14.20.001 FLOOD HAZARD AREA*

14.20.010. Purpose. It is the purpose of this Flood Hazard Area Section to regulate the use of those areas subject to periodic flooding, to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions.

14.20.020 Definitions. Words or phrases used in this Code shall be interpreted so as to give them the meaning they have in common usage and to give this Code its most reasonable application.

1. Appeal means a request for a review of the administrator's interpretation of any provision of Section 14.16.001 of this Code or a request for a variance.

2. 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 (1) to three (3) 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.

3. Area of special flood hazard means the land in the flood plain subject to a 1% or greater chance of flooding in any given year. Designation on maps always includes the letters "A" or "V".

4. Base flood means the flood having a 1% change of being equaled or exceeded in any given year. This is also referred to as the "100-year flood". Designation on maps always includes the letters "A" or "V".

5. Basement means any area of the building having its floor or subgrade (below ground level) on all sides.

6. Below grade crawlspace means an enclosed area below the base flood elevation in which the interior grade is not more than two feet below the lowest adjacent exterior grade and the height, measured from the interior grade of the crawlspace to the top of the crawlspace foundation, does not exceed 4 feet at any point.

7. Breakaway walls means a wall that is not part of the structural support of the building and is intended - through its design and construction - to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation

system.

8. Coastal high hazard area means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designed on a FIRM as Zones V1 - V30, VE, or V.

(Entire section amended by Ordinance No. 1987 (12-18-09).)*

9. Critical Facility means a facility 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, installations which produce, use or store hazardous materials or hazardous waste.

10. Development means any man-made change 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 the area of special flood hazard.

11. Elevated Building means for insurance purposes, a non-basement building that has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

12. Existing Manufactured Home Park or Subdivision means a manufactured home park subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of these floodplain management regulations.

13. Expansion of Manufactured Home Park or Subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

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

A. The overflow in inland or tidal waters; and/or

B. The unusual and rapid accumulation of run-off of surface waters from any source.

15. 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.

16. 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.

17. Floodway means the channel of a river or other water-course and the adjacent areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

18. Lowest floor means the lowest floor of the lowest enclosed area (including the basement). An unfinished or flood-resistant enclosure, usable solely for the 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 found in 14.20.050(B)(1)(b) of this Code.

19. Manufactured home means a structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

20. Manufactured home park or manufactured home subdivision means a parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale for which the construction of facilities for servicing the lot on which the manufactured home is to be affixed (including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the

construction of streets).

21. Mean sea level (MSL) means the average height of the sea for all stages of the tide.

22. New construction means the structures for which the "start of construction" commenced on or after the effective date of this Zoning Ordinance.

23. New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of adopted floodplain management regulations.

24. Recreational vehicle means a vehicle which is:

    A. built on a single chassis;

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

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

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

25. 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 date. The actual start means either the first placement of permanent construction of a structure on a site (such as the pouring of slab or footings, the installation of piles, the construction of piles, the construction of columns, or any work beyond the stage of excavation) or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation (such as clearing, grading, and filling), the installation of streets and/or walkways, excavation (for a basement, footings, piers, or foundation or the erection of temporary forms), or the installation on the property of accessory buildings (such as garages or sheds not occupied as dwelling units or not part of the main structures). For 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.

26. Structure means a walled and roofed building, including a gas or liquid storage tank that is principally above the ground.

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

28. Substantial improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either:

    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 the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either of the following:

        1. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions; or

        2. Any alteration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places.

29. State Building Code means the combined specialty codes.

30. Variance means a grant of relief from the requirements of this Code that permits construction in a manner that would otherwise be prohibited by this Code.

31. Water dependent means a structure for commerce or industry which cannot exist in any other location and is

dependent on the water by reason of the intrinsic nature of its operations.

14.20.030 **General Provisions.** The basis for establishing the areas of special flood hazard are the areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Lincoln County, Oregon and Incorporated Areas", dated December 18, 2009. The Flood Insurance Study (FIS) and accompanying Flood Insurance Rate Maps (FIRMs) are on file at the City of Newport City Hall in the Community Development Department and are hereby adopted by reference and declared to be part of this Code.

14.20.040 **Administration.**

A. Establishment of Building/Development Permit. A Building/Development Permit shall be required in conformance with the provisions of this Section. The permit shall be for all structures, including manufactured homes, as set forth in the "definitions", and for all other development, including fill and other activities as set forth in the definitions.

B. Application for Permit. Application shall be made on forms provided by the Community Development Department for this purpose 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:

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

2. Elevation in relation to mean sea level of flood-proofing in any structure;

3. Certification by a registered professional engineer or architect that the flood-proofing methods for any nonresidential structure meet the flood-proofing criteria in 14.20.050(B)(2); and

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

C. Duties and Responsibilities. The duties of the Building Official shall include, but not be limited to, permit review as follows:

1. Review all development permits to require that the permit requirements and conditions of this Code have been satisfied.

2. Review all development permits to require that all necessary permits have been obtained from those Federal, State, or local governmental agencies from which prior approval is required.

3. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of Subsection 14.20.040(16)(C)(1) are met.

D. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with this Section, 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 Sections 14.20.050.(B) (Specific Standards) and 14.20.020(17) (Floodways).

E. Information to be obtained and maintained by the Building Official:

1. Where the base flood elevation data is provided through the Flood Insurance Study or required as in 14.06.040, the actual elevation, in relation to mean sea level, of the lowest floor (including the basement and below-grade crawlspaces) of all new or substantially improved structures in a flood hazard overlay zone shall be obtained and recorded.

2. For all new or substantially improved floodproofed structures in a flood hazard overlay zone:

   a. Verify and record the actual elevation (in relation to mean sea level);

   b. Maintain the floodproofing certifications required in 14.20.040(B)(3).

