

## **Title 15**

### **BUILDINGS AND CONSTRUCTION**

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## Chapter 15.04

### BUILDING CODES

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Ordinance History: 1247, 1309

#### 15.04.010 City code administration.

The city shall provide for the administration of a plan checking, permit and inspection program for structural and mechanical work but not for plumbing or electrical. This city program is applicable to public building, including state building, as well as private building.

#### 15.04.020 Excavating and grading.

Chapter 70, Excavation and Grading, of the appendix to the 1991 edition of the Uniform Building Code, published by the International Conference of Building Officials, shall be in effect in this city.

#### 15.04.030 Local interpretation.

In addition to the provisions of Section 106 of the Structural Specialty Code, and similar provisions of other specialty codes, the building official may approve a material or a method of construction not specifically prescribed by this chapter; provided, he or she finds that the proposed design is satisfactory and that the material, method, or work offered is, for the purpose intended, at least the equivalent of that specifically prescribed by this chapter in quality, effectiveness, fire resistance, durability, safety and energy conservation, and that the director of the Department of Commerce has not issued a report disapproving the material or method for the purpose. The building official may refer the proposed design to the city board of appeals as provided in Section 204 (a) of the Structural Specialty Code, and a person affected by a ruling of the building official may appeal such ruling to the board of appeals within thirty (30) days of the date of the ruling. The provisions of this section shall not be interpreted to preclude a person from requesting a ruling from the director of the Department of Commerce prior to submitting an application to the city for a permit or after withdrawing a previously submitted application.

#### 15.04.040 Board of appeals.

For application in this city, subsection (a) of Section 204 of the Structural Specialty Code and subsection (1) of Section 203 of the Mechanical Specialty Code are replaced with the following:

In order to determine the suitability of alternate materials and methods of construction and to provide for reasonable interpretations of the provisions of standards applicable to building and related activities administered through this city, there is created a board of appeals consisting of five voting members who are qualified by experience and training to pass upon matters pertaining

to building and related activities. The building official shall be an ex officio nonvoting member and shall act as secretary of the board. The board of appeals shall be appointed by the mayor and hold office at his pleasure. The board shall adopt reasonable rules and regulations for conducting its investigations and shall render all decisions and findings in writing to the building official with a duplicate copy to the appellant. The administrator of the State Building Codes Division shall be furnished copies of decisions interpreting state building code requirements.

15.04.050 Compliance required.

It is unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain, any building or structure in the city, or cause the same to be done contrary to, or in violation of, any of the provisions of this chapter.

15.04.060 Violation--Penalty.

Violation of this chapter is punishable in accordance with Chapter 1.16.

## Chapter 15.08

### DANGEROUS BUILDINGS

#### Sections:

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Ordinance History: #1339, 1357

15.08.010 Short title.

This chapter shall be known as the "dangerous building ordinance" of the city.

15.08.020 Definitions.

For the purposes of this chapter, words used in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine includes the masculine. "And" indicates that all connected items or provisions apply. "Or" indicates that the connected items or provisions may apply singly or in combination. Terms, words, phrases and their derivatives used, but not specifically defined in this chapter, shall have the meanings commonly accepted in the community.

"Accessory structure" means any structure not intended for human occupancy which is located on residential property. Accessory structures may be attached to or detached from the residential structure. Examples of accessory structures include: garages, carports, sheds, and other non-dwelling buildings; decks, awnings, heat pumps, fences, trellises, flag poles, tanks, towers, exterior stairs and walkways, and other exterior structures on the property.

"Building" means any structure used or intended to be used for supporting or sheltering any use or occupancy.

"Building official" means the city manager of the city of Bandon or the city manager's designee.

"City official" means and includes any city councilor, mayor, city employee, or any agency or employee of any agency under contract to the city for services.

"Dangerous building" means any building or structure or portion thereof determined by the building official or the board of appeals, on the basis of criteria specified in Section 15.08.100, to endanger the life, health, property or safety of the public or its occupants.

"Owner" means the owner of title to the real property, or the contract purchaser, as shown on the last complete assessment roll in the office of the county assessor.

"Person" means a natural person, firm, partnership, association or corporation.

"Person in charge of property" means an agent, occupant, lessee, contract purchaser or other person having possession or control of property or the supervision of any construction project.

"Unsecured" means any building or structure in which doors, windows or apertures are open or broken so as to allow access.

15.08.030 Compliance required.

It is unlawful for any person, firm or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy or maintain any building or structure or cause or permit the same to be done in violation of this chapter.

15.08.040 Administrative authority.

- A. The city building official is the primary agent authorized to administer and enforce the provisions of this chapter.
- B. Whenever an appointed or elected officer of the city shall be of the opinion that there is a dangerous building in the city, it shall be the duty of such officer to report the same to the building official, who shall cause an investigation to be initiated.
- C. In accordance with approved procedures, the building official may employ qualified officers,

inspectors, assistants and other employees as shall be necessary to carry out the

provisions of this chapter.

- D. The authority of the building official to enforce the provisions of this chapter is independent of and in addition to the authority of other city officials to enforce the provisions of any other ordinance of the city.

15.08.050 Buildings and construction subject to inspection.

All buildings or structures within the scope of this chapter, and all construction or work for which a permit is required, shall be subject to inspection by the building official in accordance with and in the manner provided by this chapter, in addition to any other inspection required by law.

15.08.060 Nuisance declared.

All buildings or accessory structures or portions thereof which are determined after inspection by the building official to be dangerous as defined in this chapter are declared to be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures specified in this chapter.

15.08.070 Enforcement authority.

The city building official, the fire marshal, or their authorized representative is authorized to make such inspections and take such actions as may be required to enforce the provisions of this chapter.

15.08.080 Coordination of enforcement.

Wherever possible, inspections made by personnel of the building department or fire department shall be coordinated in order to avoid the issuance of multiple or conflicting orders.)

15.08.090 Right of entry.

Whenever it is necessary to make an inspection to enforce any of the provisions of this chapter, or whenever the building official or his or her authorized representative has reasonable cause to believe there exists in any building or upon any premises any condition that would make such building or premises a dangerous building as defined herein, or upon presentation of a lawfully issued warrant, then the building official or his or her authorized representatives may enter into such building at reasonable times to inspect the premises or to enforce any provisions of this chapter, provided that:

- A. Occupied Property. If the property is occupied, the building official shall first present proper credentials and demand entry. If entry is refused, the building official may attempt to secure entry by any legal means;
- B. Unoccupied Property. If the property is unoccupied, the building official shall first make a reasonable attempt to locate the owner or other persons having charge or control of the property and demand entry. If entry is refused, the building official may attempt to secure entry by any legal means; or
- C. Open, Unoccupied Property. If the property is unoccupied and open, the building official or an authorized representative may enter to determine if a hazardous condition exists. If a hazardous condition exists, the building official shall notify the owner of the condition and order the dwelling immediately secured against the entry of unauthorized persons;
- D. Inspection Warrant. When the building inspector or his or her authorized representative shall have first obtained a proper inspection warrant or other remedy provided by law to secure

entry, no owner or occupant, or any other person having charge, care or control of any building or premises, shall fail or neglect, after proper request is made as herein

provided, to promptly permit entry therein by the building inspector or his or her authorized representative for the purpose of inspection and examination pursuant to this chapter.

15.08.100 Dangerous conditions or defects.

For the purposes of this chapter, any building or structure which has any or all of the conditions or defects described below shall be deemed to be a dangerous building, provided that such conditions or defects exist to the extent that the life, health, property or safety of the public or its occupants are endangered:

- A. Whenever any door, aisle, passageway, stairway or other means of exit is not of sufficient width or size or is not so arranged as to provide safe and adequate means of exit in case of fire or panic;
- B. Whenever the walking surface of any aisle, passageway, stairway or other means of exit is so warped, worn, loose, torn or otherwise unsafe as to not provide safe and adequate means of exit in case of fire or panic;
- C. Whenever the stress in any materials, member or portion thereof, due to all dead and live loads, is more than one and one-half times the working stress or stresses allowed in the State Building Code for new buildings or similar structure, purpose or location;
- D. Whenever any building or portion thereof has been damaged by fire, earthquake, wind, flood, or by any other cause, to such an extent that the structural strength or stability thereof is materially less than it was before such catastrophe and is less than the minimum requirements of the Uniform Building Code for new buildings of similar structure, purpose or location;
- E. Whenever any portion or member or appurtenance thereof is likely to fail, or to become detached or dislodged, or to collapse and thereby injure persons or damage property;
- F. Whenever any portion of a building, or any member, appurtenance or ornamentation on the exterior thereof, is not of sufficient strength or stability, or is not so anchored, attached or fastened in place to as to be capable of resisting a wind pressure of one- half of that specified in the Uniform Building Code for new buildings of similar structure, purpose or location without exceeding the working stresses permitted in the Uniform Building Code for such buildings;
- G. Whenever any portion thereof has wracked, warped, buckled or settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction;
- H. Whenever the building or structure, or any portion thereof, because of: (1) dilapidation, deterioration or decay; (2) faulty construction; (3) the removal, movement or instability of any portion of the ground necessary for the purpose of supporting such building; (4) the deterioration, decay or inadequacy of its foundation; or (5) any other cause, is likely to partially or completely collapse;
- I. Whenever, for any reason, the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is used;
- J. Whenever the exterior walls or other vertical structural members list, lean or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base;
- K. Whenever the building or structure, exclusive of the foundation, shows thirty-three (33) percent or more damage or deterioration of its supporting member or members, or fifty (50)

percent damage or deterioration of its non-supporting members, enclosing or outside walls or coverings;

- L. Whenever the building or structure has been so damaged by fire, wind, earthquake or flood, or has become: (1) so dilapidated or deteriorated as to become an attractive nuisance to children; (2) a harbor for vagrants or criminals; or (3) as to enable persons to resort thereto for the purpose of committing unlawful acts;
- M. Whenever any building or structure has been constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to such building or structure provided by the building regulations of this city, as specified in the Uniform Building Code or of any law or ordinance of this state or city relating to the condition, location or structure of buildings;
- N. Whenever any building or structure which, whether or not erected in accordance with all applicable laws and ordinances, has in any non-supporting part, member or portion less than fifty (50) percent, or in any supporting part, member or portion less than sixty-six (66) percent of the (1) strength; (2) fire-resisting qualities or characteristics; or (3) weather-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height and occupancy in the same location;
- O. Whenever a building or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, damage, faulty construction or arrangement, inadequate light, air or sanitation facilities, or otherwise, is determined by the building official to be unsanitary, unfit for human habitation or in such a condition that is likely to cause sickness or disease;
- P. Whenever any building or structure, because of obsolescence, dilapidated condition, deterioration, damage, inadequate exits, lack of sufficient fire-resistive construction, faulty electric wiring, gas connections or heating apparatus, or other cause, is determined by the fire chief or building official to be a fire hazard;
- Q. Whenever any portion of a building or structure remains on a site after demolition or destruction of the building or structure or whenever any building or structure is abandoned for a period in excess of six months so as to constitute such building or portion thereof an attractive nuisance or hazard to the public;
- R. A structure that, for lack of proper repairs, or because of age and dilapidated condition or poorly installed electrical wiring or equipment, defective chimney, defective gas connection, defective heating apparatus, or for any other reason, is liable to cause fire, and which is situated or occupied in a manner that endangers other property or human life;
- S. A structure containing any combustible or explosive material, rubbish, rags, waste, oils, gasoline or inflammable substance of any kind, especially liable to cause fire or danger to the safety of the building, premises or to human life;
- T. A structure that is in a filthy or unsanitary condition liable to cause the spread of contagious or infectious diseases;
- U. A structure in such weak, dilapidated or deteriorated condition that it endangers a person or property because of the probability of partial or entire collapse.

