

CHAPTER 5.24. - FLOOD HAZARD REGULATIONS

ARTICLE I. - FINDINGS OF FACT AND PURPOSE

5.24.010. - Findings.

- A. The flood hazard areas of the City of Tenino are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- B. These flood losses are caused by the cumulative effects of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately flood proofed, elevated or otherwise protected also contribute to flood loss.

(Ord. No. 861, § 6, 8-9-2016)

5.24.020. - Purpose.

See TMC 18D.70.010.

- A. It is further the purpose of these regulations to comply with the requirements of the National Flood Insurance Program by adoption of floodplain management regulations consistent with federal criteria, as set forth in Title 44 CFR, Subchapter B - Insurance and Hazard Mitigation.

(Ord. No. 861, § 6, 8-9-2016)

5.24.030. - Methods of reducing flood losses.

In order to accomplish the foregoing purposes, the following methods shall be employed pursuant to authority of this chapter in reducing flood losses:

- A. Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in increases in erosion or flood heights or velocities;
- B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction or substantial improvement;
- C. Controlling the alteration of natural floodplains, stream channels and natural protective barriers which help accommodate the storage or channeling of floodwaters;
- D. Controlling the filling, grading and other development which may increase flood damage;
- E. Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards in other areas; and
- F. Such other measures as are deemed necessary and appropriate in light of any special vulnerability to flood damage of a specific site due to location or natural features.

(Ord. No. 861, § 6, 8-9-2016)

ARTICLE II. - DEFINITIONS

5.24.040. - Definitions.

Unless specifically defined in this section, words or phrases used in this chapter shall be interpreted to have the meaning they have in common usage and to give this chapter its most reasonable application to effectuate its purposes. The following words and phrases shall for purposes of this chapter have the following meanings:

Alteration of watercourse means any action that will change the location of the channel occupied by water within the banks of any portion of a riverine waterbody.

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*Appeal* means a request for a review of the building official's interpretation of this chapter, or review by superior court of a decision of city council.

*Area of shallow flooding* means a designated AO or AH zone on the flood insurance rate map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. AO is characterized as sheet flow, and AH indicates ponding.

*Area of special flood hazard* means the land in the floodplain within a community subject to a 1 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 (V, VO, V1-30, VE). "Special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters "A" or "V."

Commented [RA(2)]: Additional language mandatory per 44 CFR 59.1

*Base flood* means the flood having a one percent chance of being equaled or exceeded in any given year, and may be used interchangeably with the term "100-year flood."

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

Commented [RA(3)]: Mandatory per 44 CFR 59.1

*Basement* means any area of the building having its floor sub grade (below ground level) on all sides.

*Critical facility* means facilities for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, and installations which produce, use or store hazardous materials or hazardous waste.

*Development* means any manmade changes to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials located within an area of special flood hazard.

*Fill* means any natural or processed earthen material of any nature whatsoever, including, but not limited to, soil, gravel, crushed rock, concrete, and asphalt imported to a lot, tract or parcel, other than those materials that are directly incorporated into a building or structure. For purposes of construction of railroad track, "fill" shall not include such ballast as may be required by state or federal regulations to provide for the stability of the track, not exceeding 16 inches in depth. For purposes of road, driveway, sidewalk or approved parking area construction, "fill" shall include materials used to construct to sub grade, including gravel or rock, but shall not include above-grade concrete, asphalt, gravel or other paving material, if any, not exceeding four inches in total thickness; and further provided, for purposes of public streets, "fill" shall not include materials used to construct to six inches of sub grade to create a roadway crown, where deemed necessary or appropriate by the city engineer.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

Commented [RA(4)]: Additional language mandatory per 44 CFR 59.1

1. The overflow of inland or tidal waters; and/or
2. The unusual and rapid accumulation of runoff of surface waters from any source.
3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (1)(b) of this definition 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.

4. 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 in paragraph (1) of this definition.

*Flood insurance rate map (FIRM)* means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

*Flood insurance study* means the official report provided by the Federal Insurance Administration that includes flood profiles, the flood boundary-floodway map, and the water surface elevation of the base flood.

*Floodplain* means a land area adjoining a river, stream, watercourse or lake, which is likely to be flooded.

*Floodplain administrator* means the community official designated by title to administer and enforce the floodplain management regulations.

Commented [RA(5)]: Mandatory per 44 CFR 59.1

*Flood proofing* means any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents. Flood proofed structures are those that have the structural integrity and design to be impervious to floodwater below the Base Flood Elevation.

Commented [RA(6)]: Additional language mandatory per 44 CFR 59.1

*Floodway* means the channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as "Regulatory Floodway."