3. Maintain for public inspection all records pertaining to the provisions of this Code.

F. Alteration of Watercourses. The Building Official shall:

1. Notify Lincoln County, the Department of Land Conservation and Development, and other appropriate state and federal agencies prior to any alteration or relocation of a water course and submit evidence of such notification to the Federal Insurance

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

G. 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 boundary and actual field conditions). Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 14.20.060, Appeals and Variance Procedures.

14.20.050 <u>Provisions for Flood Hazard Reduction</u>.

A. General Standards. In areas of special flood hazard as adopted by this ordinance (which may be illustrated on a zoning map as a Flood Hazard Overlay Zone (FH Zone)) the following provisions are required:

1. Anchoring.

   a. All new construction and substantial improvements lateral movement of the structure.

   b. All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that:

2. Over-the-top ties be provided at each end of the manufactured home, with two (2) additional ties per side at intermediate locations, and manufactured homes less than 50 feet long requiring one (1) additional tie per side.

3. Frame ties are to be provided at each corner of the home with five (5) additional ties per side at intermediate points, and manufactured homes less than 50 feet long will require four (4) additional ties per side;

4. All components of the anchoring system are to be capable of carrying a force of 4,800 pounds; and

5. Additions to the manufactured home are to be similarly anchored.

    a. An alternative method of anchoring may involve a system designed to withstand the wind force of 90 miles an hour or greater.

Certification must be provided by a registered structural engineer to the Building Official that this standard has been met.

    b. All modular homes shall comply with the requirements of the applicable building code.

6. 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 or substantial improvements shall be constructed by methods and practices that minimize flood damage.

    c. 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.

7. Utilities.

    a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

    b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into the flood waters; and

    c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding consistent with Department of Environmental Quality regulations.

8. Subdivision Proposals.

    a. All subdivision proposals shall be consistent with the need to minimize flood damage.

    b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

    c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

    d. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments that contain at least 50 lots or five (5) acres (whichever is less).

9. Critical Facilities.

    a. New critical facilities shall be located outside the limits of the Flood Hazard Overlay Zone, unless no feasible alternative site is available.

    b. New critical facilities constructed within the Flood Hazard Overlay Zone shall have the lowest floor elevated three feet or to the height of the 500-year flood, whichever is higher.

    c. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into floodwaters.

    d. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible.

10. Review of Building Permit Applications by Building Official. Where elevation data is not available, either through the Flood Insurance Study or from another authoritative source (14.20.040(D)), applications for building permits shall be reviewed to see that proposed construction will be reasonably safe from flooding. A determination of reasonable safety is a judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available for the area. Failure to elevate the lowest floor at least two (2)

feet above grade in these zones may result in higher insurance rates.

B. Specific Standards. In all areas of special flood hazards (which may be illustrated on a zoning map as a FH Zone) adopted by this ordinance where base flood elevation data has been provided as set forth in this Section, the following provisions are required:

1. Residential Construction.

   a. New construction or substantial improvement of any residential structures shall have the lowest floor, including the basement, elevated to a minimum of one (1) foot above the base flood elevation.

   b. 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:

   a. A minimum of two openings having a total net area of not less than one (1) 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 (1) foot above grade.

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

13. Nonresidential Construction. New construction or substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including the basement) elevated to one (1) foot above the base floor elevation or, together with attendant utility and sanitary facilities, shall:

   a. Be floodproofed so that below 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;

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 14.20.050(B)(1)(b); and

e. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one (1) foot below the floodproofed level (e.g., a building constructed to the base flood level will be rated as one (1) foot below that level).

14. Manufactured Homes.

a. All manufactured homes to be placed or substantially improved on sites:

i. Outside of a manufactured home park or subdivision,

ii. In a new manufactured home park or subdivision,

iii. In an expansion to an existing manufactured home park or subdivision, or

iv. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood;

shall be elevated on a permanent foundation such that the finished floor of the manufactured home is elevated to a minimum 18 inches (46 cm) above the base flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

b. Manufactured homes to be placed or substantially

improved on sites in an existing manufactured home park or subdivision within Zones A1-30, AH, and AE on the community's FIRM that are not subject to the above manufactured home provisions be elevated so that either:

i. The finished floor of the manufactured home is elevated to a minimum of 18 inches (46 cm) above the base flood elevation, or

c. 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 be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

15. Crawlspace construction. Below grade crawlspace construction is permitted within the floodplain provided that applicable National Flood Insurance Program (NFIP) specifications, as found in FEMA Technical Bulletin 11-01, are met. More detail is provided by FEMA Technical Bulleting 11-01, including these specifications:

a. 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 openings stated in Subsection (b) below. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five (5) 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.

b. 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 (1) foot above the lowest adjacent exterior grade.

c. 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.

d. 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.

e. The interior grade of a crawlspace below the BFE must not be more than two (2) feet below the lowest adjacent exterior grade.

f. 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 (4) 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.

g. 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.

h. The velocity of floodwaters at the site should not exceed five (5) feet per second for any crawlspace. For velocities in excess of five (5) feet per second, other foundation types should be used.

