ratio provisions.



NOTICE OF PUBLIC REVIEW
July 1, 2025, 6:00 p.m.
And July 8, 2025, 6:30 p.m.
Hearings will be in person and
by phone/computer.
See Agenda on the City website for details.

The City of Millersburg will hold a **PLANNING COMMISSION** hearing on July 1, 2025 at the above time and place, and a **CITY COUNCIL** hearing on July 8, 2025 at the above time and place to consider the action described below. The action may be heard later than the time indicated, depending on the agenda schedule. Interested parties are invited to send written comments or attend the hearing. A staff report relating to the proposal will be available seven (7) days prior to the first public hearing. For further information contact Matt Straite, Community Development Director, at Millersburg City Hall- (458) 233-6300.

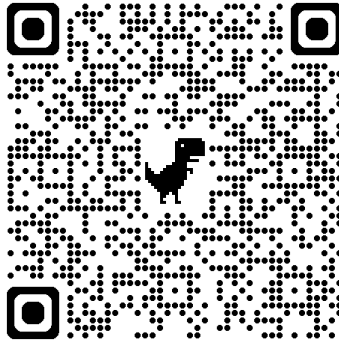
The location of the meeting is accessible to the disabled. If you need any special accommodation to attend or participate in the meeting, please notify City Hall at least twenty-four (24) hours before the meeting.

APPLICANT: City initiated
LOCATION: City wide
CRITERIA: Millersburg Development Code; Section 5.11. These criteria also require compliance with the applicable Statewide Planning Goals and Oregon Administrative Rules, 660-004, 660-012, 660-014, 660-015, 660-022, and Oregon Revised Statutes 197.732.
FILE No.: DC 25-01

REQUEST:
The City of Millersburg is revising its Development Code to make changes required by FEMA. FEMA is requiring participating communities to make changes to the National Flood Insurance Program (NFIP) in Oregon. FEMA explains that the changes are needed to protect the habitat of several species of fish and the Southern Resident killer whales to comply with the Endangered Species Act (ESA). FEMA outlined these changes in the draft NFIP-ESA Implementation Plan, which FEMA will fully implement in 2027. Until then, FEMA is requiring communities to begin implementing interim measures, known as Prelplementation Compliance Measures (PICMs), to protect habitat and achieve what FEMA is calling 'no net loss.'

The City is also proposing some changes that are not related to the FEMA requirement. These 9 changes include proposed changes to RV covers (walls on them specifically), further refinements to the new ground mounted solar sections, changes to partition requirements, changes to legal non-conforming structure standards, revisions to signs on chain link fencing, minor clarification to the standards for fowl and rabbits, additions for middle housing mandates by the State, and clarification to lot-to-width standards for new partitions and subdivisions.

See QR Code for more detail and the full Code text edits proposed:



You can also see the current version of the Development Code here:
https://library.municode.com/or/millersburg/codes/development_code