*Flood barrier* means any manmade obstruction which serves to prevent, hinder, restrict, bar or alter the passage of flood waters through usual and normal conveyance channels, other than any structure specifically approved as part of a flood control project, which has more than a purely localized effect on conveyance.

~~For purposes of this chapter, lowest floor means 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 chapter. Functionally dependent use means 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.~~

Commented [RA(7)]: Mandatory per 44 CFR 59.1

*Highest adjacent grade* means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Commented [RA(8)]: Mandatory per 44 CFR 59.1

*Historic structure* means any structure that is:

- 1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- 2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- 3) Individually listed on a state inventory of historic places in states with historic preservation programs

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which have been approved by the Secretary of Interior, or

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

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

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

For purposes of this chapter, lowest floor means 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 chapter.

*Manufactured home* means a single-family dwelling built in accordance with the Department of Housing and Urban Development Manufactured Home Construction and Safety Standards Act, which is a national, preemptive building code. For purposes of this chapter, the term "manufactured home" shall also include a mobile home, which is defined as a factory-built dwelling built prior to June 15, 1976, to standards other than the HUD code, and acceptable under applicable state codes in effect at the time of construction or introduction of the home into the state. For purposes of this chapter, and other ordinances, statutes or administrative regulations relating to floodplain management, the term also includes park trailers, travel trailers and other similar vehicles placed on a site for more than 180 consecutive days.

*Manufactured home park* means a parcel (or contiguous parcels) of land divided into two or more lots for sale or rent for the placement of manufactured homes.

*Market value* means the value a structure would bring on the open market upon reasonable exposure to sale, excluding the value of the land itself, as determined by the building official. In no event, however, shall such value be less than the assessed value for tax purposes as determined by the King County assessor.

Mean sea level means for purposes of the National Flood Insurance Program, the vertical datum to which Base Flood Elevations shown on a community's Flood Insurance Rate Map are referenced.

*New construction* means structures for which the start of construction commenced on or after June 25, 1984, and includes any subsequent improvements to such structures. 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 a community and includes any subsequent improvements to such structures.

*Person* includes any individual, or group of individuals, corporation, partnership, association, or other entity, including state and local governments and agencies.

*Recreational vehicle* means a vehicle:

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

*Start of construction* includes substantial improvement, and means the date the building permit was issued; provided, the actual start of construction, repair, reconstruction, placement or other improvement was within 180 days of the permit issuance date. The actual start of construction 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, and

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includes the placement of a manufactured home upon a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets or walkways; 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* means a walled and roofed building or manufactured home, including a gas or liquid storage tank, which is principally above ground, as well as a manufactured home.

*Substantial damage* means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

*Substantial improvement.*

1. "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure:
  - a. Before the improvement or repair is started; or
  - b. If the structure has been damaged and is being restored, before the damage occurred; for purposes of this definition, "substantial improvement" is deemed to occur when the first alteration affects the external dimensions of the structure.
2. The term does not include either:
  - a. 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 are the minimum necessary to assure safe living conditions; or
  - b. Any alteration of a structure listed on the National Register of Historic Places or a comparable state inventory of historic places.

*Variance* means a grant of relief from the requirements of this chapter which permits construction in a manner that would otherwise be prohibited.

(Ord. No. 861, § 6, 8-9-2016)

### ARTICLE III. - GENERAL PROVISIONS

#### 5.24.050. - Lands to which chapter applies.

A. This chapter shall apply to all areas of special flood hazard within the corporate limits of the city.

B. The special flood hazard areas identified by the Federal Insurance Administrator in a scientific and engineering report entitled "The Flood Insurance Study (FIS) for THURSTON COUNTY, WASHINGTON AND INCORPORATED AREAS" dated October 19, 2023, and any revisions thereto, with accompanying Flood Insurance Rate Maps (FIRMs) dated June 19, 2020, and any revisions thereto, are hereby adopted by reference and declared to be a part of this ordinance. The FIS and the FIRM are on file at [community address].

The best available information for flood hazard area identification as outlined in Section 5.24.120(B) shall be the basis for regulation until a new FIRM is issued that incorporates data utilized under Section 5.24.120(B). The areas of special flood hazard identified by the Federal Insurance Administration in the most recently adopted flood insurance study for the city, together with the most recent accompanying flood maps as the same now exist or may be hereafter amended, supplemented or revised by the Federal Insurance Administration, are hereby adopted by reference and declared to be a part of this chapter. Copies of the flood insurance study and flood maps shall be maintained on file at City Hall and be available for public inspection during normal business hours.

**Commented [RA(12):** Additional language mandatory per 44 CFR 59.1

**Commented [RA(13):** Additional language mandatory per 44 CFR 59.1

**Commented [RA(14):** Additional language/language revision mandatory per Mandatory 44 CFR 60.3 (preamble) and 44 CFR 60.2(h)

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(Ord. No. 861, § 6, 8-9-2016)

5.24.060. - Compliance required—Penalties.