16. Floodways.

a. Located within areas of special flood hazards established in this Section are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion

potential, the following provisions apply:

i. Prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during that occurrence of the base flood discharge.

b. If Subsection 14.20.050(C)(1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this Subsection (14.20.050, "Provisions For Flood Hazard Reduction").

c. Projects for stream habitat restoration may be permitted in the floodway provided:

i. The project qualifies for a Department of the Army, Portland District Regional General Permit for Stream Habitat Restoration (NWP-2007-1023); and

d. A qualified professional (a Registered Professional Engineer; or staff of NRCS; the county; or fisheries, natural resources, or water resources agencies) has provided a feasibility analysis and certification that the project was designed to keep any rise in 100-year flood levels as close to zero as practically possible, given the goals of the project; and

e. No structures would be impacted by a potential rise in flood elevation; and

f. An agreement to monitor the project, correct problems, and ensure that flood carrying capacity remains unchanged is included as part of the local approval.

g. New installation of manufactured dwellings is prohibited (2002 Oregon Manufactured Dwelling and Park Specialty Code). Manufactured dwellings may only be located in floodways according to one of the following conditions:

i. If the manufactured dwelling already exists in the floodway, the placement was permitted at the time of the original installation, and the continued use is not a threat to life, health, property, or the general

welfare of the public; or

ii. A new manufactured dwelling is replacing an existing manufactured dwelling whose original placement was permitted at the time of installation, and the replacement home will not be a threat to life, health, property, or the general welfare of the public and meets the following criteria:

g. As required by 44 CFR Chapter 1, Subpart 60.3(d)(3), it must be demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the manufactured dwelling and any accessory buildings, accessory structures, or any property improvements (encroachments) will not result in any increase in flood levels during the occurrence of the base flood discharge;

h. The replacement manufactured dwelling and any accessory buildings or accessory structures minimum of 18 inches (46 cm) above the BFE as identified on the Flood Insurance Rate Map;

i. The replacement manufactured dwelling is placed and secured to a foundation support system designed by an Oregon professional engineer or architect and approved by the authority having jurisdiction;

j. The replacement manufactured dwelling, its foundation supports, and any accessory buildings, accessory structures, or property improvements (encroachments) do not displace water to the degree that it causes a rise in the water level or diverts water in a manner that causes erosion or damage to other properties;

k. The location of a replacement manufactured dwelling is allowed by the local planning department's ordinance; and

l. Any other requirements deemed necessary by the authority having jurisdiction.

17. In areas where a regulatory floodway has not been designated in a non-tidally influenced area, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1-A30 or AE on the community FIRMs, 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.

18. Coastal High Hazard Area. Located within areas of special flood hazards established in Subsection 14.32.040 above are "Coastal High Hazard Areas", designated as Zones V1-V30, VE, and/or V. These areas have special flood hazards associated with high velocity waters from tidal surges and, therefore, in addition to meeting all provisions in this Ordinance and the State Building Code, the following provisions shall apply:

    a. All new construction and substantial improvements in Zones V1 - V30 and VE (V if base flood elevation data is available) shall be elevated on pilings and columns so that:

    b. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to at least one foot above the base flood elevation; and

    c. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a 1% chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

    d. A registered professional engineer or architect shall develop or review the structural design specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of (a) and (b) above.

    e. Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures in Zones V1 - V30 and VE, whether or not such structures contain a basement. The local administrator shall maintain a record of all such information.

    f. All new construction shall be located landward of the

reach of mean high tide.

g. Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this Section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls that exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

    i. Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and

    ii. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). Maximum wind and water loading values to be used in this determination shall each have a 1% chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

h. If breakaway walls are utilized, such enclosed space shall be usable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation.

    i. Prohibit the use of fill for structural support of buildings.

j. Prohibit man-made alteration of sand dunes which would increase potential flood damage.

k. Recreational vehicles placed on sites within Zones V1-30, V, and VE on the community's FIRM shall either:

i. Be on the site for fewer than 180 consecutive days.

ii. 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

iii. Meet the requirements of Section 14.20.020 (Administration) and (1) through (8) of this Subsection.

19. For construction of new essential and new special occupancy structures as defined in ORS 455.446 and 447, refer to the statutes which state that such structures may not be constructed in the Tsunami Inundation Zone. The Tsunami Inundation Zone inclues V, A, and potentially other flood zones. If an exception is granted pursuant to the statutes, then the Coastal High Hazard Area construction standards outlined in this subsection shall apply.

20. Areas of Shallow Flooding (AO Zone). In all areas of special flood hazards designated as areas of shallow flooding, the following provisions shall apply:

a. All new construction and substantial improvements of residential structures and manufactured homes within AO zones shall have the lowest floor (including basement) elevated above the highest adjacent grade to the building by one foot or more above the depth number specified on the FIRM or by at least two (2) feet if no depth number is specified on the FIRM.

b. All new construction and substantial improvements of nonresidential structures within AO zones shall either:

i. Have the lowest floor (including the basement) elevated above the highest adjacent grade to the building by one foot or more above the depth number specified on the FIRM or by at least two (2) feet if no depth number is specified on the FIRM; or

ii. Together with attendant utility and sanitary facilities, be completely flood-proofed to or above the level designated in Subsection 14.20.050(B)(2) 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 effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this Subsection are satisfied.

iii. Adequate drainage paths around structures on slopes shall be required to guide floodwaters around and away from proposed structures.

c. Crawlspace construction. Below-grade crawlspace construction is permitted within the floodplain provided that applicable National Flood Insurance Program (NFIP) specifications found in FEMA Bulletin TD-1101 are met.

14.20.060 <u>Appeals and Variance Procedures</u>.

A. The Planning Commission shall hear and decide appeals when it is alleged that there is an error in any interpretation, requirement, decision, or determination in the enforcement or administration of this Code. Such appeals shall be granted only if consistent with the standards of 44 CFR Chapter 60.6 of the rules and regulations of the National Flood Insurance Program (44 CFR Chapter 1, Subchapter B) as adopted through January 1, 2009.

B. Variances.

1. Variances shall be issued or denied in accordance with the procedures for a Planning Commission level variance and subject to the following criteria:

a. There is a good and sufficient cause for the variance. Examples of good and sufficient cause include the reconstruction, rehabilitation or restoration of historic structures (that are listed in the National Register of Historic Places, state inventory of Historic Places, or that contribute to a historic district) or a functionally-dependent use (a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water). In considering this criterion, the Planning Commission shall consider:

b. The importance of the services provided by the facility to the community.

c. The necessity to the facility of a waterfront location, where applicable.

d. The availability of alternative locations for the use that are not subject to flooding.

e. The compatibility of the use with existing and anticipated development.