15.08.110 Structures unfit for human habitation.

- A. Whenever the building official finds that any structure is in such a state of disrepair or is unsanitary, vermin or rodent-infested, that it lacks sanitary facilities or equipment in good working order, or otherwise fails to comply with the minimum requirements of the building

code, yet is not a dangerous structure as defined in Section 15.08.020, in addition to serving a notice of violation, the building official may declare the structure as unfit for human habitation and order it vacated if not repaired within a specified time.

- B. If the building official orders a structure vacated, the building official shall cause to be posted a copy of the order to vacate on or near the main entrance and cause the order to be served on the owner. The notice to the owner shall be done in any manner reasonably calculated to apprise the owner of the existence of the order to vacate.
- C. Tenants shall be considered notified when notices are posted on or at every dwelling unit entry door.
- D. The building official may act to prevent the future occupancy of a vacated, substandard structure or portion of such a structure by posting a notice, by barricading, or by other means calculated to prevent re-occupancy. Failure by the owner to correct the substandard conditions within the prescribed time may result in abatement under procedures for abating general nuisances.
- E. It is unlawful for any person other than the building official to remove or cause to be removed any posted order, notice or barricade. Failure to comply with orders to vacate and/or repair shall be a violation of this chapter.

15.08.120 Notices and orders of building official.

- A. Commencement of Proceedings. Whenever the building official has found and determined through inspection that a building is a dangerous building, he or she shall commence proceedings to cause the repair, vacation or demolition of the building.
- B. Notice and Order. The building official shall issue a notice and order directed to the owner of the building. The notice and order shall contain:
  - 1. The street address and a legal description sufficient for identification of the premises upon which the building is located;
  - 2. A statement that the building official has found the building to be dangerous with a brief and concise description of the conditions found to render the building dangerous under the provisions of Section 15.08.100;
  - 3. A statement of the action required to be taken as determined by the building official:
    - a. Repair. If the building official has determined that the building or structure must be repaired, the order shall require that all required permits be secured therefor and the work physically commenced within such time (not to exceed sixty (60) days from the date of the order) and completed within such time as the building official shall determine is reasonable under all the circumstances.
    - b. Vacate. If the building official has determined that the building or structure must be vacated, the order shall require that the building or structure be vacated within a time certain from the date of the order as determined by the building official to be reasonable.
    - c. Demolish. If the building official has determined that the building or structure must be demolished, the order shall require that the building be vacated within such time as the building official shall determine is reasonable (not to exceed sixty (60) days from the date of the order), that all required permits be secured therefor within sixty (60) days from the date of the order, and that the demolition be completed within such time as the building official shall

determine is reasonable;

4. A statement advising that if any required repair or demolition work (without vacation also being required) is not commenced within the time specified, the building official

will order the building vacated and posted to prevent further occupancy until the work is completed, and may proceed to cause the work to be done and charge the cost thereof against the property or its owner;

5. A statement advising that: (a) any person having any record title or legal interest in the building may appeal from the notice and order or any action of the building official to the board of appeals, provided the appeal is made in writing as provided in this chapter and filed with the city recorder within thirty (30) days from the date of service of such notice and order; and (b) failure to appeal will constitute a waiver of all right to an administrative hearing and determination of the matter.

- C. Service of Notice and Order. The notice and order, and any amended or supplemental notice and order, shall be served upon the owner and posted on the property; and one copy thereof shall be served on each of the following if known to the building official or disclosed from official public records: the holder of any mortgage or deed of trust or other lien or encumbrance of record; the owner or holder of any lease of record; and the holder of any other estate or legal interest of record in or to the building or the land on which it is located. The failure of the building official to serve any person required herein to be served shall not invalidate any proceedings hereunder as to any other person duly served or relieve any such person from any duty or obligation imposed on him or her by the provisions of this section.
- D. Method of Service. Service of the notice and order shall be made upon all persons entitled thereto either personally or by mailing a copy of such notice and order by certified mail, postage prepaid, return receipt requested, to each person at his or her address as it appears on the last assessment roll of the county or as known to the building official. If no address of any such person so appears or is known to the building official, then a copy of the notice and order shall be so mailed, addressed to such person, at the address of the building involved in the proceedings. The failure of any such person to receive such notice shall not affect the validity of any proceedings taken under this section. Service by certified mail in the manner herein provided shall be effective on the date of mailing.
- E. Proof of Service. Proof of service of the notice and order shall be certified to at the time of service by written declaration under penalty of perjury executed by the persons effecting service, declaring the time, date and manner in which service was made. The declaration, together with any receipt card returned in acknowledgment of receipt by certified mail, shall be affixed to the copy of the notice and order and retained by the city recorder.
- F. Recording of Notice and Order. If compliance with the order does not occur within the time specified therein and no appeal has been properly and timely filed, the building official shall file in the office of the county clerk a certificate describing the property and certifying that the building is a dangerous building and that the owner has been so notified. Whenever the corrections so ordered shall thereafter have been completed or the building demolished so that it no longer exists as a dangerous building on the property described in the certificate, the building official shall file a new certificate with the county clerk certifying that the building has been demolished or all required corrections have been made so that the building is no longer dangerous, whichever is appropriate.

15.08.130 Repair, vacation and demolition.

The following standards shall be followed by the building official (and by the board of appeals if an appeal is made) in ordering the repair, vacation or demolition of any dangerous building or structure:

- A. Any building declared a dangerous building under this chapter either shall be repaired in accordance with the current building code or shall be demolished at the option of the building owner.
- B. If the building or structure is in such condition as to make it immediately dangerous to the life, limb, property or safety of the public or its occupants, it shall be ordered to be vacated.

15.08.140 Notice to vacate.

- A. Posting. Every notice to vacate shall, in addition to being served as provided in Section 15.08.120(D), be posted at or upon each exit of the building and shall be substantially in the following form:

DO NOT ENTER  
UNSAFE TO OCCUPY

Any person occupying this building or removing or  
defacing this notice shall pay a fine not exceeding \$500.00.

Building Official  
City of Bandon, Oregon

- B. Compliance. Whenever such notice is posted, the building official shall include a notification thereof in the notice and order issued by him or her under Section 15.08.120(C), reciting the emergency and specifying the conditions which necessitate the posting. No person shall remain in or enter any building which has been so posted, except that entry may be made to repair, demolish or remove such building under permit. No person shall remove or deface any such notice after it is posted until the required repairs, demolition or removal have been completed and a certificate of occupancy has been issued by the city or the Oregon Department of Commerce.

15.08.150 Summary abatement.

The procedures for abatement as set out herein need not be followed if the condition of the building is so unmistakably dangerous that it poses an imminent threat to life or property. In such instance, the building official or fire chief may summarily abate the nuisance by whatever reasonable means necessary to eliminate the danger. The cost of the work shall be assessed pursuant to Section 15.08.340 using the procedures established by Sections 15.08.280 through 15.08.390.

15.08.160 Board of appeals.

In order to provide for final interpretation of the provisions of this chapter and to hear appeals as provided in this chapter, there is established a board of appeals consisting of seven members. The city recorder shall act as secretary to said board. The board of appeals shall be appointed by the city council and shall hold office at the pleasure of the council. The council may appoint itself to act in the capacity of the board of appeals. The board shall adopt reasonable rules and regulations for conducting its business and shall render all decisions and findings in writing. Appeals to the

board shall be processed in accordance with the provisions contained in Section 15.08.170.

15.08.170 Appeal.

- A. Form of Appeal. Any person entitled to service under Section 15.08.120 may appeal from any notice and order or any action of the building official under this chapter by filing with the city recorder a written appeal containing:
1. A heading in the words: "Before the Board of Appeals of the City of Bandon, Oregon;"
  2. A caption reading: "Appeal of \_\_\_\_\_," giving the names of all appellants participating in the appeal;
  3. A brief statement setting forth the legal interest of each of the appellants in the building or the land involved in the notice and order;
  4. A brief statement in ordinary and concise language of the specific order or action protested, together with any material facts claimed to support the contentions of the appellant;
  5. A brief statement in ordinary and concise language of the relief sought and the reasons why it is claimed the protested order or action should be reversed, modified or otherwise set aside;
  6. The signatures of all parties named as appellants and their official mailing addresses;
  7. The verification (by declaration under penalty of perjury) of at least one appellant as to the truth of the matters stated in the appeal.
- B. Filing of Appeal. The appeal shall be filed with the city recorder within thirty (30) days from the date of the service of such order or action of the building official.
- C. Processing of Appeal. Upon receipt of any appeal filed pursuant to this section, the city recorder shall present it at the next regular meeting of the city council.
- D. Scheduling Appeal for Hearing. As soon as practicable after receiving the written appeal, the city council shall fix a date, time and place for the hearing of the appeal by the board of appeals. The hearing date shall be not less than ten (10) days nor more than sixty (60) days from the date the appeal was filed with the city recorder. Written notice shall be given at least ten (10) days prior to the date of the hearing to each appellant by the city recorder either by causing a copy of such notice to be delivered to the appellant personally, or by mailing a copy thereof, postage prepaid, addressed to the appellant(s) at the address(es) shown on the appeal.
- E. Appointment of Board of Appeals. Following receipt of a written appeal, a board of appeals shall be appointed for the purpose of hearing the appeal in accordance with Section 15.08.160.

15.08.180 Effect of failure to appeal.

Failure of any person to file an appeal in accordance with the provisions of Section 15.08.170 shall constitute a waiver of his or her right to an administrative hearing and adjudication of the notice and order or any portion thereof.

15.08.190 Scope of hearing on appeal.

Only those matters or issues specifically raised by the appellant shall be considered in the hearing of the appeal.

15.08.200 Staying of order under appeal.

Except for vacation orders made pursuant to Section 15.08.130(B), enforcement of any notice and order of the building official issued under this chapter shall be stayed during the pendency of an appeal therefrom which is properly and timely filed.

15.08.210 Conduct of board of appeals.

- A. Hearings Officer. The board may appoint one of its members to serve as hearings officer to conduct the hearings. The hearings officer shall exercise all powers relating to the conduct of hearings until it is submitted by him or her to the board for a decision.
- B. Record. A record of the entire proceedings shall be made by tape recording or by any other means of permanent recording determined to be appropriate by the board. The proceedings at the hearing may be reported by stenographic reporter if requested by any party thereto. A transcript of the proceedings shall be made available to all parties upon request and upon payment of the actual cost thereof. The board may require a party requesting a transcript to pay a deposit to the city in an amount of the estimated cost of producing a transcript, and may refuse to order a transcript be produced until such deposit is paid.
- C. Continuances. The board or hearings officer may grant continuances for good cause shown.
- D. Oaths--Certification. In any proceedings under this chapter, the board, any board member, the city recorder, or the hearings officer has the power to administer oaths and affirmations and to certify to official acts.
- E. Reasonable Dispatch. The board and its representatives shall proceed with reasonable dispatch to conclude any matter before it. Due regard shall be shown for the convenience and necessity of any parties or their representatives.

