CITY OF NEWPORT

ORDINANCE NO. 2157

AN ORDINANCE AMENDING CHAPTER 14.21 OF THE NEWPORT MUNICIPAL CODE RELATED TO GEOLOGICALLY HAZARDOUS AREAS

WHEREAS, the City of Newport Zoning Ordinance, codified as Title XIV of the Newport Municipal Code (NMC), regulates new development and redevelopment in areas of known or potential geologic hazards; and

WHEREAS, those regulations, found in NMC Chapter 14.21, promote the public health, safety, and general welfare by minimizing public and private losses due to earth movement hazards and limiting erosion and related damage, consistent with Statewide Planning Goals 7 and 18 and the Natural Features Section, of the Environment Chapter of the Newport Comprehensive Plan; and

WHEREAS, on January 28, 2019, the Planning Commission considered a citizen request that it make targeted amendments to NMC Chapter 14.21 as it relates to development or redevelopment within active landslide areas; and

WHEREAS, the Planning Commission agreed that revisions were needed and held a work session on February 25, 2019 to refine the scope of the changes, which include (a) a requirement that a certified engineering geologist or geotechnical engineer outline the scope of exempt "exploratory excavations" in writing, and schematically, before the work is performed and provide oversight of the work; (b) that geologic reports required to inform new development or redevelopment be prepared in accordance with the most current guidelines issued by the Oregon State Board of Geologist Examiners; (c) a change to a 25-year design storm for new storm water retention facilities; and (d) the addition of a code section requiring geologic reports be peer reviewed in active landslide areas; and

WHEREAS, copies of the draft amendments were shared with certified engineering geologists and geotechnical engineers that have prepared geologic reports in accordance with NMC Chapter 14.21; and

WHEREAS, the Planning Commission held a public hearing on July 8, 2019 to consider public testimony and comment on the draft amendments and, at the conclusion of the hearing, passed a motion recommending the City Council adopt the amendments with minor revisions; and

WHEREAS, in making its recommendation, the Planning Commission concluded that the amendments satisfy the City's requirement that legislative amendments must be necessary and further the general welfare of the community because they will improve the quality of reporting, enhance project oversight, and ensure storm water is effectively managed, reducing the chances that resulting development in geologically hazardous areas will adversely impact the subject property or nearby parcels; and

WHEREAS, the City Council held a public hearing on October 7, 2019 regarding the question of the proposed revisions and continued the hearing on the amendments to November 4, 2019 in response to a request that the record be left open for written comment, with said comment period closing on October 21, 2019; and

WHEREAS, after considering the public testimony, both written and verbal, staff report, Planning Commission recommendation, and evidence and argument in the record, the City Council voted to adopt the amendments; and

WHEREAS, considering the challenges inherent to development in active landslide areas, including potential risks to life and property, the Council determined that it is necessary that the ordinance be put into effect immediately upon its passage; and

WHEREAS, information in the record, including affidavits of mailing and publication, demonstrate that appropriate public notification was provided for both the Planning Commission and City Council hearings.

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

Section 1. The above findings are hereby adopted as support for the amendments, below.

Section 2. Chapter 14.21 of the Newport Municipal Code is hereby amended as depicted in Exhibit "A."

Section 3. Declaration of Emergency. Newport Charter Section 17 provides that an ordinance may take effect less than 30 days after adoption if it contains an emergency clause. Given the challenges associated with developing in active landslide areas, including risks to life and property, it is necessary that this ordinance be effective immediately upon its passage. Therefore, it is hereby adjudged and declared that existing conditions are such that this Ordinance is necessary for the immediate preservation of the public peace, health, and safety of the City of Newport, and an emergency is hereby declared to exist and this Ordinance, and all provisions modifying the Ordinance referred to herein, shall be in full force and effect as of the date it is adopted.

Date adopted and read by title only: November 4, 2019.

Signed by the Mayor on November 5, 2019.

Dean H. Sawyer, Mayor

ATTEST:

Margaret M. Hawker, City Recorder

(Deleted language shown in ~~strikethrough~~ and new language is underlined. Staff comments are not a part of the amendments. They are preceded with the term "Staff" and are *italicized*.)

CHAPTER 14.21 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:

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.

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 and oversight of a ~~registered~~ certified engineering geologist or geotechnical engineer. A letter, and graphic diagram, from the certified engineering geologist or geotechnical engineer outlining the scope of work shall be submitted before earthwork is commenced;

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.

Staff: Sub-section D has been amended to require a letter outlining the scope of work before earthwork is commenced and to clarify that the certified engineering geologist or geotechnical engineer is to provide oversight through the course of the exploratory excavation.

14.21.050 Application Submittal Requirements

In addition to a land use application form with the information required in Section 14.52.020, 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 most recent edition of 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 14.21.070 to 14.21.090, 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.

Staff: Oregon State Board of Geologist Examiners guidelines are updated from time to time, with the most recent version dated 2014. Engineering geologists will use the most current version and the City code should reflect that practice.

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~~A certified engineering geologist, geotechnical engineer, or qualified civil engineer 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.

Staff: The change in this section was recommended by Dave Running, P.E., G.E. with Foundation Engineering. Geotechnical engineers and civil engineers are qualified to prepare erosion control plans, so this change gives applicants more options. Mr. Running's comments were received after the Planning Commission hearing.

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~~ when specified by the City Engineer. The retention facilities shall be designed for storms having a ~~20~~25-year recurrence frequency. Storm waters shall be directed into a drainage with adequate capacity so as not to flood adjacent or downstream property.

Staff: The Public Works Department settled on a more conservative 25-year design storm as the City standard after this code was last updated. They also do not require retention in all circumstances. The proposed changes reflect their current practices regarding storm water management.

14.21.110 Approval Authority

An application shall be processed and authorized using a Type I decision making procedure.

14.21.120 Peer Review within Active Landslide Zones

Upon receipt of an application for development within an active landslide zone, City shall refer the Geologic Report to a certified engineering geologist to perform a peer review during the 30-day period within which the application is reviewed for completeness. The peer reviewer shall conduct a site visit and confirm, in writing, that the Geologic Report was prepared in accordance with the requirements set forth in this Chapter. In the event the peer reviewer identifies the need for additional analysis or clarification, those comments shall be provided to the applicant so that they can be addressed by the Report's author.

In circumstances where a Geologic Report is accompanied by an engineering report , prepared by a licensed civil engineer, geotechnical engineer, or certified engineering geologist (to the extent qualified), that report shall be subject to peer review by an individual with equivalent qualifications in the same manner as described above.

City may require that a fee deposit be paid by the applicant to off-set the cost of the peer review, with the amount of the deposit being set by City Council resolution.

Staff: This section is drafted to provide for peer review in active landslide areas, as discussed at the 1/28/19 work session. The Commission expressed a preference that the professional be independent of the applicant, and since their feedback may result in revisions to the application, it is important that the review occur before an application is deemed complete. At the July 8, 2019 public hearing, the Commission requested that peer reviewers be required to conduct a site visit. A fee resolution would be prepared to address the fee deposit issue if this moves forward.

14.21.~~120~~130 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 14.52.050. 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~~140 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~~150 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~~160 Applicability of Nonconforming Use Provisions

A. A building or structure that is nonconforming under Section 14.32 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 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.