2. Failure to grant the variance would result in an exceptional hardship to the applicant based on exceptional, unusual, and/or peculiar circumstances of the property. For the reconstruction, rehabilitation or restoration of historic structures (that are listed in the National Register of Historic Places, state inventory of Historic Places, or that contribute to a historic district) or for functionally-dependent uses (a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water) only practical difficulties resulting from the failure to grant the variance rather than exceptional hardship are required.

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

4. The variance is the minimum necessary, considering the flood hazard, to afford relief.

5. The applicant for an approved variance shall be notified in writing that approval of the variance will result in increased flood insurance purchase premium rates, up to $25 per $100 coverage.

14.21.001 GEOLOGIC HAZARDS OVERLAY*

14.21.010 **Purpose.** The purpose of this section is to promote the public health, safety, and general welfare by minimizing public and private losses due to earth movement hazards and limiting erosion and related environmental damage, consistent with Statewide Planning Goals 7 and 18, and the Natural Features Section of the Newport Comprehensive Plan.

14.21.020 **Applicability of Geologic Hazards Regulations.**

A, The following are areas of known geologic hazards or are potentially hazardous and are therefore subject to the requirements of Section 14.21.001:

1. Bluff or dune backed shoreline areas within high or active hazard zones identified in the Department of Geology and Mineral Industries (DOGAMI) Open File Report O-04-09 Evaluation of Coastal Erosion Hazard Zones along Dune and Bluff Backed Shorelines in Lincoln County, Oregon: Cascade Head to Seal Rock, Technical Report to Lincoln County, dated 2004.

2. Active or potential landslide areas, prehistoric landslides, or other landslide risk areas identified in the DOGAMI Open File Report O-04-09.

3. Any other documented geologic hazard area on file, at the time of inquiry, in the office of the City of Newport Community Development Department.

A "documented geologic hazard area" means a unit of land that is shown by reasonable written evidence to contain geological characteristics/conditions which are hazardous or potentially hazardous for the improvement thereof.

B. The DOGAMI Open File Report O-04-09 is not intended as a site specific analysis tool. The City will use DOGAMI Open File Report O-04-09 to identify when a Geologic Report is needed on property prior to development. A Geologic Report that applies to a specific property and that identifies a proposed development on the property as being in a different hazard zone than that identified in DOGAMI Open File Report O-04-09, shall control over DOGAMI Open File Report O-04-09 and shall establish the bluff or dune-backed shoreline hazard zone or landslide risk area that applies to that specific property. The time restriction set forth in subsection 14.21.030 shall not apply to such determinations.

C. In circumstances where a property owner establishes or a

Geologic Report identifies that development, construction, or site clearing (including tree removal) will occur outside of a bluff or dune-backed shoreline hazard zone or landslide risk areas, as defined above, no further review is required under this Section 14.21.001.

D. If the results of a Geologic Report are substantially different than the hazard designations contained in DOGAMI Open File Report O-04-09 then the city shall provide notice to the Department of Geology and Mineral Industries (DOGAMI) and Department of Land Conservation and Development (DLCD). The agencies will have 14 days to provide comments and the city shall consider agency comments and determine whether or not it is appropriate to issue a Geologic Permit.

*(*Section amended by Ordinance No. 1601 (5-20-91) and then repealed and replaced in its entirety by Ordinance No. 2017 (8-17-2011).)*

14.21.030 **Geologic Permit Required.** All persons proposing development, construction, or site clearing (including tree removal) within a geologic hazard area as defined in 14.21.010 shall obtain a Geologic Permit. The Geologic Permit may be applied for prior to or in conjunction with a building permit, grading permit, or any other permit required by the city.

Unless otherwise provided by city ordinance or other provision of law, any Geologic Permit so issued shall be valid for the same period of time as a building permit issued under the Uniform Building Code then in effect.

14.21.040 **Exemptions.** The following activities are exempt from the provisions of this chapter:

A. Maintenance, repair, or alterations to existing structures that do not alter the building footprint or foundation;

B. An excavation which is less than two feet in depth, or which involves less than twenty-five cubic yards of volume;

C. Fill which is less than two feet in depth, or which involves less than twenty-five cubic yards of volume;

D. Exploratory excavations under the direction of a registered engineering geologist or geotechnical engineer;

E. Construction of structures for which a building permit is not required;

F. Removal of trees smaller than 8-inches dbh (diameter breast

height);

G. Removal of trees larger than 8-inches dbh (diameter breast height) provided the canopy area of the trees that are removed in any one year period is less than twenty-five percent of the lot or parcel area;

H. Forest practices as defined by ORS 527 (the State Forest Practices Act) and approved by the state Department of Forestry;

I. Maintenance and reconstruction of public and private roads, streets, parking lots, driveways, and utility lines, provided the work does not extend outside the area previously disturbed;

J. Installation of utility lines not including electric substations; and

K. Emergency response activities intended to reduce or eliminate an immediate danger to life, property, or flood or fire hazard.

14.21.050 **Application Submittal Requirements.** In addition to a land use application form with the information required in Section 14.43.020, an application for a Geologic Permit shall include the following:

A. A site plan that illustrates areas of disturbance, ground topography (contours), roads and driveways, an outline of wooded or naturally vegetated areas, watercourses, erosion control measures, and trees with a diameter of at least 8-inches dbh (diameter breast height) proposed for removal; and

B. An estimate of depths and the extent of all proposed excavation and fill work; and

C. Identification of the bluff or dune-backed hazard zone or landslide hazard zone for the parcel or lot upon which development is to occur. In cases where properties are mapped with more than one hazard zone, a certified engineering geologist shall identify the hazard zone(s) within which development is proposed; and

D. A Geologic Report prepared by a certified engineering geologist, establishing that the site is suitable for the proposed development; and

E. An engineering report, prepared by a licensed civil engineer, geotechnical engineer, or certified engineering geologist (to

the extent qualified), must be provided if engineering remediation is anticipated to make the site suitable for the proposed development.

