



**Planning Commission Hearing  
Staff Report  
Hearing Date: November 10, 2021**

**ITEM 6\*** Community and Neighborhood Services requests an Ordinance Text Amendment to Provo City Code Chapter 15.05.180 to increase the elevation requirement of the lowest habitable floor within the Special Flood Hazard Area and revise the 100-foot setback requirement to the Provo River. Citywide application Melissa McNalley 801-852-6164 mmcnalley@provo.org PLOTA20210362.

**Applicant:** Community and Neighborhood Services

**Staff Coordinator:** Melissa McNalley

**Citywide Application**

**Council Action Required:** Yes

**Alternative Actions:**

1. **Continue** to a future date to obtain additional information or to further consider information presented. *The next available meeting date is December 8, 2021, 6:00 p.m.*
2. **Deny** of the proposed rezoning. This would be a change from the Staff recommendation; the Planning commission should state new findings.

**Relevant History:** The setback to the Provo River was established after the significant flooding events of 1983. The 100-foot determination was used as a blanket approach for safety. Provo participates in the National Flood Insurance Program from FEMA. In order to comply with rating guidelines, a building standard in the floodplain area was established of one foot above the base flood elevation.

**Neighborhood Issues:**

There has been no feedback from neighborhoods affected by this change.

**Summary of Key Issues:**

- The change in buildable area elevations within the floodplain will offer future development in the floodplain more protection against potential flood events.
- The proposed amendment will give more leeway to developments along the Provo River in areas outside the floodplain.
- Future improvements to levees are taken into consideration for development closer to the Provo River.

**Staff Recommendation:**

Staff recommends the Planning Commission recommend approval of the proposed ordinance amendment to the Municipal Council.

## **OVERVIEW**

The applicant is requesting an ordinance text amendment to update the building elevation requirements within the floodplain. Requirements are currently 1 (one) foot above the base flood elevation (BFE). The proposal is to require a 3 foot above BFE requirement in the floodplain to add increased protection in a flood event.

Additionally, the applicant is proposing changes to the Provo River setback in order to allow more building options in areas adjacent to the Provo River and outside of the floodplain.

## **GENERAL PLAN POLICIES**

Protect and enhance lands adjacent to Provo River. Enhance upkeep and removal of litter and debris. (Goal 4.4.13.5).

Avoid development in flood hazard areas to preserve storage space for flood waters and protect persons and property, unless proper mitigation efforts are implemented. (Goal 4.4.26).

## **FINDING OF FACTS**

1. The current building requirement in the floodplain is 1 (one) foot above the base flood elevation.
2. Increasing the building requirement within the floodplain will offer more protection to property built within the floodplain.
3. The current setback to the Provo River throughout Provo is 100 feet.
4. Changing the setback requirements will allow property owners adjacent to the Provo River more development opportunity outside the floodplain while allowing the City the access it will need to keep the river free of debris.

## **STAFF ANALYSIS**

The proposed ordinance text amendment will provide additional guidelines for development along the Provo River.

1. Provo City Code Section 14.02.020(2) sets forth the following guidelines for consideration of ordinance text amendments:

*Before recommending an amendment to this Title, the Planning Commission shall determine whether such amendment is in the interest of the public and is consistent with the goals and policies of the Provo City General Plan. The following*

*guidelines shall be used to determine consistency with the General Plan:*  
**(responses in bold)**

*(a) Public purpose for the amendment in question.*

**The proposed amendment supports development that may complement the Provo River while also retaining a level of protection in the floodplain.**

*(b) Confirmation that the public process is best served by the amendment in question.*

**The proposed amendment allows for more diversity along the Provo River where relevant throughout the city.**

*(c) Compatibility of the proposed amendment with General Plan policies, goal, and objectives.*

**The proposed amendment supports the goals, policies, and objectives of the General Plan regarding land use for developmentally sensitive lands.**

*(d) Consistency of the proposed amendment with the General Plan's "timing and sequencing" provisions on changes of use, insofar as they are articulated.*

**The proposed amendment is consistent with the timing and sequencing of the General Plan.**

*(e) Potential of the proposed amendment to hinder or obstruct attainment of the General Plan's articulated policies*