15.08.220 Form of notice of hearing.

The notice to appellant shall be substantially in the following form, but may include other information:

You are hereby notified that a hearing will be held before the Board of Appeals of the City of Bandon on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at the hour of \_\_\_\_\_, in the Council Chambers at City Hall, 555 Highway 101, Bandon, Oregon, regarding the notice and order served upon you. You may be present at the hearing. You may be, but need not be, represented by counsel. You may present any relevant evidence and will be given full opportunity to cross examine all witnesses testifying against you. You may request the issuance of subpoenas to compel the attendance of witnesses and the production of documents or other things by filing a written request therefor with the Board of Appeals.

15.08.230 Conduct of hearings.

- A. Rules. Hearings need not be conducted according to the technical rules relating to evidence and witnesses.
- B. Oral Evidence. Oral evidence shall be taken only on oath or affirmation.
- C. Hearsay Evidence. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions in the courts of this state.
- D. Admissibility of Evidence. Any relevant evidence shall be admitted if it is the type of evidence

on which responsible persons are accustomed to rely in the conduct of serious

affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in the courts of this state.

- E. Exclusion of Evidence. Irrelevant and unduly repetitious evidence shall be excluded.
- F. Rights of Parties. Each party shall have these rights, among others:
  - 1. To call and examine witnesses on any matter relevant to the issues of the hearing;
  - 2. To introduce documentary and physical evidence;
  - 3. To cross-examine opposing witnesses on any matter relevant to the issues of the hearing;
  - 4. To impeach any witness regardless of which party first called him or her to testify;
  - 5. To rebut the evidence against him or her;
  - 6. To represent himself or herself or to be represented by anyone of his or her choice who is lawfully permitted to do so.
- G. Official Notice.
  - 1. What May be Noticed. In reaching a decision, official notice may be taken, either before or after submission of the case for decision, of any fact which may be judicially noticed by the courts of this state or of official records of the board or departments and ordinances of the city or rules and regulations of the board.
  - 2. Parties to be Notified. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto.
  - 3. Opportunity to Refute. Parties present at the hearing shall be given a reasonable opportunity, on request, to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the board or hearings officer.
- H. All matters before the board or a hearings officer, including the deliberation process, shall be heard in public session under the provisions of Oregon's Open Meetings Law.
- I. Inspection of the Premises. The board may inspect any building involved in the appeal during the course of the hearing, provided that (1) notice of such inspection shall be given to the parties before the inspection is made; (2) the parties are given an opportunity to be present during the inspection; and (3) the board shall state for the record upon completion of the inspection the material facts observed and the conclusions drawn therefrom. Each party then shall have a right to rebut or explain the matters so stated by the board.

15.08.240 Method and form of decision.

- A. Hearing before Board Itself. When a contested case is heard, any member of the board who did not hear the evidence shall not vote on or take part in the decision.
- B. Voting. A quorum of the board shall have authority to act and make any decision on any issue. A vote by the majority of the members of the board who are present and participating in the decision shall be sufficient to decide any issue in question. Any decision shall be based upon a preponderance of evidence.
- C. Form of Decision. The final decision shall be in writing and shall contain findings of fact, a determination of the issues presented, and the requirements to be complied with. A copy of the decision shall be delivered to the appellant personally or sent to him or her by certified mail, postage prepaid, return receipt requested. Decisions on preliminary matters may be

made by oral vote in public session.

- D. Effective Date of Decision. The effective date of the decision shall be as stated therein.

15.08.250 Enforcement of the order of the building official or the board of appeals.

- A. Compliance. After any order of the building official or the board of appeals made pursuant to this chapter shall have become final, no person to whom any such order is directed shall fail, neglect or refuse to obey any such order. Upon a finding of noncompliance with any order, the board of appeals may impose a penalty for each day's noncompliance in an amount not to exceed one hundred twenty-five dollars (\$125.00). Each subsequent day shall be considered a separate violation subject to penalty.
- B. Failure to Obey Order. If, after any order of the building official or board of appeals made pursuant to this chapter has become final, the person to whom such order is directed shall fail, neglect or refuse to obey such order, the building official may (1) cause such person to be fined under subsection A of this section; or (2) institute any appropriate action to abate such building as a public nuisance.
- C. Failure to Commence Work. Whenever the required repair or demolition is not commenced within thirty (30) days after any final notice and order issued under this chapter becomes effective, the building official shall cause the building described in such notice and order to be vacated by posting at each entrance thereto a notice reading:

DANGEROUS BUILDING

DO NOT OCCUPY

Any person occupying this building or removing or defacing this notice shall pay a fine not exceeding \$500.00.

Building Official

City of Bandon, Oregon

1. No person shall occupy any building which has been posted as specified in this subsection. No person shall remove or deface any notice so posted until the repairs, demolition or removal ordered by the building official have been completed and a certificate of occupancy issued by the city or the Department of Commerce of the state of Oregon.
2. Penalty. Violation of the provisions contained in subsection (C)(1) of this section shall be punishable upon conviction by a fine not exceeding five hundred dollars (\$500.00).
3. The building official may, in addition to any other remedy provided in this chapter, cause the building to be repaired to the extent necessary to correct the conditions which render the building dangerous as set forth in the notice and order; or, if the notice and order required demolition, to cause the building to be sold and demolished, or demolished and the materials, rubble and debris removed and the lot cleaned. Any such repair or demolition work shall be accomplished and the cost paid and recovered in the manner provided in this chapter. Any surplus realized from the sale of the building, or from its demolition, over and above the cost of demolition and of cleaning the lot shall be paid over to the person or persons lawfully entitled to it.

15.08.260 Extension of time to perform work.

Upon receipt of an application from the person required to conform to the order and an agreement by such person that he or her will comply with the order if allowed additional time, the

building official may, in his or her discretion, grant an extension of time, not to exceed an additional one hundred twenty (120) days, within which to complete the repair, rehabilitation or demolition, if the building official determines that such an extension of time will not create or perpetuate a situation imminently dangerous to life or property. The building official's authority to

extend time is limited to the physical repair, rehabilitation or demolition of the premises and will not in any way affect the time to appeal his or her notice and order.

15.08.270 Interference with repair or demolition work prohibited.

No person shall obstruct, impede or interfere with any officer, employee, contractor or authorized representative of this city or with any person who owns or holds any estate or interest in any building which has been ordered repaired, vacated or demolished under the provisions of this chapter, or with any person to whom such building has been lawfully sold pursuant to the provisions of this chapter, whenever such officer, employee, contractor or authorized representative of this jurisdiction, person having an interest or estate in such building or structure, or purchaser is engaged in the work of repairing, vacating and repairing, or demolishing any such building, pursuant to the provisions of this chapter, or in performing any necessary act preliminary to or incidental to such work authorized or directed pursuant to this chapter.

15.08.280 Performance of work of repair or demolition by the city.

- A. General Procedure. When any work of repair or demolition is to be done pursuant to Section 15.08.250(C)(3), the building official shall refer the matter to the city manager, who shall direct that the work be accomplished by personnel of this city or by private contractor under the city's direction. Plans and specifications for the work may be prepared by city staff or the city manager may employ such architectural and engineering assistance on a contract basis as he or she may deem reasonably necessary. If any part of the work is to be accomplished by private contract, standard contractual procedures shall be followed.
- B. Costs. The cost of such work may be paid from a repair and demolition fund, and shall be a special assessment against the property involved, or shall be a personal obligation of the property owner.

15.08.290 Repair and demolition fund.

- A. General. The city council may establish a fund to be designated as the repair and demolition fund. Payments may be made out of this fund to defray the costs and expenses which may be incurred by this city in doing or causing to be done the necessary work of repair or demolition of dangerous buildings. Costs may be paid from any other fund of the city as may be deemed appropriate by the city council.
- B. Maintenance of Fund. The city council may at any time transfer to the repair and demolition fund, out of any money in the general fund, such sums as it may deem necessary in order to expedite the performance of the work of repair and demolition, and any sum so transferred shall be deemed a loan to the repair and demolition fund and shall be repaid out of the proceeds of the collections provided for in Section 15.08.390. All funds collected under the proceedings provided for in this chapter shall be paid to the city and may be credited to the repair and demolition fund or to the general fund.

15.08.300 Account of expense--Filing of report.

The city recorder shall keep an itemized account of the expense incurred by this city in the repair or demolition of any building done pursuant to the provisions of Section 15.08.250(C)(3). Upon the completion of the work of repair or demolition, the city recorder shall prepare and file a report specifying the work done, the itemized and total cost of the work, a description of the real property upon which the building or structure is or was located, and the names and addresses of

the persons entitled to notice pursuant to Section 15.08.120(C).

15.08.310 Report transmitted to council--Hearing date set.

The city recorder shall present the report to the city council for consideration. The city council shall fix a time, date and place for hearing the report and any protests or objections to it. The city recorder shall cause notice of the hearing to be posted upon the property involved, published once in a newspaper of general circulation in this city, and served by certified mail, postage prepaid, addressed to the owner of the property as his or her name and address appear on the last assessment roll of the county or as known to the city recorder. Such notice shall be given at least ten (10) days prior to the date set for hearing and shall specify the day, hour and place when the city council will hear and pass upon the recorder's report, together with any objections or protests which may be filed in accordance with Section 15.08.320.

15.08.320 Protests and objections.

Any person affected by the proposed charge may file written protests or objections with the city recorder at any time prior to the time set for the hearing on the report. Each protest or objection must contain a description of the property in which the signer of the protest is interested and the grounds of such protest or objection. The city recorder shall endorse on every protest or objection the date and time it was received. These protests or objections shall be presented to the city council at the hearing, and no other protests or objections shall be considered.

15.08.330 Hearing of protests.

At the appointed time, the council shall hear and pass upon the report together with any objections or protests. The city council may make such revisions, correction or modification in the report or the charge as it may deem just; and when the city council is satisfied with the correctness of the charge, the report (as submitted or as revised, corrected or modified) together with the charge, shall be confirmed or rejected. The decision of the city council on the report and the charge, and on all protests or objections, shall be final and conclusive.

15.08.340 Personal obligation or special assessment.

- A. General. At the hearing provided for in Section 15.08.330, the city council may order that the charge for completion of the work shall be made a personal charge against the property involved.
- B. Personal Obligation. If the city council orders that the charge shall be a personal obligation of the property owner, it may direct the city attorney to collect the same on behalf of the city by use of all appropriate legal remedies.
- C. Special Assessment. If the city council orders that the charge shall be assessed against the property, the council shall confirm the assessment and cause it to be recorded on the lien docket as a special assessment and lien upon the property, which shall bear interest as provided in Section 15.08.370(B).

15.08.350 Contesting of assessment.

The validity of any assessment made under the provisions of Section 15.08.340 shall not be contested in any action or proceeding unless it is commenced within thirty (30) days after the assessment is placed upon the lien docket.

15.08.360 Authority for installment payment of assessments with interest.

The city council, in its discretion, may determine that assessments in amounts of five hundred dollars (\$500.00) or more may be payable in not to exceed five equal annual installments. The city council's determination to allow payment of such assessments in installments, the number of installments, whether they shall bear interest (and at what rate) shall be by a resolution adopted prior to the confirmation of the assessment.

15.08.370 Lien of assessment.

- A. Priority. Immediately upon being placed on the lien docket, the assessment shall be deemed to be complete, the amounts assessed shall be payable, and the assessments shall be liens against the lots or parcels of land assessed, respectively. The lien shall be subordinate to all existing special assessment liens previously imposed upon the same property. The lien shall continue until the assessment and all interest due and payable thereon are paid.
- B. Interest. All assessments remaining unpaid after thirty (30) days from the date the assessment is recorded on the lien docket shall become delinquent and shall bear interest at the rate of ten (10) percent per annum from and after that date.