14.21.060 Geologic Report Guidelines. Geologic Reports shall be prepared consistent with standard geologic practices employing generally accepted scientific and engineering principles and shall, at a minimum, contain the items outlined in the Oregon State Board of Geologist Examiners "Guidelines for Preparing Engineering Geologic Reports in Oregon," in use on the effective date of this section. Such reports shall address subsections 14.21.035 to 14.21.045, as applicable. For oceanfront property, reports shall also address the "Geological Report Guidelines for New Development on Oceanfront Properties," prepared by the Oregon Coastal Management Program of the Department of Land Conservation and Development, in use as of the effective date of this section. All Geologic Reports are valid as prima facie evidence of the information therein contained for a period of five (5) years. They are only valid for the development plan addressed in the report. The city assumes no responsibility for the quality or accuracy of such reports.

14.21.070 Construction Limitations within Geologic Hazard Areas.

A. New construction shall be limited to the recommendations, if any, contained in the Geologic Report; and

   1. Property owners should consider use of construction techniques that will render new buildings readily moveable in the event they need to be relocated; and

   2. Properties shall possess access of sufficient width and grade to permit new buildings to be relocated or dismantled and removed from the site.

14.21.080 Prohibited Development on Beaches and Foredunes. Construction of residential, commercial, or industrial buildings is prohibited on beaches, active foredunes, other foredunes that are conditionally stable and subject to ocean undercutting or wave overtopping, and interdune areas (deflation plains) that are subject to ocean flooding. Other development in these areas shall be permitted only if a certified engineering geologist determines that the development is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves and is designed to minimize adverse environmental effects. Such a determination shall consider:

A. The type of use proposed and the adverse effects it might have on the site and adjacent areas;

B. Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;

C. Methods for protecting the surrounding area from any adverse effects of the development; and

D. Hazards to life, public and private property, and the natural environment that may be caused by the proposed use.

14.21.090 **Erosion Control Measures.** In addition to completing a Geologic Report, a certified engineering geologist shall address the following standards.

A. Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction;

B. Development plans shall minimize cut or fill operations so as to prevent off-site impacts;

C. Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;

D. Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;

E. Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;

F. Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching, seeding, planting, or armoring with rolled erosion control products, stone, or other similar methods;

G. All drainage provisions shall be designed to adequately carry existing and potential surface runoff from the twenty year frequency storm to suitable drainageways such as storm drains, natural watercourses, or drainage swales. In no case shall runoff be directed in such a way that it significantly decreases the stability of known landslides or areas

identified as unstable slopes prone to earth movement, either by erosion or increase of groundwater pressure.

H. Where drainage swales are used to divert surface waters, they shall be vegetated or protected as necessary to prevent offsite erosion and sediment transport;

I. Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:

1. Energy absorbing devices to reduce runoff water velocity;

2. Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;

3. Dispersal of water runoff from developed areas over large undisturbed areas;

J. Disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures; and

K. Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, site monitoring and clean-up activities.

14.21.100 **Storm water Retention Facilities Required.** For structures, driveways, parking areas, or other impervious surfaces in areas of 12% slope or greater, the release rate and sedimentation of storm water shall be controlled by the use of retention facilities as specified by the City Engineer. The retention facilities shall be designed for storms having a 20-year recurrence frequency. Storm waters shall be directed into a drainage with adequate capacity so as not to flood adjacent or downstream property.

14.21.110 **Approval Authority.** An application shall be processed and authorized using a Type I decision making procedure.

14.21.120 **Appeals of Geologic Permits.** Any appeal from the issuance or denial of a Geologic Permit shall be filed within 15 calendar days of the date the city issues a final order as

provided by Section 14.43.050. Appellants challenging substantive elements of a Geologic Report shall submit their own analysis prepared by a certified engineering geologist. Such report shall be provided within 30 days of the date the appeal is filed. A failure to submit a report within this timeframe is grounds for dismissal of the appeal.

14.21.130 **Certification of Compliance**. No development requiring a Geologic Report shall receive final approval (e.g. certificate of occupancy, final inspection, etc.) until the city receives a written statement by a certified engineering geologist indicating that all performance, mitigation, and monitoring measures contained in the report have been satisfied. If mitigation measures involve engineering solutions prepared by a licensed professional engineer, then the city must also receive an additional written statement of compliance by the design engineer.

14.21.140 **Removal of Sedimentation.** Whenever sedimentation is caused by stripping vegetation, grading, or other development, it shall be the responsibility of the person, corporation, or other entity causing such sedimentation to remove it from all adjoining surfaces and drainage systems and to return the affected areas to their original or equal condition prior to final approval of the project.

14.21.150 **Applicability of Nonconforming Use Provisions**.

A. A building or structure that is nonconforming under Section 14.32.001 of the Zoning Ordinance that is destroyed by fire, other casualty or natural disaster shall be subject to the casualty loss provisions contained in Section 14.32.001 of the Zoning Ordinance. Application of the provisions of this section to a property shall not have the effect of rendering it nonconforming.

B. A building or structure that conforms to the Zoning Ordinance that is destroyed by fire, other casualty or natural disaster may be replaced with a building or structure of up to the same size provided a Geologic Report is prepared by a certified engineering geologist. A Geologic Report prepared pursuant to this subsection shall adhere to the Geologic Report Guidelines outlined in subsection 14.21.030. All recommendations contained in the report shall be followed, however the report need not establish that the site is suitable for development as required in subsection 14.21.050(D). An application filed under this subsection shall be processed and authorized as a ministerial action by the Community Development Department.

