



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Katy Allen

SUBJECT: FLOOD HAZARD ORDINANCE
REVISION

DATE: 02-23-09

Approved

Deanna Santana

Date

2/25/09

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Approval of an ordinance of the City of San José amending Chapter 17.08 of Title 17 of the San José Municipal Code to adopt floodplain management regulations that meet the provisions of Paragraphs 60.3(d) and 60.3(e) of the National Flood Insurance Program regulations, and adopt floodplain management regulations and terminology required by an audit by the State of California Department of Water Resources.

OUTCOME

Approval of the Ordinance will satisfy the Federal Emergency Management Association (FEMA) directive to adopt Paragraphs 60.3(d) and 60.3(e) of the National Flood Insurance Program regulations, and satisfy an audit finding of the State of California Department of Water Resources (DWR) to incorporate other regulations and terminology currently not included in the ordinance.

BACKGROUND

The City of San José in 1982 became an active participant in the National Flood Insurance Program (NFIP) administered by the Federal Emergency Management Agency (FEMA). Participation in the NFIP is voluntary and is based on an agreement between communities and the Federal Government. If a community adopts and enforces a floodplain management ordinance to reduce future flood risks to new and existing developments in floodplains, the Federal Government will make flood insurance available within the community as a financial protection against flood losses. This insurance is designed to provide an alternative to disaster assistance to reduce the escalating costs of repairing damage to buildings and their contents caused by floods. The City of San José adheres to the NFIP regulations by administering land use and construction permits in conformance with Municipal Code Chapter 17.08, Special Flood Hazard Area Regulations (Flood Hazard Regulations).

The City is currently using paper maps maintained by FEMA to identify special flood hazard areas. In 2004, FEMA implemented a Map Modernization Program to create new digital

products for floodplain management purposes. The new maps, also known as Digital Flood Insurance Rate Maps (DFIRMs), will allow up-to-date maps more closely aligned with actual risk to support the City's floodplain management program and allow the City of San José and its citizens to be better prepared for flood-related disasters. On November 30, 2007, FEMA delivered to the City the Preliminary DFIRMs for review and the revalidation of record maps changes for review. City staff dedicated significant resources to review and return comments to the 78 map pages and exchange information including floodplain management records and GIS information such as City boundaries and topography. There were several iterations to the reviews and corrections to the maps and the certifications of the records of map changes before the maps were considered ready for use. This work resulted in a more accurate depiction and fewer changes to the City's flood hazard areas. FEMA has recently completed the transfer of county-wide map information to digital format, and on November 18, 2008, FEMA sent a Letter of Final Determination notifying the City of the end of the review period of the draft DFIRMs and has set May 18, 2009, as the effective date by which San José is required to begin utilizing the new DFIRMs and to adopt the DFIRM regulations.

In addition, the DWR also regulates the City's floodplain management standards by performing audits every five years. The DWR performed a Community Assistance Visit (CAV), or audit, on September 8, 2006, and reviewed the City's Floodplain Management Program. The resulting report noted that minor adjustments to our processes were necessary, such as enforcing requirements to correct unresolved cases, to notify the Federal Insurance Administrator whenever boundaries of the City have been modified by annexation, and to revise our Flood Hazard Regulations to incorporate the latest terminology and regulations.

ANALYSIS

The revised DFIRMs from FEMA are pursuant to Section 206 of the Flood Disaster Protection Act of 1973 and are in accordance with the National Flood Insurance Act of 1968, as amended. Because of the modifications, certain additional requirements must be met under Section 1361 of the 1968 Act, as amended, within six months of the date of the LFD, November 18, 2008. FEMA requires the City to show evidence of adoption of floodplain management regulations that meet the standard of Paragraph 60.3(d) and 60.3(e) of the NFIP regulations prior to May 18, 2009, in order to satisfy the additional requirements. These standards are the minimum standards and do not supersede any State or local requirements of a more stringent nature. Communities that fail to enact the necessary regulations will be suspended from participation in the NFIP.