15.08.380 Lien collections.

The amount of the assessment which is a lien upon the property pursuant to this chapter shall be collected in accordance with the provisions of Oregon law regarding methods of enforcing liens and collecting assessments by cities.

15.08.390 Repayment of repair and demolition fund.

Money recovered by payment of the charge or assessment or from the sale of the property at a foreclosure sale shall be paid to the city recorder who may credit the same to the repair and demolition fund.

15.08.400 Liability for injuries.

- A. The owner of real property on which a nuisance exists is liable to the person injured because of failure by the owner to abate the nuisance.
- B. If the city is required to pay damages for an injury to any person caused by the failure of an owner to abate a nuisance, the owner shall reimburse the city for the amount of any damages paid, and for the attorney fees and costs of defending against the claim for damages. The city may maintain an action in a court of competent jurisdiction to enforce the provisions of this section.)

15.08.410 Violation--Penalty.

Violation of a provision of this chapter is punishable by a fine not to exceed five hundred dollars (\$500.00).

15.08.420 Separate violations.

- A. Each day's violation of a provision of this chapter constitutes a separate offense.
- B. The abatement of a nuisance is not a penalty for violating this chapter, but is an additional

remedy. The imposition of a penalty does not relieve a person of the duty to abate the nuisance. However, abatement of a nuisance within ten (10) days of the date of notice to abate, or if a written protest has been filed, then abatement within ten (10) days of council determination that a nuisance exists, will relieve the person responsible from the imposition of a fine under Section 15.08.250.

## Chapter 15.12

### RECREATIONAL VEHICLES

#### Sections:

- 15.12.010 Purpose.
- 15.12.020 Definitions.
- 15.12.030 Regulation of trailer parks and recreational vehicle parks.
- 15.12.040 Trailers subject to building code.
- 15.12.050 Recreational Vehicles - Prohibited acts.
- 15.12.060 Temporary occupancy of recreational vehicles - General provisions.
- 15.12.070 Temporary occupancy on private land.
- 15.12.080 Temporary occupancy on public land.
- 15.12.090 Parking and storage of recreational vehicles.
- 15.12.100 Appeal of administrative decision.
- 15.12.110 Revocation of permit.
- 15.12.120 Violation - Penalty.

Ordinance History: #982, 996, 1208, 1390, 1528

#### 15.12.010 Purpose.

Occupancy of recreational vehicles shall not be allowed within the city of Bandon except as provided in this chapter.

#### 15.12.020 Definitions.

As used in this chapter:

"Camper" means a structure that has a floor; is designed to be mounted upon a motor vehicle; is not permanently attached to a motor vehicle upon which it is mounted; is designed to provide facilities for human habitation or for camping; is six feet or more in overall length; is five and one-half feet or more in height from floor to ceiling at any point; and has no more than one axle designed to support a portion of the weight of the camper. (ORS 801.180)

"Motor home" means a motor vehicle that: (1) is reconstructed, permanently altered, or originally designed to provide facilities for human habitation; or (2) has a structure permanently attached to it that would be a camper if the structure was not permanently attached to the motor vehicle. (ORS 801.350)

"Recreational vehicle" means a vehicle with or without motive power, which is designed for human occupancy and to be used temporarily for recreational, seasonal or emergency purposes, and has a gross floor area not exceeding four hundred (400) square feet in the set-up mode. The term "recreational vehicle" includes a camper, motor home, self-contained unit, and travel trailer, but does not include a mobile home or trailer house. (ORS 46.005(37))

"Recreation vehicle park" means any area designated by the person establishing, operating, managing or maintaining the same for picnicking or overnight camping by the general public or any segment of the public. "Recreation park" includes but is not limited to areas open to use free of charge or through payment of a tax or fee or by virtue of rental, lease, license, membership, association or common ownership and further includes, but is not limited to those areas divided into two or more lots, parcels, units or other interests for purposes of such use.

"Self-contained unit" means a camper, recreational vehicle or travel trailer equipped with a holding tank for sewage and other putrescible waste..

"Travel trailer" means a manufactured dwelling that is eight and one-half feet or less in width and is not being used for commercial or business purposes; or a recreational vehicle without motive power that is eight and one-half feet or less in width and is not being used for commercial or business purposes; or a prefabricated structure that is eight and one-half feet or less in width and that is not being used for commercial or business purposes. (ORS 801.565)

15.12.030 Regulation of trailer parks and recreation parks.

- A. Park Operator's Permit Required. It is unlawful for any person to establish, operate, manage, maintain or begin the operation of any recreational vehicle park or trailer park within the city without first having obtained a permit from the Department of Consumer and Business Services, and a conditional use permit as required by the city's municipal code.
- B. Transient Occupancy. Any recreational vehicle park, or trailer park where at least fifty (50) percent of the spaces are occupied by persons who remain for less than thirty (30) days shall be subject to transient occupancy tax regulations of the city.

15.12.040 Trailers subject to building code.

Any trailer from which the wheels are removed or which is blocked up or otherwise supported shall immediately become subject to the State Building Code. It is unlawful to use or occupy the trailer for sleeping or cooking purposes unless the construction satisfies the building code in all respects.

15.12.050 Recreational Vehicles - Prohibited acts.

No person shall:

- A. Occupy a recreational vehicle for cooking or sleeping purposes within the city outside of a recreation park licensed by the state of Oregon, except as provided in Sections 15.12.070 through 15.12.090;
- B. Benefit from city utilities while occupying a recreational vehicle, via extension cords, hoses or other temporary or permanent connections, if that person has a delinquent utility account with the city and has failed to establish and comply with a satisfactory installment plan for the payment of the overdue amount;
- C. Provide a recreational vehicle with access to city water by means of a hose attached to an existing faucet or hydrant unless a check valve has been attached to prevent backflow and placement of the hose does not create a hazard for persons approaching the unit;
- D. Provide the unit with access to electricity by means of an extension cord unless the cord and all connections are weatherproofed and the cord does not create a hazard for persons living in or approaching the unit.
- E. Connect a recreational vehicle to the city's sanitary sewer system without permission from the city and installation of a backflow device and inspection by qualified city personnel;
- F. Use kitchen or toilet facilities in a recreational vehicle parked overnight at a place where sanitary facilities are not provided unless the person makes provision whereby sewage and other waste materials can be held in watertight and sanitary containers of a type approved by the State Health Division;
- G. Empty a container described in F above except into a site authorized by the city or state, or into a septic tank or cesspool of a type approved by the State Department of Environmental Quality;
- H. When using a recreation park or organizational camp, create an unsanitary condition or deposit putrescible or non-putrescible waste any place other than in appropriate containers designated for such purposes.

15.12.060 Temporary occupancy of recreational vehicles - General provisions.

- A. An application for a temporary recreational vehicle occupancy permit shall be signed by both the applicant and the owner or person in charge of the location address.
- B. The application shall describe the recreational vehicle, identify all the occupants, indicate what provisions have been made for water, propane gas or electricity and how, where and how often holding tanks shall be emptied.
- C. The application shall be accompanied by a plot plan that illustrates the proposed position of the recreational vehicle in relation to existing structures and property lines.
- D. Applications for a temporary recreational vehicle occupancy permit shall be filed with the city recorder, accompanied by a non-refundable plan review fee. The planning director will review the application with a recommendation to either grant the permit, grant with conditions, or deny the permit.
- E. An application receiving a favorable endorsement from the planning director shall be returned to the city recorder for issuance of a permit.
- F. The temporary recreational vehicle occupancy permit shall be posted conspicuously on or near the entrance of the unit and shall contain the following information:
  - 1. Description of unit and license number including state where license was issued;
  - 2. Name and mailing address of applicant;
  - 3. Number of persons to occupy the unit;
  - 4. Address at which unit will be located;
  - 5. Name of owner or person in charge of location address;
  - 6. Date of issue and expiration date;
  - 7. Special conditions imposed by the city, if any.
- G. Permit fees shall be established on the basis of the city's average cost for reviewing the plans and administering the permit. Fees may be established and adjusted from time to time by council resolution.
- H. If denial of the permit has been recommended, the city recorder shall notify the applicant of the decision and the right to appeal that decision to the city council.

15.12.070 Temporary occupancy on private land.

- A. Commercial or Industrial Property. Except as otherwise specifically allowed herein, occupancy of a recreational vehicle for cooking or sleeping purposes shall not be allowed on property where the zoning or primary use is commercial or industrial.
- B. Religious Institutions. Occupancy of a recreational vehicle for cooking or sleeping purposes shall not be allowed on property where the primary use is a house of public worship, except as follows:
  - 1. A permit may be obtained for a visiting minister to occupy a self-contained unit in the parking lot adjacent to a church for up to four consecutive days per calendar quarter. No more than one unit may be occupied on the property concurrently, and no recreational vehicle may be stored on the property when not in use.
  - 2. No recreational vehicle permit shall be issued for a church to provide temporary housing to transients.
  - 3. A permit shall be required for one or more self-contained recreational vehicles to occupy church property in connection with a special religious event or maintenance project. The city planning director and/or city manager may impose limitations or conditions on the type of use and the length of time allowed.
  - 4. A temporary water connection requires a back-flow device and inspection by qualified city personnel. No connection to the city sewer system is permitted.

- C. Residential Visit. If the occupancy of a recreational vehicle is in connection with a visit to an established residence, it is subject to the following limitations:
1. Once each calendar quarter, a self-contained unit may be occupied without a permit for a maximum of seven days, except as provided in subsection D of this section. No more than one such unit may be occupied in this manner at the same address. Parking of the recreational vehicle shall comply with Section 15.14 of this Chapter of the Code.
  2. One Month Permit. The occupant of a self-contained unit may obtain a permit from the city recorder upon payment of the appropriate fee which will entitle the person to occupy the unit on private property within the city outside of a licensed recreation park for a maximum period of thirty (30) days under the provisions of Section 15.12.060. Another permit shall not be re-issued to the same individual or to the same unit at any location within the city for a period of one calendar year after expiration of the permit.
  3. A water connection for a residential visit requires a back-flow device and inspection by qualified city personnel.
  4. No connection to the city sewer system is permitted.
  5. Access to electricity may be provided by means of an extension cord. All connections shall be weatherproofed and the cord shall not create a hazard for persons living in or approaching the RV.
- D. Property Maintenance Permit. The owner of a vacant residential property who does not reside in Coos County and who desires to park an RV on the property periodically while maintaining vegetation or performing tasks preliminary to construction of a residence may obtain a permit from the city recorder under the following conditions:
1. The unit shall be occupied by the owner of the property or the owner's designee a maximum of four days per calendar quarter, under the general provisions of Sections 15.12.050 and 15.12.060.
  2. No more than one unit may be located on the property.
  3. A permit shall be obtained for each visit during the year.
  4. The unit may not be stored on the property when not in use.
- E. Temporary Occupancy during Construction. The owner of a residential property who is engaged in the active construction, reconstruction or remodeling of the residence may obtain a permit from the city recorder to occupy a self-contained unit for a period of up to six months on the same property. In addition to application information required in Section 15.12.070, this permit shall have the following requirements:
1. The application shall include a copy of the building permit issued by the State Building Codes. If the work involves reconstruction or remodeling of an existing residence, a written description of the specific work to be performed shall be attached.
  2. Upon issuance of the permit, a person within 100 feet of the subject property who is dissatisfied with the administrative action may appeal that decision to the city council, as provided in 15.12.110.
  3. One renewal of the permit may be granted by the city recorder with the approval of the planning director for up to six additional months upon a finding that the terms of the permit were met and the building permit remains active and adequate

progress is being made. Any further occupancy on the site beyond one year shall be submitted to the City Council for approval.