- A. No structure or land shall hereafter be located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations.
- B. Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established by the building official pursuant to the authority of this chapter) after notice of violation and order to comply issued by the building official shall constitute a civil infraction. Any person who violates the provisions of this chapter or fails to comply with any of its requirements shall be subject to a cumulative civil penalty of \$500.00 per day from the date set for compliance in the order to comply until such violation is corrected, or compliance with such order occurs. The penalty provided shall be collected by civil action in Tenino Municipal Court.
- C. Nothing contained herein shall be construed to prevent the building official from taking such other lawful action as is necessary to prevent or remedy any violation, and all violations shall also be subject to abatement as a public nuisance pursuant to Chapter 8.08 TMC, including removal of unlawful structures, fill or flood barriers, at the owner's expense.
- D. In any action to collect a civil penalty, the defendant may show that the violation giving rise to such action was caused by the willful act or neglect of another, or that correction of such violation was commenced promptly upon receipt of notice thereof but that full compliance within the time specified was prevented by inability to obtain necessary materials or labor, or other circumstances or conditions beyond the defendant's control, and upon such showing the court may abate all or part of the penalty accumulated as justice may require.

(Ord. No. 861, § 6, 8-9-2016)

5.24.070. - Abrogation and greater restrictions.

This chapter is not intended to repeal, abrogate or impair any existing easements, covenants, or deed restrictions. However, where the provisions of this chapter and any other ordinance, easement, covenant, or deed provision conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. No. 861, § 6, 8-9-2016)

5.24.080. - Interpretation.

- A. This chapter shall be strictly interpreted to effectuate its purposes, and where doubt exists as to the meaning of any word or phrase herein, such word or phrase shall be construed in the most restrictive manner in favor of preservation of flood storage and conveyance consistent with the constitutional rights of the owners of property affected hereby, and further provided, the definitions and substantive provisions of Title 44 CFR, Subchapter B - Insurance and Hazard Mitigation may be consulted as an aid to interpretation of these regulations.
- B. All provisions of this chapter shall be considered as minimum requirements, and shall be deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 861, § 6, 8-9-2016)

5.24.090. - Warning and disclaimer of liability.

The degree of flood protection required by this chapter is deemed reasonable for the regulatory purposes for which it is enacted, and this chapter is based upon scientific and engineering considerations. Larger floods than those contemplated by this chapter may occur from time to time, and flood heights may be increased by manmade or natural causes. Nothing contained herein shall be construed to assure or warrant that areas outside those identified as area of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create any liability on the part of the city of Tenino, any officer or employee thereof, or the Federal Insurance Administration, for any damages that result from reliance on this chapter or any administrative decisions lawfully made hereunder.

(Ord. No. 861, § 6, 8-9-2016)

5.24.095. – Severability

This ordinance and the various parts thereof are hereby declared to be severable. Should any Section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the Section so declared to be unconstitutional or invalid.

**Commented [RA(16):** Additional language mandatory per 44 CFR 60.1(b). *The severability clause may be included in the adopting ordinance and left uncodified.*

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ARTICLE IV. - ADMINISTRATION

5.24.100. - Building official to administer.

The building official of the city shall administer and implement the provisions of this chapter, and shall have the authority to grant or deny flood improvement permits in accordance with its provisions.

(Ord. No. 861, § 6, 8-9-2016)

5.24.110. - Development permit required.

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 5.24.050(B). The permit shall be for all structures including manufactured homes, as set forth in the "Definitions," and for all development including fill and other activities, also as set forth in the "Definitions."

See TMC 18D.70

(Ord. No. 861, § 6, 8-9-2016)

**Commented [RA(17):** This language is mandatory per 44 CFR 60.3(b)(1). It is recommended the placeholder language located here referencing another section be replaced by this mandatory language.

5.24.XXX. - Application for Development Permit

Application for a development permit shall be 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:

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Elevation Certificates are not mandatory outside of Community Rating System communities but highly recommended.

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- A. Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures recorded on a current elevation certificate with Section B completed by the Floodplain Administrator.
- B. Elevation in relation to mean sea level to which any structure has been flood proofed;
- C. Where a structure is to be flood proofed, certification by a registered professional engineer or architect that the flood proofing methods for any nonresidential structure meet flood proofing criteria in 5.24.160(B);
- D. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development;
- E. Where development is proposed in a floodway, an engineering analysis indicating no rise of the Base Flood Elevation; and
- F. Any other such information that may be reasonably required by the Floodplain Administrator in order to review the application.