14.22.001 AIRPORT RESTRICTED AREA

14.22.010 Definitions. As used in this section, unless the context otherwise requires:

A. Airport means the Newport Municipal Airport.

B. Airport Elevation means 161 feet above mean sea level.

C. Airport Reference Point means the point established as the approximate geographic center of the airport landing area and so designated.

D. Approach Surface means a surface longitudinally centered on the extended runway center line, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in the Section. In plan, the perimeter of the approach surface coincides with the perimeter of the approach zone.

D. Conical Surface means a surface extending outward ad upward from the periphery of the horizontal surface at a slope of 10 to 1 for a horizontal distance of 4,000 feet.

E. Hazard To Air Navigation means an obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.

F. Height. For the purpose of determining the height limits in all zones set forth in this Code and shown on the Zoning Map, the datum shall be mean sea level elevation unless otherwise specified.

G. Horizontal Surface means a horizontal plane 150 feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.

H. Instrument Runway means a runway equipped or to be equipped with electronic or visual air navigation aids adequate to permit the landing of aircraft under restricted visibility conditions.

I. Larger Than Utility Runway means a runway that is constructed for an intended to be used by propeller-driven aircraft of greater than 12,500 pounds maximum gross weight and jet-powered aircraft.

J. Obstruction. Any structure, growth, or other object, including a mobile object, that exceeds a limiting height set forth in this section.

K. Precision Instrument Runway (Runway 16-34) means a runway having an instrument approach procedure utilizing an Instrument Landing System (ILS) or a Precision Approach Radar (PAR). It also means a runway for which a precision approach system is planned and is so indicated on an approved airport layout plan or any other planning document.

L. Primary Surface means a surface longitudinally centered on a runway. When the runway has a specifically prepared hard surface, the primary surface extends 200 feet beyond each end of the runway. For military runways, or when the runway has no specially prepared hard surface (or planned hard surface), the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.

M. Runway means a defined area on an airport prepared for landing and takeoff of aircraft along is length.

N. Structure means an object, including a mobile object, constructed or installed, including - but without limitation - buildings, towers, cranes, smokestacks, earth formations, and overhead transmission lines.

O. Transitional Surfaces. These surfaces extend outward to 90° angles to the runway center line, and the runway centerline extends at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at 90° angles to the extended runway centerline.

P. Tree means any object of natural growth.

Q. Utility Runway (Runway 2-20) means a runway that is constructed for and intended to be used by propeller-driven aircraft of 12,500 pounds maximum gross weigh and less.

R. Visual Runway (Runway 2-20) means a runway intended solely for the operation of aircraft using visual approach procedures.

14.22.020 Airport Zones. In order to carry out the provisions of this Code, there are hereby created and established certain

zones that include all of the land lying within the Instrument Approach Zones, Non-Instrument Approach Zones, Transition Zones, Horizontal Zones, and Conical Zones. Such areas and zones are shown on the "Layout Plan" and "Approach and Clear Zone Plan" of the Newport Municipal Airport, consisting of three sheets prepared by George M. Baldwin & Associates (dated August 24, 1979), which is made part of this Ordinance. An area located in more than one of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined as follows:

A. Utility Runway Visual Approach Zones (both ends of Runway 2-20). The inner edge of this approach coincides with the width of the primary surface and is 250 feet wide. The approach zone expands outward uniformly to the width of 1,250 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

B. Runway Larger Than Utility Visual Approach Zone (Runway 34). The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 1,500 feet at a horizontal distance of 5,000 feet from the primary surface. Its centerline is the continuation of the runway.

C. Precision Instrument Runway Approach Zone (Runway 16). The inner edge of this approach zone coincides with the width of the primary surface and is 1,000 feet wide. The approach zone expands outward uniformly to a width of 16,000 feet at a horizontal distance of 50,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

D. Transitional Zones. The transitional zones are the areas beneath the transitional surfaces.

E. Horizontal Zones. The horizontal zone is established by swinging arcs of 5,000 feet radii for all runways designated utility or visual and 10,000 feet for all others from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal zone does not include the approach and transitional zones.

F. Conical Zone. The conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward there from a horizontal distance of 4,000

feet.

14.22.030 **Airport Zone Height Limitations.** Except as otherwise provided in this Code, no structure shall be erected, altered, or maintained, and no tree shall be allowed o grow in any zone created by this Code to a height in excess of the applicable height herein established for such zone. Such applicable height limitations are hereby established for each of the zones in question as follows:

A. Utility Runway Visual Approach Zone (Runway 2-20). Slopes 20 feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.

B. Runway Larger Than Utility Visual Approach Zone (Runway 34). Slopes 20 feet outward for each foot upward beginning at the end of an at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.

C. Precision Instrument Runway Approach Zone (Runway 16). Slopes 50 feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline; thence slopes upward 40 feet horizontally for each foot vertically to an additional horizontal distance of 40,000 feet along the extended runway centerline.

D. Transitional Zones. Slopes seven (7) feet outward for each foot upward beginning at the sides of an at the same elevation as the primary surface and the approach surface and extending to a height of 150 feet above the airport elevation, which is 100 feet above mean sea level. In addition to the foregoing, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and the same elevation as the approach surface and extending to where they intersect the conical surface. Where the precision instrument runway approach zone projects beyond the conical zone, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and the same elevation as the approach surface and extending a horizontal distance of 5,000 feet at 90° angles to the extended runway centerline.

E. Horizontal Zone. Established at 150 feet above the airport elevation or at a height of 311 feet above mean sea level.

F. Conical Zone. Slopes 20 feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation.

G. Excepted Height Limitations. Nothing in this Ordinance shall be construed as prohibiting the construction or maintenance of any structure or growth of any tree to a height up to 35 feet above the surface of the land.