The CAV revisions required by the DWR are also required in order to comply with NFIP regulations. The report identified that minor adjustments to our process were necessary and missing terminology and regulations from the City's Flood Hazard Regulations need to be added in order for the Municipal Code to meet the minimum standards of the NFIP. FEMA has issued a letter to the City dated September 2, 2008 finalizing the CAV pending submittal of the adopted revised ordinance.

The proposed revised Ordinance reflects the revisions per the FEMA and the DWR letters. The revisions have been coordinated with the FEMA Regional Office (Region IX), and the DWR staff.

A summary of the revisions to the Ordinance is list:

1. Part 1, Title and Scope, is revised per the Model Ordinance to add Statutory Authorization, Findings of Fact, Statement of Purpose, and Methods of Reducing Flood Losses.
2. Part 2, Definitions, is revised per the Model Ordinance to add or clarify Floodplain Management terms for Administrator, Base Flood Elevation, Biennial Report, Breakaway Walls, Coastal High Hazard Area, Conditional Letter of Map Revision, Elevation Certificate, Flood Boundary and Floodway Map, Flood Hazard Boundary Map, Flood Insurance Rate Map, Flood Insurance Study, Floodplain Administrator, Floodplain Management, Floodplain Management Regulations, Floodplain or Flood-Prone Area, Flood-proofing, Letter of Map Revision, Letter of Map Revision Based on Fill, Mean Sea Level, Mixed-Use Structures, New Construction, Official Map or Official Maps, Recreational Vehicle, Remedy a Violation, Special Flood Hazard Area, Start of Construction, Structure, Violation, Water Surface Elevation, and Watercourse.
3. Part 3, Designation of Flood Hazard Areas, is revised per the Model Ordinance so that in Public Access, a copy of the Flood Insurance Study shall be filed with the City Clerk and be available for use by the public (in addition to a copy of the Official Maps).
4. Part 4, General Provisions and Administration, is revised per the Model Ordinance to add Basis for Establishing the Areas of Special Flood Hazard, Compliance, Abrogation and Greater Restrictions, Warning and Disclaimer of Liability, Severability, Designation of the Floodplain Manager, Duties and Responsibilities of the Floodplain Manager (including A. Permit Review, B. Development of Substantial Improvement and Substantial Damage Procedures, C. Review, Use and Development of Base Flood Data, D. Notification of Other Agencies, E. Documentation of Floodplain Development, F. Map Determination, G. Remedial Action, H. Biennial Report, and I. Planning), Development Permit, and Appeals.
5. Part 5, Requirements for Special Flood Hazard Area, is revised to require residential uses in mixed-use structures in A zones to be dry flood-proofed, and to add requirements for Coastal High Hazard Areas and Standards for Recreational Vehicles.

EVALUATION AND FOLLOW-UP

Adoption of the proposed ordinance would bring the City's Floodplain Management Program into full compliance with FEMA and DWR standards and regulations.

In addition, as part of the DFIRM process, FEMA identified certain changes to the flood zone designations to certain San José properties. Although not directly related to the recommendation to Council as identified in this memorandum, staff will prepare and submit an informational memo to the Council in early March 2009 regarding these proposed flood zone changes and the impacts to the community.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- ✓ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This item meets Criteria 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. Although the proposed changes to the City's Flood Hazard Regulations are nominal and more administrative in nature, adopting these changes will ensure the City of San José's good standing with FEMA and the DWR. Public Works staff has emailed notices of this Council report and proposed Ordinance to FEMA, the DWR, the Santa Clara Valley Water District, and a consortium of private consulting engineers, and posted notice on the Department of Public Works' website. This memorandum will be posted to the City's website for the March 17, 2009 Council agenda.

COORDINATION

This memo and Ordinance have been reviewed by the City Attorney's Office, the City Manager's Budget Office, Department of Planning, Building and Code Enforcement, FEMA, and the DWR.

CEQA

Exempt; File Number PP09-020.


KATY ALLEN
Director, Public Works Department

For questions please contact TIMM BORDEN, DEPUTY DIRECTOR, at (408) 535-8300.