5.24.XXX - Designation of the Floodplain Administrator

The (job title of the appropriate administrative official) is hereby appointed 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.

5.24.120. - Duties of the building official.

Duties of the building official shall include but not be limited to the following:

- A. Permit review. Review all development permits to determine that:
  - 1. The permit requirements of this ordinance have been satisfied;
  - 2. All other required state and federal permits have been obtained;
  - 3. The site is reasonably safe from flooding;
  - 4. The proposed development is not located in the floodway. If located in the floodway, assure the encroachment provisions of TMC 5.24.170(A) are met.
  - 5. Notify FEMA when annexations occur in the Special Flood Hazard Area.
  - 6. It shall be the responsibility of the applicant to identify all federal, state or local agencies whose prior approval is required, and all risk of loss or damage for the failure to do so shall be borne solely by the applicant.

~~The building official shall review all applications for flood improvement permits, for compliance with the requirements of this chapter, determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required, determine if the proposed action will occur in the floodway, and if so, determine that all special provisions relating to actions in the floodway have been met, provided, it shall be the responsibility of the applicant to identify all federal, state or local agencies whose prior approval is required, and all risk of loss or damage for the failure to do so shall be borne solely by the applicant.~~

- B. Use of other base flood data. When base flood elevation data has not been provided in accordance with TMC 5.24.050(B), the building official shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer the provisions of TMC 5.24.160, Specific Standards, and TMC 5.24.170, Floodways.

**Commented [RA(19):** Mandatory (44 CFR 59.22(b)(1))

**Commented [RA(20):** Insert designated FPA's title, often the Building Official.

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C. *Maintenance of information.* The building official shall obtain, record, and maintain for public inspection the following information:

1. The actual (as-built) elevation in relation to mean sea level of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement; and
2. For all new or substantially improved flood proofed structures, verify and record the actual elevation in relation to mean sea level, and maintain the flood proofing certifications required by this chapter.

~~3. Certification required by 5.24.170(A).~~

~~4. Records of all variance actions, including justification for their issuance.~~

~~5. Improvement and damage calculations.~~

~~6. Maintain for public inspection all records pertaining to the provisions of this ordinance.~~

D. *Alteration of watercourses.* ~~See TMC 18D.70.040.D.~~

~~Whenever a watercourse is to be altered or relocated:~~

~~1. Notify adjacent communities and the Department of Ecology prior to such alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administrator through appropriate notification means, and~~

~~2. Assure that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained.~~

E. *Interpretation of FIRM boundaries.* The building official shall make interpretations where needed as to the exact location of the boundaries of the areas of special flood hazards, for example, where there appears to be a conflict between a mapped area and actual field conditions. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation. Such appeals shall be granted when consistent with the standards of Section 60.6 of the Rules and Regulations of the National Flood Insurance Program (44 CFR 59-76) as the same now exist or may hereafter be amended.

- F. 1. Whenever necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the building official or his designee has reasonable cause to believe that there exists in any building or upon any lands any condition or violation of this chapter, the building official or his designee may enter such building or lands at all reasonable times to inspect the same or to perform any duty imposed on the building official by this chapter, provided, that if such building or lands be occupied, he shall first identify himself and request entry; and if such building or lands is unoccupied, he shall first make a reasonable effort to locate the owner or person having control of the building or lands and request entry. If such entry is refused, the building official or his designee shall have recourse to every remedy provided by law to secure entry.
2. No owner or occupant or any other person having charge, care or control of any building or lands shall fail or neglect, after proper request, to promptly permit entry by the building official for the purposes authorized above.

(Ord. No. 861, § 6, 8-9-2016)

G. ~~*Review of Building Permits.* Where elevation data is not available, either through the FIS, FIRM, or from another authoritative source TMC 5.24.120(B), applications for floodplain development shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available.~~

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**Commented [RA(23):** It is recommended this be removed and replaced with the mandatory language provided.

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(Failure to elevate habitable buildings at least two feet above the highest adjacent grade in these zones may result in higher insurance rates.)

H. *Changes to Special Flood Hazard Area.*

1. If a project will alter the BFE or boundaries of the SFHA, then the project proponent shall provide the community with engineering documentation and analysis regarding the proposed change. If the change to the BFE or boundaries of the SFHA would normally require a Letter of Map Change, then the project proponent shall initiate, and receive approval of, a Conditional Letter of Map Revision (CLOMR) prior to approval of the development permit. The project shall be constructed in a manner consistent with the approved CLOMR.
2. If a CLOMR application is made, then the project proponent shall also supply the full CLOMR documentation package to the Floodplain Administrator to be attached to the floodplain development permit, including all required property owner notifications.

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5.24.130. - Variances.