14.22.040 Use Restriction. Notwithstanding any other provisions of this Code, no use may be made of land or water within any zone established by this Code in such a manner as to crate electrical interference with navigational signals or radio communications between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.

14.22.050 Nonconforming Uses

A. Regulations Not Retroactive. The regulations prescribed in this Code shall not be construed to require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulations as of the effective date of this Ordinance, or otherwise interfere with the continuance of a nonconforming use. Nothing contained herein shall require any change in the construction, alteration, or intended use of any structure, the construction or alteration of which has begun prior to the effective date of this Ordinance and is diligently prosecuted.

B. Marking and Lighting. Notwithstanding the preceding provision of this Section, the owner of any existing nonconforming structure or tree is hereby required to permit the installation, operation, and maintenance thereon of such markers and lights as shall be deemed necessary by the City Manager to indicate to the operators of aircraft in the vicinity of the airport and presence of such airport obstruction. Such markers and lights shall be installed, operated, and maintained at the expense of the City of Newport.

14.22.060 Permits

A. Future Uses. Except as specifically provided in paragraphs 1, 2, and 3, no material change shall be made in the use of land, no structure shall be erected or otherwise established, and no tree shall be planted in any

zone hereby created unless a permit therefore shall have been applied for and granted. Each application for a permit shall indicate the purpose for which the permit is desired, with sufficient particularity to permit it to be determined whether the resulting use, structure, or tree would conform to the regulations herein prescribed. If such determination is in the affirmative, the permit shall be granted. No permit for a use inconsistent with the provisions of this Ordinance shall be granted unless a variance has been approved in accordance with Section 14.33.001, Adjustments and Variances, and Section 14.43.001, Procedural Requirements.*

1. In the area lying within the limits of the horizontal zone and conical zone, no permit shall be required for any tree or structure less than 50 feet of vertical height above the ground, except when, because of terrain, land contour, or topographic features, such tree or structure would extend above the height limits prescribed for such zones.

2. In areas lying within the limits of the approach zones but at a horizontal distance of not less than 4,200 feet from each end of the runway, no permit shall be required for any tree or structure less than 50 feet of vertical height above the ground, except when such tree or structure would extend above the height limit prescribed for such approach zones.

3. In the areas lying within the limits of the transition zones beyond the perimeter of the horizontal zone, no permit shall be required for any tree or structure less than 50 feet of vertical height above the ground, except when such tree or structure, because of terrain, land contour, or topographic features, would extend above the height limit prescribed for such transition zones.

Nothing contained in any of the foregoing exceptions shall be construed as permitting or intending to permit any construction, alteration of any structure, or growth of any tree in excess of any of the height limits established by this Ordinance except as set forth in 14.22.030 above.

*(*Amended by Ordinance No. 1989 (1-1-10).)*

B. Existing Uses. No permit shall be granted that would allow the establishment or creation of an obstruction or permit a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of

this Code, or any amendments thereto, or than it is when the application for a permit is made. Except as indicated, all applications for such a permit shall be granted.

C. Nonconforming Uses Abandoned or Destroyed. Wherever the City Manager determines that a nonconforming tree or structure has been abandoned or more than 80% torn down, physically deteriorated, or decayed, no permit shall be granted that would allow such tree or structure to exceed the applicable height limit or otherwise deviate from the zoning regulations.

D. Variances. Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use property not in accordance with the regulations prescribed in this Code may apply to the Planning Commission for a variance from such regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variances shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship, and relief granted will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this Code. Variances will be approved in accordance with Section 14.33.001, Adjustments and Variances, and consistent with Section 14.43.001, Procedural Requirements.* Additionally, no application for variance to the requirements of this Code may be considered by the Planning Commission unless a copy of the application has been furnished to the Airport Commission and Airport Manager for advice as to the aeronautical effects of this variance. If the Airport Manager and Airport Commission do not respond to the application within 30 days after receipt, the Planning Commission may act on its own to grant or deny said application.

*(*Sentence added by Ordinance No. 1989 (1-1-10).)*

E. Obstruction Marking and Lighting. Any permit or variance granted may, if such action is deemed advisable to effectuate the purpose of this Code and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to install, operate, and maintain, at the owner's expense, such markings and lights as may be necessary. If deemed proper by the City Council, this condition may be modified to require the owner to permit the City of Newport, at its own expense, to install, operate,

and maintain the necessary markings and lights.

14.22.070 **Lane Uses Within Airport Zones.** All structures and uses within the Airport Zones shall conform to the requirements of Federal Aviation Agency Regulation FAR-77, or successor, and to other federal and state laws regulating structural height, smoke, steam, or dust, and other hazards to flight, air navigation, or public health, safety and welfare.

Within the various airport zones, certain uses are compatible and certain uses are not because of possible negative effects on either the airport or the use. Such effects on the airport may include danger to property or life from accident, noise, and vibration. Because of these factors, the various underlying zones have been further restricted by the following airport zones:

14.22.080 **Obstruction Zone.** Includes all areas within conical surface area (14.18.010 to 14.18.060).