- F. Medical Emergency. In the event the occupancy of a recreational vehicle is connected with a family medical emergency, and the occupants are engaged in and needed in the care of a person who is an occupant of the established residence (or the occupant requires care from a relative who is an occupant of the established residence) a permit may be obtained for a maximum of ninety (90) days, as follows:
1. Application may be made to the city recorder, providing the information required in Section 15.12.070 plus documentation of the medical emergency from a licensed physician, and the relationship of the occupant of the unit to the person requiring emergency care. The city recorder may issue a permit for a period not to exceed ninety (90) days.
  2. A person within 100 feet of the property who is dissatisfied with the administrative action may appeal that decision to the city council, as provided in Section 15.12.110.
  3. Occupancy shall be limited to the specific recreational vehicle, location and family, and such other conditions as the city may impose.
  - 4.. No renewal shall be allowed beyond ninety (90) days.

15.12.080 Temporary occupancy of public land.

Upon application to the city recorder, a permit may be issued administratively to occupy specified public property under the following circumstances:

- A. Use of Mobile home or Trailer House by Governmental Body for Nonliving Purposes. A governmental body may use and occupy a mobile home or trailer house for purposes other than a full-time residence upon a showing to the city of a need for such occupancy. The city recorder may issue a permit for any such use for a period of two years. The permit may be renewed for a like period or periods upon a showing for continued need. There shall be no fee charged to the governmental body for this permit. The granting of such a permit shall not be construed to be a permit to occupy or use the structure in any manner contrary to the municipal code other than those commonly referred to as building code and relating to the manner of constructing a structure. Such a permit shall not be construed to permit any occupancy or use which is contrary to any applicable state or federal laws or regulations. Any permit issued shall contain thereon the provisions of this section.
- B. Special Event. A permit may be issued for self-contained recreational vehicles to occupy specified public property in connection with a convention or community activity held in the city. If the event is to take place on land owned or controlled by the city, it must be an event the city has authorized to take place in that location, and may be subject to conditions or limitations imposed by the city. Such a permit shall not be issued for a period of more than five consecutive days. The city council grants the city manager discretion to require posting of a cash bond to ensure that premises are left clean and undamaged. Any charges against such a bond shall be at the cost of cleanup and/or repair, plus ten (10) percent. Cost shall include all wages, employer taxes and fringe benefits and a reasonable charge for equipment and disposal of waste.
- C. Park Host. The city shall provide a recreational vehicle site with utilities in City Park for persons contracting with the city to serve as park hosts by providing visitor information, maintenance and security for the park area. No person who is not under contract with the city for this position may use the site.

15.12.090 Parking and Storage of recreational vehicles.

The provisions of this chapter do not apply to the parking of recreational vehicles which are not occupied for sleeping or cooking purposes. Stored recreational vehicles shall be subject to the Bandon municipal code zoning and parking regulations.

15.12.100 Appeal of administrative decision.

A person objecting to an administrative decision to grant a temporary recreational vehicle permit with or without special conditions, or objecting to the denial of such a permit, may appeal that decision to the city council by submitting the specific objections in writing within ten (10) days after notice of the decision has been issued. The statement shall be referred to the council as a part of the regular agenda at its next scheduled meeting which is not less than six days from the date the objection was filed. At the time set for consideration of the appeal, the person protesting may appear and be heard by the council and the council shall determine whether to grant or deny the permit. Council determination shall be required only in those cases where a written statement has been filed as provided.

15.12.110 Revocation of permit.

The council may in its discretion revoke any and all permits issued, either with or without notice, and with or without cause.

15.12.120 Violation - Penalty.

- A. In addition to any other penalty provided by law relating to the construction, operation or maintenance of a tourist facility or relating to local zoning restrictions, violation of this chapter is punishable in accordance with Chapter 1.16 of the Bandon Municipal Code.
- B. Each day's violation of a provision of this chapter constitutes a separate offense, punishable by a fine not to exceed seven hundred fifty dollars (\$750.00) per day.

## Chapter 15.14

### STORAGE OF RECREATIONAL VEHICLES

#### Sections:

- 15.14.010 Recreational vehicle (RV) defined.
- 15.14.020 On-street parking or storage.
- 15.14.030 Driveway parking.
- 15.14.040 Side yard parking and storage.
- 15.14.050 Backyard parking and storage.
- 15.14.060 Occupancy of a recreational vehicle.
- 15.14.070 Utility connections to a recreational vehicle.
- 15.14.080 Violation--Penalty.

Ordinance History: #1448

#### 15.14.010 Recreational vehicle (RV) defined.

For purposes of this chapter, a recreational vehicle shall be defined as any vehicle/vessel that is required to be licensed by the Oregon Department of Motor Vehicles and whose primary use is recreational including, but not limited to, single and double axle travel trailers, boats or vessels and their trailers, campers, vehicles with camping shells, vehicles commonly referred to as motor homes, bus conversions or camper-van conversions.

#### 15.14.020 On-street parking or storage.

- A. No RV shall be parked on the street right-of-way adjacent to a residence or business in such a manner that it obstructs the flow of traffic, or obstructs the line of sight of vehicles exiting adjacent driveways, or for a period of time longer than a total of seventy-two (72) hours per year.
- B. No RV not currently licensed may be left standing on the street right-of-way at any time.

#### 15.14.030 Driveway parking.

- A. An RV shall be parked or placed in such a manner that it is parallel to the driveway of the residence and perpendicular to the street.
- B. The RV shall not extend onto an open right-of-way or obstruct the line of sight of vehicles exiting adjacent driveways.
- C. A minimum distance of twelve (12) feet shall be maintained between the edge of the right-of-way and the RV.
- D. The vehicle shall be currently licensed.

#### 15.14.040 Side yard parking and storage.

An RV may be stored or parked in or on the side yard of a residence provided the following conditions are met:

- A. The RV complies with the provisions of Section 15.14.030(B) through (D) of this chapter.
- B. A minimum of five feet shall be maintained between the RV and the walls of any residential structure.
- C. The RV does not obstruct the line of sight of vehicles exiting adjacent driveways.
- D. The area under and around the RV shall be kept clean and free of noxious weeds or pests and maintained in such a manner that grass shall not be allowed to grow higher than four

- inches.
- E. The RV shall not be in an obviously non-operable or deteriorated condition.

15.14.050 Backyard parking and storage.

An RV may be stored or parked in the backyard of a residence at any time provided the following conditions are met:

- A. The RV complies with Section 15.14.030 (B) and (C) of this chapter.
- B. The RV and its surrounding area shall be maintained in a manner which is not a hazard to health and safety.
- C. Backyards with street frontage shall comply with the regulations in Sections 15.14.030 and/or 15.14.040 of this chapter, as appropriate.

15.14.060 Occupancy of a recreational vehicle.

No person shall occupy an RV for cooking or sleeping purposes within the city, outside a recreational vehicle park licensed by the state of Oregon, except as provided in Chapter 15.12 of this code.

15.14.070 Utility connections to a recreational vehicle.

- A. All electrical connections shall be weatherproof, and all cords shall be properly sized and rated for outdoor use. All electrical cords shall be either firmly supported and suspended at least eight feet above the ground, or shall be located at or below ground level in a manner which will not represent a tripping, shock, or other hazard.
- B. No RV shall be provided with access to city water by means of a hose attached to an existing faucet or hydrant unless that connection has been authorized and approved by the city and has been installed in conformance with all city requirements and backflow prevention devices.
- C. No RV shall be connected to the city's sanitary sewer system without permission from the city and installation and inspection by qualified city personnel.

15.14.080 Violation--Penalty.

Each day's violation of a provision of this chapter constitutes a separate offense, punishable by a fine not to exceed seven hundred fifty dollars (\$750.00) per day under the ordinance providing for enforcement of city ordinances.

## Chapter 15.16

### SOLAR ACCESS

#### Sections:

- 15.16.010 Purpose and intent.
- 15.16.020 Definitions.
- 15.16.030 Solar setbacks.
- 15.16.040 Waiver of solar setback requirements.
- 15.16.050 Waiver by release of protected area property owner.
- 15.16.060 Variances.
- 15.16.070 Application for recordation of solar collector.
- 15.16.080 Hearing procedure.
- 15.16.090 Limits on recordation.
- 15.16.100 Entry of recordation into register.
- 15.16.110 Effect and enforcement.
- 15.16.120 Repurchase of recordation.

#### Ordinance History: #1135

#### 15.16.010 Purpose and intent.

The purpose of this chapter is to provide protection of a reasonable amount of solar access to all parcels in the city so that investments in solar equipment may be secure, and further use of solar energy will be encouraged. This protection, which will potentially shade the receiving property owner, should weigh equally on both the receiving property owner and the property owner.

#### 15.16.020 Definitions.

As used in this chapter, the following terms shall have the meanings shown:

"Development permit" means any permit or authorization issued by the city as a prerequisite for undertaking any development. It includes permits and authorizations customarily known as building permits, zoning or rezoning permits, variances, conditional use permits, plat approvals, subdivision or planned unit development permits.

"Protected area" means that portion of a lot which is buildable, not in the required setback areas, and may be used for the location of a solar collector.

"Shadow casting portion" means that portion of a building which actually casts a shadow under the sun, is at an altitude of twenty-five (25) degrees, and is due south. For a building with a roof pitch of 5/12 or less, the shadow casting portion is the height from the northernmost projection above the natural grade. If the roof pitch is greater than 5/12, the shadow casting portion is the height from the roof peak to the natural grade.

"Slope" means the gradient of ground surface which forms an angle with the plane of the horizon.

"Unprotected area" means that area of a lot which could not be used for the location of a solar collector. This area includes all required setback areas, parking lots, street, alley and other public rights-of-way and easements, and the northern half of lots which are less than twice the minimum lot size of the zone in which they are located.

#### 15.16.030 Solar setbacks.

All structures shall meet the solar access requirements of this section, according to the

following conditions:

- A. The setback required from the property line, measured in a northerly (0°) direction, shall be determined by the following formula:  $SB = (H-6) \times C$

Where:

SB = Setback distance

H = Height of the shadow casting portion of the proposed building

C = Correction factor, obtained from the following table:

Slope Direction

Slope %	N	NE	E	SE	S	SW	W	NW
0%	2.0	2.0	2.0	2.0	2.0	2.0	2.0	2.0
5%	2.2	2.2	2.0	1.9	1.8	1.9	2.0	2.2
10%	2.5	2.3	2.0	1.8	1.7	1.8	2.0	2.3
15%	2.9	2.6	2.0	1.7	1.6	1.7	2.0	2.6
20%	3.4	2.8	2.0	1.6	1.5	1.6	2.0	2.8

- B. If the setback required under subsection A of this section cannot be met by the proposed structure, then the following method shall be used to determine the setback. The actual shadow length to be cast by the proposed structure shall be determined by the following formula:  $S = H/C$

Where:

S = Shadow length

H = Shadow casting portion of the building

C = Correction factors, obtained from the table in subsection A of this section.