- A. The city council of the city shall hear and decide requests for variances from the requirements of this chapter.
- B. In passing upon such applications, the city council shall consider all technical evaluations, relevant factors, standards specified in other sections of this chapter, and the following:
  1. The danger that materials may be swept onto other lands to the injury of others;
  2. The danger to life and property due to flooding or erosion damage;
  3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
  4. The importance of the services provided by the proposed facility to the community;
  5. The necessity to the facility of a waterfront location, if applicable;
  6. The availability of alternative locations for the proposed use which are not subject to flooding or erosion;
  7. The compatibility of the proposed use with existing and anticipated development;
  8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
  9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
  10. The expected heights, velocities, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
  11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
- C. Upon consideration of the factors specified in the foregoing paragraph, the city council may approve, approve with conditions such as it deems necessary to further the purposes of this chapter, or deny the request.
- D. The director of development services shall maintain records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

(Ord. No. 861, § 6, 8-9-2016)

5.24.140. - Conditions for variances.

- A. Variances from the strict application of this chapter may be granted only upon full consideration of the matters set forth in TMC 5.24.130(D). No variances may be granted from the requirements of TMC 5.24.160(A) or TMC 5.24.170(B).
- B. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or a comparable state inventory of historic places, without regard for the procedures set forth in this section.
- C. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
- D. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- E. Variance requests shall be denied unless the city council finds on the basis of clear and convincing evidence that:
  - 1. A showing of good and sufficient cause has been made;
  - 2. Failure to grant the variance would result in exceptional hardship to the applicant; and
  - 3. Granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense or nuisance, or conflict with any other existing local laws or ordinances.
- F. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all variance criteria except subsection (A) of this section, and otherwise complies with the provisions regarding anchoring and construction materials and methods below.
- G. Any applicant to whom a variance is granted shall be given a written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting therefrom. All risk of damage or loss not covered by flood insurance occurring as a result of such variance permitting a reduction in the required elevation for the lowest floor shall be borne solely by the applicant.

(Ord. No. 861, § 6, 8-9-2016)

#### ARTICLE V. - FLOOD HAZARD REDUCTION

##### 5.24.150. - General standards.

- A. *Finished grade after construction.*
  - 1. After construction or other development, but prior to final building inspection, certificate of occupancy or other final approval, the applicant shall obtain and furnish to the city a topographic survey, prepared by a licensed surveyor or engineer, with sufficient scale and contour to interval to adequately assess variation in ground surface and determine the average grade after construction or development, unless the requirement for a topographic survey was waived at the time of application.
  - 2. The average finished grade of all lots, tracts or parcels after construction of a building or other development, excluding the area occupied by the above-grade building or other development, shall be no greater than the average grade of the lot prior to construction or development. After construction or other development but prior to final building inspection, the applicant shall furnish, together with the topographic survey, the written certification of the licensed surveyor or engineer preparing the topographic survey that the finished grade meets the requirement of this subsection. No building or other development shall be occupied or used if the requirements of this section are not met.

3. Any earth material that must be removed from a site in order to comply with the requirements of this chapter shall be transported to an approved disposal site at the applicant's or property owner's sole expense, and evidence of such disposal shall be furnished to the building official.

B. *Anchoring.*

1. All new construction and substantial improvements shall be anchored so as to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads including the effects of buoyancy, pursuant to a design prepared by a registered professional engineer or architect licensed by the State of Washington.
2. All manufactured homes shall be anchored to prevent flotation, collapsecollapse, or lateral movement, pursuant to a design prepared by a registered professional engineer or architect, and architect and shall be installed using methods and practices that minimize the flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
3. An alternative method of anchoring may involve a system designed to withstand a wind force of 85 miles per hour or greater. Certification must be provided to the building official that this standard has been met.

**Commented [RA(27):** Additional language mandatory per 44 CFR 60.3(a)(b)

**Commented [RA(28):** Additional language mandatory per 44 CFR 60.3(b)(8). For more detailed information, refer to guidebook, FEMA-85, "Manufactured Home Installation in Flood Hazard Areas."

C. *Construction materials and methods.*

1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
3. Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

D. *Utilities.*

1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharge from the systems into floodwaters.
3. On-site waste disposal systems, if otherwise permitted, shall be located to avoid impairment to them or contamination from them during flooding.

4. Water wells shall be located on high ground that is not in the floodway.

**Commented [RA(29):** WAC 173-160-171 prohibits new water wells in floodways.

E. *Subdivision, short subdivision, binding site improvement plan and commercial and multifamily site plan approval proposals within areas of special flood hazard.*

~~1. All subdivision, short subdivision, binding site improvement plan and commercial and multifamily site plan proposals within areas of special flood hazard shall be subject to the provisions of TMC Title 18.~~

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All subdivisions, as well as new development shall:

**Commented [RA(30):** Recommend removing and using mandatory language below.

1. Be consistent with the need to minimize flood damage;

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2. Have public utilities and facilities, such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;

3. Have adequate drainage provided to reduce exposure to flood damage;

4. Where subdivision proposals and other proposed developments contain greater than 50 lots or 5 acres (whichever is the lesser) base flood elevation data shall be included as part of the application.