14.22.090 **Approach Zone.** To assure safety, uses in the approach safety zone shall not attract large groups of people. Places of public assembly are therefore prohibited. Most residential uses are also prohibited. Where residential development is already in place, low density is preferred. Retirement homes or other residential institutions are prohibited. While manufacturing is generally quite compatible, such uses are subject to the issuance of a conditional use permit in accordance with the provisions of Section 14.33.001, Conditional Uses, and Section 14.43.001, Procedural Requirements, and shall be reviewed for potential operations hazards, electrical interference, high intensity lighting, bird attractions, smoke, glare, or other interferences.* Transportation uses are generally compatible as are communications (except radio and television transmission) and utilities (except petroleum storage, electric power plants and lines, and solid waste disposal). Industrial and wholesale uses are generally compatible; however, retail establishments such as restaurants and concentrated retail commercial developments which attract large numbers of people are prohibited. Offices and services are compatible, except rest homes and hospitals. Recreational uses are allowed subject to the issuance of a conditional use permit in accordance with the provisions of Section 14.33.001, Conditional Uses, and Section 14.43.001, Procedural Requirements, (excluding public assembly and other high intensity uses, which are prohibited).** Resource production, including agriculture and undeveloped land, is generally compatible. (Aggregate extraction - if it will result in ponding and other uses posing a bird strike hazard - is excluded.)

*(*Sentence Amended by Ordinance No. 1989 (1-1-10).*
***Sentence Amended by Ordinance No. 1989 (1-1-10).)*

14.22.100 **Clear Zones.** Clear zones are to be kept clear with no development. Agriculture that does not attract birds is compatible, but no structures are allowed. Above ground power lines are prohibited. Most other uses are excluded. Wherever possible, the clear zone should be free of any construction or obstacle and should be minimally used by people.

14.22.110 **Moderate Noise Impact (Ldn 55-65) Zones.** Schools, hospitals, nursing homes, theaters, auditoriums, residential developments, and other places of public assembly shall have noise insulation in accordance with the State of Oregon's Department of Environmental Quality (DEQ) standards and recommendations. Orientation of housing, screening with fences or berms, or other treatment shall be used to reduce awareness of the airport.*

14.22.120 **Substantial Noise Impact (Ldn 65+) Zones.** Retail, office, or service uses shall not be developed in this substantially impacted area except by conditional use where it can be shown that adequate noise insulation shall be provided and the use is necessary in that location. While motels or other transient lodging with appropriate insulation can be excluded in this zone, single and multi-family housing and mobile home parks are excluded. Schools, libraries, churches, hospitals, nursing homes, and other noise sensitive uses are also to be excluded. Though many recreational uses are compatible, these uses are conditional and shall be reviewed for noise sensitivity and appropriate measures taken. Non-noise sensitive industry, manufacturing, wholesaling, and warehousing, retailing, agriculture, forestry, fishing, mining, and open spaces are allowed uses. Uses mentioned as conditional in this section are allowed subject to the issuance of a conditional use permit in accordance with the provisions of Section 14.33.001, Conditional Uses, and Section 14.43.001, Procedural Requirements.**

*(*Amended by Ordinance No. 1344 (11-7-83).*
***Sentence Added by Ordinance No. 1989 (1-1-10).)*

14.22.130 Airport Development Zone

A. Purpose. The airport development zone is different from the other zones presented. The land in the immediate vicinity of the airport may be impacted by noise, safety hazards, pollution (not only from the aircraft but from autos accessing the facility), congestion, etc. The combination of these factors and others produce an environment that resembles an industrial setting. An airport requires an area for the

growth of the facility, and many types of industry can receive considerable travel and transportation advantage if they are located in close proximity to the airport. The Newport Municipal Airport property is, therefore, set aside and designated as an "airport development zone" to serve these purposes.

B. If the airport development zone grows over time, it should expand in areas impacted by the airport rather than expanding perpendicular to the runway along access routes or other features. It should serve as an airport buffer and include areas receiving severe noise impacts.

C. Residential uses other than transient lodging and recreational uses including high concentrations of people are excluded from this zone. Other uses which are acceptable, providing they do not violate any other zones, are airport-related and include appropriate sound reduction measures. Conditional Uses under "E" of this section shall follow the provisions of Section 14.33.001, Conditional Uses, and shall be decided using the appropriate Land Use Action decision process as provided by Section 14.43.001, Procedural Requirements.*

*(*Sentence Added by Ordinance No. 1989 (1-1-10).)*

D. Permitted Uses.

1. Accessory buildings and uses whose immediate presence is necessary to the property's aviation function.

2. Aircraft runways and taxiways.

3. Aircraft hangars, storage and tiedown areas.

4. Aircraft sales, repair, and service facilities.

5. Air control facilities.

6. Fuel storage facilities.

7. Parking facilities.

8. Open land for aviation clear zone.

9. Agriculture, excluding the commercial raising of animals that would be adversely affected by aircraft passing overhead.

10. Landscape nurseries, cemeteries, or recreation areas

which do not include buildings or structures.

11. Roadways, parking areas, and storage yards located in such a manner that vehicle light will not make it difficult for pilots to distinguish between landing lights and vehicle lights, or result in glare, or in any other way impair visibility in the vicinity of the landing approach.

12. Water impoundment (no closer than 5,000 feet from the airport).

13. Pipeline.

14. Underground utility wire.

E. Conditional Uses.

1. A structure or building accessory for a permitted use.

2. A single-family dwelling, or a commercial or industrial use if permitted in the primary zoning district (subject to Subsection F Limitations).

3. Buildings and uses of public works, public service, or utility nature (subject to Subsection F Limitations).

4. Game preserve or reservation.

5. Airport dependent or related industrial or commercial uses.*

*(*Added by Ordinance No. 1603 (6-17-91).)*

F. Limitations.

1. No place of public assembly shall be permitted in an airport approach district.

2. The height of any structure shall be limited by requirements prescribed by the Planning Commission or by any other local ordinance or regulation.

3. Whenever there is a conflict in height limitations prescribed by this Code or another pertinent ordinance, the lowest height limitation fixed shall govern. Provided, however, that the height of other limitations and restrictions here imposed shall not apply to such structures or uses customarily employed for aeronautical purposes.

4. Notwithstanding any other provisions of this Code, no use may be made of land or water within any zone established by this Code in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the airport.