The planning commission, upon the recommendation of the city manager, shall then determine whether the shadow cast is in an unprotected area as defined in Section 15.16.020. If the shadow to be cast by the proposed structure is entirely within an unprotected area, the city manager shall issue the permit. The projected shadow shall be measured in a northerly (0°) direction.

- C. Any land which has a slope of greater than ten (10) percent facing due north shall meet the following setback to the property line in a northerly direction determined by the following formula:  $S = (H-16) \times C$

Where:

S = Shadow length

H = Shadow casting portion of the building

C = Correction factor, obtained from the table in subsection A of this section.

- D. Effect and Enforcement. The city shall issue no development permit purporting to allow the erection of any structure in violation of the setback provisions of this section.

15.16.040 Waiver of solar setback requirements.

The planning commission, upon the recommendation of the city manager, may waive the requirements of Section 15.16.030 if it is found that the protected areas which would be shaded by allowing the waiver already lack solar access due to shading by topography or other adjacent existing structures, and the proposed new structure would not increase the shading of the protected area.

15.16.050 Waiver by release of protected area property owner.

- A. The requirements of this chapter shall be waived if the owner or owners of all property which contains the protected area to be shaded during the winter collector use period, by a proposed structure, releases the builder of the proposed structure from the requirements of this chapter. Such a release shall be on a form supplied by the city and shall contain the following information:
  - 1. All persons who hold an interest in the property in question;
  - 2. A statement that the waiver applies only to the specific building or buildings to which the waiver is granted;
  - 3. A statement that the solar access guaranteed by this chapter is waived for that particular structure and the city is held harmless for any damages resulting from the waiver;
  - 4. A description and drawing of the shading which would occur;
  - 5. The form shall be signed by all persons who hold an interest in the property to be shaded and acknowledged in the same manner as required by law for the execution of deeds and shall be recorded and indexed in records of Coos County.
- B. The city manager shall grant a waiver after all the necessary information has been presented, all proper forms completed, and the necessary papers have been recorded in the county records.

15.16.060 Variances.

In addition to the findings in Sections 15.16.010--15.16.050, a variance may be granted on the sole finding that solar access at solar noon on December 21st to the protected area of the adjacent parcels will not be further restricted or impeded by the construction of the proposed structure.

15.16.070 Application for recordation of solar collector.

- A. Any property owner or lessee, or agent of either, may apply for a solar access recordation from the city. The application shall be in such form as the city map prescribes, but shall, at a minimum, include the following:
  - 1. A fee of fifty dollars (\$50.00);
  - 2. The applicant's name and address, the owner's name and address, and the tax lot number of the property where the proposed collector is to be located;
  - 3. A statement by the applicant that the collector is already installed or that it will be installed on the property within one year following the granting of the recordation;
  - 4. The proposed size and location of the collector, its orientation with respect to true south, and its slope from the horizontal, shown clearly in drawing form;
  - 5. An explanation of how the applicant has done everything reasonable, taking cost into account, in designing and locating the collector in a manner to minimize the impact on nearby properties, and that the collector is located in a protected area as defined in this chapter;
  - 6. A diagram showing the plotted skyline (hills, buildings, deciduous and evergreen trees) from the center of the lower edge of the proposed location of the collector surface;

7. The tax lot numbers of adjacent properties proposed to be subject to the solar access recordation; a parcel map of the owner's property and such adjacent properties with the locations of existing buildings and trees noted thereon;
  8. An estimate of the monthly and annual quantity and percentage of energy that the collector is expected to provide for its particular use given best available weather data and existing access during the collector use period. An explanation of how these figures were computed shall be included;
  9. Document that the solar collector will provide at least twenty (20) percent of the energy for its particular use during the collector use period;
  10. A separately signed and dated statement that the applicant agrees to submit to binding arbitration the value of the recordation and the damages to be paid if the city diminishes the rights protected by the recordation following procedures in Section 15.16.120, Repurchase of Recordation.
- B. If the application is complete and on its face complies with this chapter, then the city manager shall accept the solar access recordation application and notify the applicant.
  - C. The city manager shall send notice by certified letter, return receipt requested, to each owner and recorded lessee of property proposed to be subject to the solar access recordation. The letter shall contain, at a minimum, the following information: the name and address of the applicant; that an application for solar access recordation has been filed; copies of the collector location drawing, diagram and parcel map submitted by the applicant; that the recordation, if granted, imposes on them duties to trim some vegetation at their expense; the advisability of obtaining photographic proof of the existence of trees and large shrubs; the times and places where the application may be viewed; telephone number and address of the city department that will provide further information; and that any adversely affected person may object to the issuance of the recordation by a stated time and date, and how and where objection must be made.
  - D. If no objections are filed within thirty (30) days following the date the letter is mailed, the city manager shall issue the solar access recordation.
  - E. If any adversely affected person or governmental unit files a written objection with the city manager within the specified time, and if the objections still exist after informal discussions among the objector, appropriate city staff, and the applicant, then a hearing date shall be held within thirty (30) days of the date of the last filed written objection. The city manager may approve, modify, or disallow the recordation and any affected party may file a written request for a hearing before the planning commission within ten (10) days of the action of the city manager. A hearing shall be set within thirty (30) days of the date of the filing of request for hearing and held before the planning commission in accordance with the provisions of Section 15.16.080, Hearing Procedure.

15.16.080 Hearing procedure.

- A. The city manager shall send notice of the hearing before the planning commission on the recordation application to the applicant and to all persons who objected to issuance of the recordation.
- B. The planning commission shall consider the matters required for application set forth in Section 15.16.070, Application for Recordation, on which the applicant shall bear the burden of proof and the following factor on which the objector shall bear the burden of proof: A showing by the objector that the proposed collector would unreasonably restrict the planting of vegetation of presently underdeveloped property. If the objector is unable to

prove these circumstances and the applicant makes the showings required by Section 15.16.070, Application for Recordation, the planning commission shall approve the recordation. If the applicant has failed to show all structures or vegetation shading the proposed collector location in his or her application, the planning commission may approve

the recordation while adding the omitted shading structures or vegetation as exemptions from this chapter. If the objector shows that an unconditional approval of the application would unreasonably restrict development of the objector's presently underdeveloped property, the planning commission may approve the recordation, adding such exemptions as are necessary to allow for reasonable development of the objector's property.

- C. Any party adversely affected by a decision of the planning commission has the right to file an appeal within ten (10) days of the date of the decision of the planning commission with the city council. The notice shall state how the party has been adversely affected by the decision of the planning commission and shall state how the planning commission has erred in its decision. Within thirty (30) days of the filing of the notice of appeal, the city council shall hold a hearing and may, pursuant to the criteria, conditions and limitations established by this chapter, reverse, affirm or modify the decision of the planning commission.

15.16.090 Limits on recordation.

- A. No recordation may be filed which encumbers any lot which has an average slope of ten (10) percent in the northerly direction.
- B. A recordation becomes void if the use of the solar collector is discontinued for more than twelve (12) consecutive months, or if the solar collector is not installed and operative within twelve (12) months of the filing date of the recordation.

15.16.100 Entry of recordation into register.

- A. When a solar access recordation is granted, the city manager shall:
  - 1. File the recordation with the county clerk, including the owner's name and address and the tax lot of the property where the recorded collector is to be located together with any special exceptions or exemptions from the usual effects of a recordation and the tax lots of the adjacent properties subject to the recordation;
  - 2. Send a certified letter, return receipt requested, to the applicant and to each owner and recorded lessee of property subject to the solar access recordation that such recordation has been granted;
  - 3. Enter this information in a register and plot the recorded collector location on a map kept for this purpose. The application, copies of all notices, and certified mail return receipts shall be kept on file.
- B. If a recordation becomes void under Section 15.16.090, Limits on Recordation, or is repurchased under Section 15.16.120, Repurchase of Recordation, the city manager shall record a form that notes that event.

15.16.110 Effect and enforcement.

- A. No city department shall issue any development permit purporting to allow the erection of any structure in violation of the setback provisions of this chapter.
- B. No one shall plant any vegetation that shades a recorded collector (or a recorded collector location if it is not yet installed) after receiving notice of the pendency of solar access recordation application or after issuance of a recordation. After receiving notice of a solar access recordation or application, no one shall permit any vegetation on his or her property

to grow in such a manner as to shade a recorded collector (or a recorded collector location if it is not yet installed), unless the vegetation is specifically exempted in the recordation.

- C. If vegetation is not trimmed as required or is planted contrary to subsection B of this section, the recorded owner or the city, on complaint by the recorded owner, shall give

notice of the shading by certified mail, return receipt requested, to the owner of the property where the shading vegetation is located. If the property owner fails to remove the shading vegetation within thirty (30) days after receiving this notice, the recorded owner or the city may apply to the appropriate court for an injunction or damages.

15.16.120 Repurchase of recordation.

- A. Any recordation issued pursuant to this chapter is subject to the repurchase requirements of this section.
- B. Solar access recordations shall contain a condition stating that at any time the city may repurchase all or part of the rights granted by the recordation. At the time of the recordation application, the applicant shall agree in writing to follow a procedure for valuing the recordation on the time of any buy-back as follows:  
Arbitration. In Section 15.16.070(A)(10) the recorded owner agrees, as a condition of obtaining a recordation, to submit to binding arbitration the value of the recordation and the damages to be paid if the city diminishes in whole or in part the rights protected by the recordation. The arbitration shall be held pursuant to the rules of the American Arbitration Association. The presumptive measure of damages shall be the greater of the present net worth of the collector and associated equipment or the discounted present worth of the difference in energy costs with and without the collector for the remaining life of the collector and associated equipment, plus the cost of removing the collector (and repairing or putting on a new roof, siding, etc., if needed), plus the cost of providing mechanical equipment properly sized to perform the task formerly assumed by the collector and associated equipment, plus the costs to the recorded owner of the repurchase proceedings. The burden of showing the amount of these presumptive damages shall be on the recorded owner. The city shall be given the opportunity of showing that the actual damages are less than would be calculated by this formula and the extent of the actual damages.
- C. If a private individual stands to benefit from the repurchase of a solar access recordation, the city may require that individual to reimburse the city for the cost of the repurchase as a prior condition to granting a development permit that would authorize what would have been unlawful shading.

## Chapter 15.20

### PUBLIC WORKS CONSTRUCTION STANDARDS

#### Sections:

- 15.20.010 Adoption of standard specifications.
- 15.20.020 Public works construction under city contracts
- 15.20.030 Public works construction outside city contracts.
- 15.20.040 Administration and interpretation.
- 15.20.050 Appeals.
- 15.20.060 Violation - Penalty.

#### Ordinance History: #1355

##### 15.20.010 Adoption of standard specifications.

The city adopts as its standard specifications for public works construction the document which is attached to the ordinance codified in this chapter as Attachment A and included herein by reference, entitled "Standard Specifications for Public Works Construction," 1990 edition, including text supplements thereto dated June, 1992, and drawing supplements thereto dated May, 1992.

##### 15.20.020 Public works construction under city contracts.

For public works projects undertaken through a contract with the city, all construction involving public streets, sidewalks, storm drainage, water lines, sewer lines, structures, or other public works projects shall conform to all of the provisions, regulations and requirements of the standard specifications for public works construction.