**Commented [RA(31):** Mandatory per 44 CFR 60.3(a)(4) and (b)(3)

~~F. Review of building permits. Where elevation data is not available see TMC 18D.70.030 D.~~

(Ord. No. 861, § 6, 8-9-2016)

~~F. Storage of Materials and Equipment.~~

- ~~1. The storage or processing of materials that could be injurious to human, animal, or plant life if released due to damage from flooding is prohibited in special flood hazard areas.~~
- ~~2. Storage of other material or equipment may be allowed if not subject to damage by floods and if firmly anchored to prevent flotation, or if readily removable from the area within the time available after flood warning.~~

5.24.160. - Specific standards.

A. ~~Residential construction.~~

- ~~1. In AE and A1-30 zones or other A zoned areas where the BFE has been determined or can be reasonably obtained, New-new construction and substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.- Mechanical equipment and utilities shall be waterproof or elevated least one foot above the BFE. The following elevation requirements for the first floor of additions to existing residential structures shall apply:
  - a. A vertical addition not increasing the footprint of the residential structure shall require elevation of the structure only if it constitutes a substantial improvement.
  - b. A lateral addition to a residential structure which constitutes a substantial improvement shall require elevation of the structure, regardless of when construction of the structure commenced.
  - c. A lateral addition to a residential structure which does not constitute a substantial improvement shall require elevation of the addition to the same elevation as the structure.~~
- ~~2. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, unless they are designed to automatically equalize hydrostatic pressure on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must be certified by a registered professional engineer or architect or must meet the following minimum criteria:
  - a. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
  - b. The bottom of all openings shall be no higher than one foot above grade; and
  - c. Openings may be equipped with break-away type screens, louvers or other coverings or devices; provided that they permit the automatic entry and exit of floodwaters.~~

~~d. A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry and exit of floodwaters.~~

~~Alternatively, a registered engineer or architect may design and certify engineered openings.~~
- ~~3. New construction and substantial improvement of any residential structure in an Unnumbered A-zone for which a BFE is not available and cannot be reasonably obtained shall be reasonably safe from flooding, but in all cases the lowest floor shall be at least two feet above the Highest Adjacent Grade.~~

B. ~~Nonresidential construction.~~

~~Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet the requirements of subsection 1 or 2, below.~~

**Commented [RA(32):** Section can be removed as has been inserted into 5.24.150(G). The location and format is does not have to follow that order, but it is where this section is usually placed in our Model Ordinance.

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**Commented [RA(35):** Additional language mandatory per 44 CFR 60.3(c)(5).

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**Commented [RA(36):** Additional language mandatory per 44 CFR 60.3(b)(2)

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**Commented [AR37]:** It is recommended this new Nonresidential Construction section be adopted and replace the one prior. The additional language that is included is mandatory per 44 CFR 60.3(c)(3) and (4).

If you do not want to replace the section, let me know, as the language that is missing will need to be added to the existing language. Likely easier to just replace the section, though.

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1. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet all of the following requirements:

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a. In AE and A1-30 zones or other A zoned areas where the BFE has been determined or can be reasonably obtained:

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New construction and substantial improvement of any commercial, industrial, or other nonresidential structure shall have the lowest floor, including basement, elevated one foot or more above the BFE, or elevated as required by ASCE 24, whichever is greater. Mechanical equipment and utilities shall be waterproofed or elevated least one foot above the BFE, or as required by ASCE 24, whichever is greater.

b. If located in an Unnumbered A zone for which a BFE is not available and cannot be reasonably obtained, the structure shall be reasonably safe from flooding, but in all cases the lowest floor shall be at least two feet above the Highest Adjacent Grade.

c. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

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i. Have a minimum of two openings with a total net area of not less than one square inch for every square foot of enclosed area subject to flooding.

ii. The bottom of all openings shall be no higher than one foot above grade.

iii. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

iv. A garage attached to a residential structure, constructed with the garage floor slab below the BFE, must be designed to allow for the automatic entry and exit of floodwaters.

Alternatively, a registered engineer or architect may design and certify engineered openings.

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2. If the requirements of subsection 1 are not met, then new construction and substantial improvement of any commercial, industrial or other nonresidential structure shall meet all of the following requirements:

a. Be dry flood proofed so that below one foot or more above the base flood level the structure is watertight with walls substantially impermeable to the passage of water or dry flood proofed to the elevation required by ASCE 24, whichever is greater;

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

c. 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 subsection based on their development and/or review of the structural design, specifications and plans.

d. Nonresidential structures that are elevated, not flood proofed, must meet the same standards for space below the lowest floor as described in TMC 5.24.160(A)(2);

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Applicants who are flood proofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the flood proofed level (e.g. a building flood proofed to the base flood level will be rated as one foot below). Flood proofing the building an additional foot will reduce insurance premiums.

- ~~1. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including basement) elevated to or above the level of the base flood elevation or together with attendant utility and sanitary facilities, shall:
  - ~~a. Be flood proofed so that below one foot above the base flood level the structure is watertight with walls substantially impermeable to the passage of water;~~
  - ~~b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and~~
  - ~~c. 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 the provisions of this subsection based on their development and/or review of the structural design, specifications and plans, and such certification is provided to the building official.~~~~
- ~~2. Nonresidential structures that are elevated, not flood proofed, must meet the same standards for space below the lowest floor as provided for residential structures.~~
- ~~3. Applicants for floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the flood proofed level; for example, a building flood proofed to one foot above the base flood level will be rated as at the base flood level.~~

C. *Manufactured homes.*

1. All manufactured homes to be placed or substantially improved within zones A1-30, AH and AE on the FIRM on sites (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; or (c) in an expansion to an existing manufactured home park or subdivision in which a manufactured home has incurred substantial damage as a result of a flood, shall be elevated on a permanent foundation such that the lowest floor of the manufactured homes one foot or more above the base flood elevation, and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.
2. Manufactured homes to be placed or substantially improved on sites in an existing manufactured home or subdivision within zones A1-30, AH and AE on the FIRM that are not subject to the foregoing manufactured home provisions shall be elevated so that either:
  - a. The lowest floor of the manufactured home is elevated to one foot above the base flood elevation; or
  - b. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and is securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement.
3. For purposes of this section, "substantial damage" of a manufactured home shall mean any damage the cost of which to repair or reconstruct exceeds 50 percent of the market value of the manufactured home before the repair or reconstruction is started.

D. *Recreational vehicles.* Recreational vehicles placed on site within zones A1-30, AH and AE on the FIRM shall either:

1. Be on site fewer than 180 consecutive days;

2. Be fully licensed and ready for highway use, be on its wheels or jacking system, be attached to the site only by quick disconnect type utilities and security devices, and have no permanent attached additions; or
  3. Meet the requirements of the elevation and anchoring requirements for manufactured homes.
- E. *Critical facilities.* Construction of new critical facilities shall be, to the extent possible, located outside of the limits of the base floodplain. Construction of new critical facilities shall be permissible within the base floodplain if no feasible alternative site is available. Critical facilities constructed within the base floodplain shall have the lowest floor elevated to three feet or more above the base flood elevation at the site. Floodproofing and sealing measure must be taken to ensure that toxic substances will not be displaced by or released into floodwaters. Access routes elevated to or above the level of the base floodplain shall be provided to all critical facilities to the extent possible.
- F. *Fill.*
1. Subject to the provisions of subsection (F)(2) of this section, no fill shall be permitted except where provision has been made on the subject property to balance the capacity to store floodwaters and accommodate potential surface flow in an amount equal to the amount of floodwater likely to be displaced by the fill; provided, provision may be made subject to TMC 5.24.18 to balance the capacity to store floodwaters off the subject property, when it can be demonstrated that the property upon which the balancing capacity is being created is located such that no increase in the base flood discharge will result. Care shall be taken to prevent erosion and surface runoff to adjacent properties. All fill shall be compacted at the time of placement.
  2. Any person may place not more than five yards of material used solely for landscape maintenance or gardening at a residence or business in any one calendar year; provided, written notification shall be given to the building official within five business days after the placement of such fill. Such right shall not be assignable, nor shall it carry over from year to year or otherwise be cumulative.
- G. *Clearing and grading.* Clearing and grading shall be approved only when the application provides:
1. A plan and profile of the site to be cleared;
  2. Identification of the flora to be removed;
  3. A reclamation plan to prevent erosion; and
  4. A drainage plan in accordance with Title 12 TMC, where a street project is proposed.
- H. *Bank improvements.* Where proposed development or improvements include modification or work along the banks of Scatter Creek, application shall first be made to the State Department of Fisheries and Game for a State Hydraulics Permit. Application for the permit required by this chapter shall not be made until after the state permit is approved, and a certified copy has been provided to the city.
- I. *Hazardous materials.*
1. The placement, transfer or storage of chemicals, petroleum products or by-products, fertilizers, insecticides, pesticides, lime, cement or other material that, when inundated will constitute a hazard to life, health and safety, or adversely affect the quality of surface waters, in quantities greater than those declared to be exempt pursuant to the International Building Code is prohibited within areas of special flood hazard.
  2. Where a clearing and grading permit is sought in connection with any development for which a shorelines substantial development permit is required, the application shall be reviewed by the planning administrator prior to issuance of a clearing and grading permit.
- J. Enclosed area below the lowest floor. If buildings or manufactured homes are constructed or substantially improved with fully enclosed areas below the lowest floor, the areas shall be used solely for parking of vehicles, building access, or storage.
- K. Detached Accessory Structures (Detached garages and small storage structures). Detached accessory structures used solely for parking of vehicles or limited storage may be constructed such