##### 15.20.030 Public works construction outside city contracts.

For public works projects undertaken outside a contract with the city, all construction involving public streets, sidewalks, storm drainage, water lines, sewer lines, structures, or other public works projects shall conform to all of the provisions, regulations and requirements of the standard specifications for public works construction, with the exception of those provisions which apply exclusively to contracts with the city.

##### 15.20.040 Administration and interpretation.

The city manager and his/her designee(s), which shall include the city engineer, public works director, public works superintendent, water superintendent, chief wastewater operator, planning director and/or other designee(s) of the city manager, shall be responsible for administering and interpreting the provisions of this chapter.

##### 15.20.050 Appeals.

Any person aggrieved by the administration, application or interpretation of the provisions of this chapter may file an appeal within fifteen (15) days of the action being appealed. That appeal must be in writing to the city manager, fully setting forth the basis for that appeal and all of the facts in the matter. Within fifteen (15) days of receiving the appeal, the city manager shall

make a decision on the matter and shall notify the appellant of that decision, or shall forward the appeal documentation to the city council if the appeal is regarding a decision of the city manager. In the case of an appeal to the city council, the matter shall be placed on the next available city

council agenda, considering agenda deadlines in effect at that time.

15.20.060 Violation--Penalty.

It is unlawful for any person, firm or corporation to erect, construct, install, enlarge, alter, change, repair, move, improve, remove, convert or demolish all or any portion of a public street, sidewalk, storm drain, water line, sewer line, structure, or other public works project, or cause the same to be done, contrary to, or in violation of, the provisions, regulations and requirements of this chapter. Violation of this chapter is punishable in accordance with Chapter 1.16.



## Chapter 15.24

### SYSTEM DEVELOPMENT CHARGE

#### Sections:

15.24.010	Purpose.
15.24.020	Scope.
15.24.030	Definitions.
15.24.040	System development charge established.
15.24.050	Methodology.
15.24.060	Authorized expenditures.
15.24.070	Expenditure restrictions.
15.24.080	Improvement plan.
15.24.090	Collection of charge.
15.24.100	Delinquent charges--Hearing.
15.24.110	Installment payments.
15.24.120	Exemptions.
15.24.130	Credits.
15.24.140	Segregation and use of revenue.
15.24.150	Appeal procedure.
15.24.160	Prohibited connection.
15.24.170	Violation--Penalty.
15.24.180	Construction.

Ordinance History: #1327, 1514

#### 15.24.010 Purpose.

The purpose of the system development charge is to impose a portion of the cost of capital improvements for water, wastewater drainage, streets, flood control, and parks upon those developments that create the need for or increase the demands on capital improvements.

#### 15.24.020 Scope.

The system development charge imposed by this chapter is separate from and in addition to any applicable tax, assessment, charge or fee otherwise provided by law or imposed as a condition of development.

#### 15.24.030 Definitions.

For purposes of this chapter, the following mean:

"Capital improvements" means facilities or assets used for:

1. Water supply, treatment and distribution;
2. Wastewater collection, transmission, treatment and disposal;
3. Transportation, drainage and flood control; or
4. Parks and recreation.

"Development" means conducting a building or mining operation, making a physical change in the use or appearance of a structure or land, dividing land into two or more parcels (including partitions and subdivisions), and creating or terminating a right of access.

"Improvement fee" means a fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to Section 15.24.040.

"Land area" means the area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of a portion of the parcel within a recorded right-of-way or easement subject to a servitude for a public street or scenic or preservation purpose.

"Owner" means the owner or owners of record title or the purchaser or purchasers under a recorded sales agreement, and other persons having an interest of record in the described real property.

"Parcel of land" means a lot, parcel, block or other tract of land that is occupied or may be occupied by a structure or structures of other use, and that includes the yards and other open spaces required under the zoning, subdivision, or other development ordinances.

"Qualified public improvements" means a capital improvement that is:

1. Required as a condition of development approval;
2. Identified in the plan adopted pursuant to Section 15.24.080; and
3. Not located on or contiguous to a parcel of land that is the subject of the development approval.

"Reimbursement fee" means a fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to Section 15.24.040.

"System development charge" means a reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement. "System development charge" includes that portion of a sewer or water system connection charge that is greater than the amount necessary to reimburse the city for its average cost of inspecting and installing connections with water and sewer facilities. "System development charge" does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision.

15.24.040 System development charge established.

- A. System development charges shall be established and may be revised by resolution of the council.
- B. Unless otherwise exempted by the provisions of this chapter or other local or state law, a system development charge is imposed upon all parcels of land within the city, and upon all lands outside the boundary of the city that connect to or otherwise use the sewer facilities, storm sewers or water facilities of the city.
- C. A development shall have that portion of the system development charge applicable to a service not available to the parcel deferred until the service is available to the parcel.

15.24.050 Methodology.

- A. The methodology used to establish the reimbursement fee shall consider the cost of then-existing facilities, prior contributions by then-existing users, the value of unused capacity, rate-making principals employed to finance publicly owned capital improvements, and other relevant factors identified by the council. The methodology shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities.
- B. The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which

- the fee is related.
- C. The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be contained in an ordinance adopted by the council.

15.24.060 Authorized expenditures.

- A. Reimbursement fees shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.
- B. Improvement Fees.
1. Improvement fees shall be spent only on capacity-increasing capital improvements, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the capital improvements funded by improvement fees must be related to demands created by development.
  2. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the city pursuant to Section 15.24.080.
- C. Notwithstanding subsections A and B of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this chapter, including the costs of development of system development charge methodologies and providing an annual accounting of system development charge expenditures.

15.24.070 Expenditure restrictions.

- A. System development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
- B. System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

15.24.080 Improvement plan.

The council shall adopt a plan that:

- A. Lists the capital improvements that may be funded with improvement fee revenues;
- B. Lists the estimated cost and time of construction of each improvement; and
- C. Describes the process for modifying the plan.

15.24.090 Collection of charge.

- A. The system development charge is payable upon issuance of:
1. A building permit;
  2. A permit to connect to the water system; or
  3. A permit to connect to the sewer system.
- B. If no building, development or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased.
- C. If development is commenced or connection is made to the water or sewer systems without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.
- D. The city manager or his/her designee shall collect the applicable system development charge when a permit that allows building or development of a parcel is issued or when a

- connection to the water or sewer system of the city is made.
- E. The city manager or his/her designee shall not issue such permit or allow such connection until the charge has been paid in full, or until provisions for installment payments has been made pursuant to Section 15.24.110, or unless an exemption is granted pursuant to Section 15.24.120.
  - F. There shall be no advance payment of system development charges for any use, permit, connection, or development which has not been approved, granted, allowed or issued.

15.24.100 Delinquent charges--Hearing.

- A. When, for any reason, the system development charge has not been paid, the city manager shall report to the council the amount of the uncollected charge, the description of the real property to which the charge is attributable, the date upon which the charge was due, and the name of the owner.
- B. The city council shall schedule a public hearing on the matter and direct that notice of the hearing be given to each owner with a copy of the city manager' report concerning the unpaid charge. Notice of the hearing shall be given either personally or by certified mail, return receipt requested, or by both personal and mailed notice, and by posting notice on the parcel at least ten (10) days before the date set for the hearing.
- C. At the hearing, the council may accept, reject or modify the determination of the city manager as set forth in the report. If the council finds that a system development charge is unpaid and uncollected it shall direct the city manager to docket the unpaid and uncollected system development charge in the lien docket. Upon completion of the docketing, the city shall have a lien against the described land for the full amount of the unpaid charge, together with interest at the legal rate of ten (10) percent and with the city's actual cost of serving notice of the hearing on the owners. The lien shall be enforceable in the manner provided in ORS Chapter 223.

15.24.110 Installment payments.

- A. When a system development charge of one hundred dollars (\$100.00) or more is due and collectible, the owner of the parcel of land subject to the development charge may apply for payment in twenty (20) semiannual installments, to include interest on the unpaid balance, in accordance with ORS 223.208.
- B. The finance director shall provide application forms for installment payments, which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.
- C. An applicant for installment payments shall have the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the parcel and that the interest of the applicant is adequate to secure payment of the lien.
- D. The finance director shall report to the city manager the amount of the system development charge, the dates on which the payments are due, the name of the owner, and the description of the parcel.
- E. The finance director shall docket the lien in the lien docket. From that time the city shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established by the council. The lien shall be enforceable in the manner provided in ORS Chapter 223.

15.24.120 Exemptions.

- A. Structures and uses established and existing on or before July 6, 1977, are exempt from a system development charge, except water and sewer charges, to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the water or sewer charges pursuant to the terms of this chapter upon the receipt of a permit to connect to the water or sewer system.
- B. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the State Uniform Building Code, are exempt from all portions of the system development charge.
- C. An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the public improvement facility are exempt from all portions of the system development charge.
- D. A project financed totally by city revenues is exempt from all portions of the system development charge.

15.24.130 Credits.

- A. A system development charge shall be imposed when a change of use of a parcel or structure occurs, but credit shall be given for the computed system development charge to the extent that prior structures existed and services were established on or after April 1, 1994. The credit so computed shall not exceed the calculated system development charge. No refund shall be made on account of such credit.
- B. A credit shall be given for the cost of a qualified public improvement associated with a residential development. If a qualified public improvement is located partially on and partially off the parcel that is the subject of the residential development approval, the credit shall be given only for the cost of the portion of the improvement not located on or wholly contiguous to the property. The credit provided for by this subsection shall be only for the improvement fee charged for the type of improvement being constructed and shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee.
- C. Credit shall not be transferable from one development to another.
- D. Credit shall not be transferable from one type of capital improvement to another.

15.24.140 Segregation and use of revenue.

- A. All funds derived from a particular type of system development charge are to be segregated by accounting practices from all other funds of the city. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth in Section 15.24.060.
- B. The city manager shall provide the city council with an annual accounting, based on the city's fiscal year, for system development charges showing the total amount of system development charge revenues collected for each type of facility and the projects funded from each account.

15.24.150 Appeal procedure.

- A. A person challenging the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the city council by filing a written request with the city recorder describing the particularity of the decision of the city manager and the expenditure from which the person appeals. An appeal of an expenditure must be

- filed within two years of the date of the alleged improper expenditure.
- B. Appeals of any other type required or permitted to be made by the city manager under this chapter must be filed within ten (10) days of the date of the decision.
  - C. After providing notice to the appellant, the council shall determine whether the city manager's decision or the expenditure is in accordance with this chapter and the provisions of ORS 223.297 to 223.314 and may affirm, modify or overrule the decisions. If the council determines that there has been an improper expenditure of system development charge revenues, the council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent.
  - D. A legal action challenging the methodology adopted by the council pursuant to Section 15.24.050 shall not be filed later than sixty (60) days after the adoption.

15.24.160 Prohibited connection.

No person may connect to the water or sewer systems of the city unless the appropriate system development charge has been paid or the lien or installment payment method has been applied for and approved.

15.24.170 Violation--Penalty.

Violation of Section 15.24.160 is punishable in accordance with Chapter 1.16 per day per violation. (Editorially amended during 2000 codification)

15.24.180 Construction.

The rules of statutory construction contained in ORS Chapter 174 are adopted and by this reference made a part of this chapter.

## FLOODPLAIN INSURANCE

Sections:

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- 15.28.010 Adoption, statutory provisions and title.
- 15.28.020 Purpose.
- 15.28.030 Findings of fact.
- 15.28.040 Methods of reducing flood losses.
- 15.28.050 Definitions.