**Commented [RA(38):** Mandatory per 44 CFR 60.3(c)(5)

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that the floor is below the BFE, provided the structure is designed and constructed in accordance with the following requirements:

1. In special flood hazard areas other than coastal high hazard areas (Zones A, AE, AH, AO, and A1-30), the structure is not larger than a one-story two-car garage;
2. The portions of the structure located below the BFE must be built using flood resistant materials;
3. The structure must be adequately anchored to prevent flotation, collapse, and lateral movement;
4. Any machinery or equipment servicing the structure must be elevated or floodproofed to or above the BFE;
5. The structure must comply with floodway encroachment provisions in TMC 5.24.170(A);
6. The structure must be designed to allow for the automatic entry and exit of flood waters in accordance with TMC 5.24.160(A)(2);
7. The structure shall have low damage potential;
8. If the structure is converted to another use, it must be brought into full compliance with the standards governing such use; and
9. The structure shall not be used for human habitation.

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(Ord. No. 861, § 6, 8-9-2016)

5.24.165. - AE and A1-30 Zones with Base Flood Elevations but No Floodways. In areas with BFEs (when a regulatory floodway has not been designated), no new construction, substantial improvements, or other development (including fill) shall be permitted within zones A1-30 and AE on the community's 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.

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5.24.170. - Floodways.

Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the following provisions apply in all areas designated as floodways on the FIRM:

- A. *Encroachments prohibited.* No encroachment, including fill, new construction, substantial improvement or other development shall be permitted within the floodway unless certification by a registered design professional is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels during the occurrence of the base flood discharge.
- B. *Residential construction prohibited.* No new construction or reconstruction of residential structures shall be permitted within the floodway, except for the following:
  1. Repairs, reconstruction or improvements to a structure which do not increase the ground floor area; and

2. Repairs, reconstruction or improvements to a structure, the cost of which does not exceed 50 percent of the market value either:
  - a. Before the repair, reconstruction or improvement is commenced, or
  - b. If the structure has been damaged, and is being restored, before the damage occurred. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local code enforcement official and are the minimum necessary to assure safe living conditions or to structures identified as historic places shall not be included in the 50-percent limitation.

C. If the requirements of subsection (A) of this section are met, all new construction and substantial improvement shall comply with all other applicable flood hazard reduction standards of this chapter.

D. *All other building standards apply in the Floodway. If TMC 5.24.170(A) is satisfied or construction is allowed pursuant to TMC 5.24.170(B), all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article V, Flood Hazard Reduction.*

(Ord. No. 861, § 6, 8-9-2016)

5.24.190. - Appeals.

A. Any applicant, resident or taxpayer may appeal from any requirements, decision or determination of the building official when it is alleged that there is an error in the administration of this chapter. All such appeals shall be made by written notice of appeal, filed with the city clerk, which notice shall identify the requirement, decision or determination alleged to be erroneous, and shall state the factual and legal grounds relied upon. Such appeal shall be heard and determined by the city council within 60 days of the date of filing of the notice of appeal, and all decisions shall be in writing supported by findings of fact.

(Ord. No. 861, § 6, 8-9-2016)

*5.24.200. - Livestock Sanctuary Areas. Elevated areas for the for the purpose of creating a flood sanctuary for livestock are allowed on farm units where livestock is allowed. Livestock flood sanctuaries shall be sized appropriately for the expected number of livestock and be elevated sufficiently to protect livestock. Proposals for livestock flood sanctuaries shall meet all procedural and substantive requirements of this chapter. Note: To be "elevated sufficiently to protect livestock" typically means to be elevated at least one foot above the BFE.*

- Commented [RA(41):** Mandatory (44 CFR 60.3(d)(1-4)
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- Commented [RA(42):** Required by RCW 86.16.190. This section should be included by all counties. A city that does not allow livestock can forgo this section. While state law requires that local governments make provision for critter pads, it is extremely important to note that RCW 86.16.190 does not relax NFIP standards, including the no rise standard in floodways, in any way.
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