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Ordinance History: #1203, 1393

## Article I. General Provisions and Definitions

### 15.28.010 Adoption, statutory provisions and title.

- A. This chapter is adopted by the city of Bandon.
- B. This chapter is enacted pursuant to the provisions of ORS 203.035, ORS Chapter 92 and ORS Chapter 215.
- C. This chapter shall be known as "an ordinance for the city of Bandon floodplain insurance."

### 15.28.020 Purpose.

The purpose of this chapter is to establish the eligibility of city residents in the National Flood Insurance Program, to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- A. To protect human life and health;
- B. To minimize expenditure of public money and costly flood control projects;
- C. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- D. To minimize prolonged business interruptions;
- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- F. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- G. To ensure that potential buyers are notified that property is in an area of special flood hazard; and
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

### 15.28.030 Findings of fact.

- A. The flood hazard areas of the city are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commercial and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- B. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately flood-proofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.
- C. This chapter is consistent with Statewide Planning Goal 7, "Areas Subject to Natural Disasters and Hazards." This chapter will subject building and land division permit requests within flood prone areas to evaluation on the basis of existing hazards. Goal #7 encourages cities to qualify for inclusion in the National Flood Insurance Program.

### 15.28.040 Methods of reducing flood losses.

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

- A. Restricting or prohibiting uses which are dangerous to health, safety and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
- B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

- C. Controlling the alteration of natural flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- D. Controlling filling, grading, dredging and other development which may increase flood damage; and
- E. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas.

15.28.050 Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

"Appeal" means a request for a review of the city manager's interpretation of any provision of this chapter or a request for a variance.

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

"Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.

"Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year. Designation on maps always includes the letter A or V.

"Breakaway walls" means a wall that is not a 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.

"Coastal high hazard area" means the area subject to high velocity waters, including but not limited to storm surge or tsunamis. The area is designated on a FIRM as Zone VI-30, VE or V.

"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 located within the area of special flood hazard.

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

1. The overflow of inland or tidal waters; and/or
2. The unusual and rapid accumulation of runoff of surface waters from any source.

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

"Flood Insurance Study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the Flood Boundary-Floodway Map, and the water surface elevation of the base flood.

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

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor,

provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter found at Section 15.28.170(A)(2).

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

"Mean sea level" means the average height of the sea for all stages of the tide.

"New construction" means structures for which the start of construction commenced on or after the effective date of the ordinance codified in this chapter.

"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 one hundred eighty (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 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; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundation or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

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

"Substantial improvement" means:

1. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either:
  - a. Before the improvement or repair is started;
  - 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.
2. The term does not, however, include either:
  - a. Any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions; or
  - b. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

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

## **Article II. Administration and Enforcement**

### **15.28.060 Lands to which this chapter applies.**

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the city of Bandon.

15.28.070 Basis for establishing the areas of special flood hazard.

The information contained in the Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) for the Bandon area issued by the Federal Emergency Management Agency which became effective on February 18, 1998, are adopted by reference and declared to be a part of this chapter. Information contained in the FIS and FIRM shall be used as the basis for determining areas of special flood hazard as a part of the city’s floodplain management program. The FIS and FIRM are on file at Bandon City Hall.

15.28.080 Abrogation and greater restrictions.

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

15.28.090 Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

- 1. Considered as minimum requirements;
- 2. Liberally construed in favor of the governing body; and
- 3. Deemed neither to limit nor repeal any other powers granted under state statutes.

15.28.100 Warning and disclaimer of liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the city of Bandon or any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this chapter or any administrative decision lawfully made hereunder.

15.28.110 Development permit required.

A development permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 15.28.070. 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, also set forth in the definitions.

15.28.120 Application for development permit.

Application for a development permit shall be made on forms furnished by the city manager and may include but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- A. Elevation, in relation to mean sea level, of the lowest floor (including basement) of all structures;
- B. Elevation in relation to mean sea level to which any structure has been floodproofed;
- C. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 15.28.170(B); and

- D. Description of the extent to which a watercourse will be altered as a result of proposed development.

15.28.130 Designation of the city manager.

The city manager is appointed to administer and implement this chapter by granting or denying development permit applications in accordance with its provisions.

15.28.140 Duties and responsibilities of the city manager.

Duties of the city manager shall include, but not be limited to:

- A. Permit review:
  - 1. Review all development permits to determine that the permit requirements of this chapter have been satisfied,
  - 2. Review all development permits to determine that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required;
- B. Use of Other Base Flood Data. When base flood elevation data has not been provided in accordance with Section 15.28.070, Basis for Establishing the Areas of Special Flood Hazard, the city manager 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 15.28.170, Specific Standards, and 15.28.180, Floodways;
- C. Information to be Obtained and Maintained.
  - 1. Where base flood elevation data is provided through the Flood Insurance Study or required as in subsection B of this section, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement,
  - 2. For all new or substantially improved flood-proofed structures:
    - a) Verify and record the actual elevation (in relation to mean sea level), and
    - b) Maintain the flood-proofing certification required in Section 15.28.120(C),
  - 3. Maintain for public inspection all records pertaining to the provisions of this chapter,
  - 4. In coastal high hazard areas, certification shall be obtained from a registered professional engineer or architect that the structure is securely anchored to adequately anchored pilings or columns in order to withstand velocity waters;
- D. Alteration of Watercourses.
  - 1. Notify adjacent communities and the Department of Land Conservation and Development prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration,
  - 2. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished;
- E. Interpretation of FIRM Boundaries. Make interpretations, where needed, as to 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). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Sections 15.28.210 and 15.28.220.

15.28.150 Penalties for noncompliance.

No structures or land shall hereafter be constructed, located, extended, converted or altered without full compliance with the terms of this chapter and other applicable regulations.

Violation of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this chapter or fails to comply with any of its requirements shall upon conviction thereof be fined not more than five thousand dollars (\$5,000.00) or imprisoned for not more than ninety (90) days, or both, for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the city from taking such other lawful action as is necessary to prevent or remedy any violation.

### **Article III. Provisions For Flood Hazard Protection**

#### **15.28.160 General standards.**

In all areas of special flood hazards, the following standards are required:

- A. Anchoring.
  - 1. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.
  - 2. All manufactured homes must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques).
- B. Construction Materials and Methods.
  - 1. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
  - 2. All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
  - 3. Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- C. Utilities.
  - 1. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
  - 2. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters; and,
  - 3. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- D. Subdivision Proposals.
  - 1. All subdivision proposals shall be consistent with the need to minimize flood damage;
  - 2. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
  - 3. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and
  - 4. 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 development which contact at least fifty (50) lots or five acres

(whichever is less).

- E. Review of Building Permits. Where elevation data is not available, either through the Flood Insurance Study or from another authoritative source (Section 15.28.140(B)), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

15.28.170 Specific standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in Section 15.28.070, Basis for Establishing the Areas of Special Flood Hazard, or Section 15.28.140(B), Use of Other Base Flood Data, the following provisions are required:

A. Residential Construction.

1. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation.
2. 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 floodwater. 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 square inch for every square foot of enclosed area subject to flooding shall be provided.
  - b) The bottom of all openings shall be no higher than one foot above grade.
  - c) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of flood water.

B. Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

1. Be flood-proofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;
2. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
3. 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. Such certifications shall be provided to the official as set forth in Section 15.28.140(C)(2);
4. Nonresidential structures that are elevated, not flood-proofed, must meet the same standards for space below the lowest floor as described in subsection (A)(2) of this section;
5. Applicants flood-proofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the flood-proofed level (e.g. a building constructed to the base flood level will be rated as one foot below that level).

C. Manufactured Homes. All manufactured homes to be placed or substantially improved within Zones A1--30, AH and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of Section 15.28.160(A)(2).

15.28.180 Floodways.

Located within areas of special flood hazard established in Section 15.28.070 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:

- A. 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 the occurrence of the base flood discharge;
- B. If subsection A of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article III of this chapter, Provisions for Flood Hazard Reduction.

15.28.190 Coastal high hazard areas.

Located within areas of special flood hazard established in Section 15.28.070 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 chapter, the following provisions shall also 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:
  - 1. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level; and
  - 2. 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 one percent chance of being equaled or exceeded in any given year (one hundred (100) year mean recurrence interval).

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 subsection (A)(1) and (2) of this section.

- B. 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--30 and VE, and whether or not such structures contain a basement. The local administrator shall maintain a record of all such information.
- C. All new construction shall be located landward of the reach of mean high tide.
- D. 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 latticework, 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 purpose of this section, a

breakaway wall shall have a design safe loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of twenty (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:

1. The breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and
  2. 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 nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (one hundred (100) year mean recurrence interval).
- E. If breakaway walls are utilized, such enclosed space shall be solely usable for parking of vehicles, building access, or storage. Such space shall not be used for human habitation.
- F. Prohibit the use of fill for structural support of buildings.
- G. Prohibit man-made alteration of sand dunes which would increase potential flood damage.

15.28.200 Shallow flooding areas with depth designations.

Shallow zones appear on FIRM's as AO zones with depth designations. The base flood depths in these zones range from one to three feet where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas, the following provisions apply:

- A. New construction and substantial improvements of residential structures within AO zones shall have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, to or above the depth number specified on the FIRM. Where appropriate, such structures shall be elevated above the crown of the nearest road, to or above the depth number specified on the FIRM (at least two feet if no depth number is specified).
- B. New construction and substantial improvements of nonresidential structures within AO zones shall either:
1. Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, to or above the depth number specified on the FIRM (at least two feet if no depth number is specified); or
  2. Together with attendant utility and sanitary facilities, be completely flood-proofed to or above that level 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 buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as in Section 15.28.170(B)(3);
  3. Require adequate drainage paths around structures on slopes to guide flood water around and away from proposed structures.

**Article IV. Variance Procedures.**

15.28.210 Appeal board.

- A. The planning commission of the city shall hear and decide appeals and requests for

- variances from the requirements of this chapter.
- B. The planning commission shall hear and decide appeals when a determination is made by the city manager in the enforcement or administration of this chapter.
  - C. Those aggrieved by the decision of the planning commission may appeal such decision to the city council.
  - D. In passing upon such application, the planning commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:
    - 1. The danger that materials may be swept into other lands to the injury of others;
    - 2. The danger to life and property due to flooding or erosion damage;
    - 3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
    - 4. The importance of the services provided by the proposed facility to the community;
    - 5. The necessity to the facility of a waterfront location, where applicable;
    - 6. The availability of alternative locations, for the proposed use which are not subject to flooding or erosion damage;
    - 7. The compatibility of the proposed use with existing and anticipated development;
    - 8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
    - 9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
    - 10. The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
    - 11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.
  - E. Generally, the only condition under which a variance may be issued is for new construction and substantial improvements to be erected on a lot of one half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the provisions of subsection (D)(1)--(11) of this section have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.
  - F. Upon consideration of the factors of subsection D of this section and the purposes of this chapter, the planning commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.
  - G. The city manager shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

15.28.220 Conditions for variances.

- A. Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this section.
- B. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- C. Variances shall only be issued upon:
  - 1. A showing of good and sufficient cause;
  - 2. A determination that failure to grant the variance would result in exceptional hardship to the applicant;

3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in Section 15.28.210(D), or conflict with existing local laws or ordinances.
- D. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- E. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
- F. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of flood-proofing than watertight or dry-flood-proofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except this section, and otherwise complies with Section 15.28.160(A) and (B) of this chapter.
- G. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.