**There is no potential of hinderance or obstruction to the General Plan policies with the proposed amendment.**

*(f) Adverse impacts on adjacent landowners.*

**The proposed amendment is not anticipated to have an adverse effect on adjacent landowners.**

*Verification of correctness in the original zoning or General Plan for the area in question.*

**The original zoning and General Plan designation for the area is correct as shown in both the General and Neighborhood Plan.**

*(g) In cases where a conflict arises between the General Plan Map and General Plan Policies, precedence shall be given to the Plan Policies.*  
**No conflict exists.**

### **STAFF RECOMMENDATION**

1. Staff recommends the Planning Commission recommend approval of the proposed ordinance amendment to the Municipal Council.

### **ATTACHMENTS**

**1 – Ordinance Text Amendment**

## Attachment 1 – Ordinance Text

### 15.05.180

#### **Floodplain Management and Development Standards.**

The special flood hazard areas (SFHA) of Provo, Utah, are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect public health, safety, and general welfare. The following standards provide an environment in and around the SFHA to protect life and minimize property losses.

(1) *Flood Study and Map.* The Provo City Flood Insurance Study (FIS) with the effective date of June 19, 2020 (as prepared by the Federal Emergency Management Agency or FEMA), is hereby adopted by reference. The June 19, 2020 (effective date), Flood Insurance Rate Map (FIRM) for Provo City, as prepared by the FEMA, is hereby adopted by reference and is available on the City's website for examination and use by the public. The list of adopted FIRM panels is as follows: 49049C0334F, 49049C0340F, 49049C0341F, 49049C0342F, 49049C0343F, 49049C0344F, 49049C0355F, 49049C0526F, 49049C0527F, 49049C0528F, 49049C0529F, 49049C0531F, 49049C0532F, 49049C0533F, 49049C0534F, 49049C0561F, 49049CIND0A, 49049CV001A, 49049CV002A, 49049CV003A, 49049C\_20200619.

(2) *Definitions.* For purposes of this Section, certain words and phrases have the following meanings:

**"Base flood"** means a flood having a one percent (1%) chance of being equaled or exceeded in any given year.

**"Development"** means any manmade 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 the overflow of inland or tidal waters and/or the unusual and rapid accumulation or runoff of surface waters from any source.

**“Flood Insurance Rate Map (FIRM)”** means the official map of which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

**“Flood Insurance Study”** means the official report provided by the Federal Emergency Management Agency that compiles and presents flood risk data for specific water bodies within a community.

**“Floodplain”** means the relatively flat area or lowlands adjoining a river, stream, watercourse, ocean, or lake which have been or may be covered by flood water. For purposes of this Chapter, this shall be that area designated on the FIRMs as special flood hazard areas.

**“Floodplain Administrator”** means the local official or other person designated by a community as responsible for administering the floodplain management ordinance.

**“Floodway”** means the channel of the river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without accumulatively increasing the water surface elevation more than one (1) 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 nonelevation design requirements of this Title.

**“New construction”** means structures for which the start of construction commenced on or after the effective date of this Chapter.

**“Special flood hazard area (SFHA)”** means the land in the floodplain within a community subject to a one percent (1%) or greater chance of flooding in any given year.

**“Start of construction”** includes substantial improvements 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 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 excavation for a basement, footings, piers, or foundations 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 as part of the main structure.

**“Structure”** means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a manufactured home.

**“Substantial improvements”** means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- (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.

**“Warning and disclaimer of liability”** means the degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on engineering and scientific methods of study. Larger floods may occur on rare occasions, for flood heights may be increased by manmade or natural causes, such as ice jams and bridge openings restricted by debris. This Chapter does not imply that areas or land uses outside the floodplain will be free from flooding or flood damages. This Chapter shall not create liability on the part of Provo City or any officer or employee thereof for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made hereunder.

(3) *Floodplain Development Permit.*

- (a) A floodplain development permit shall be obtained before construction or development begins within the SFHA.

(b) Application for a floodplain development permit shall be made on forms furnished by the Floodplain Administrator and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures; fill; storage of materials; drainage facilities; and the location of the foregoing.

(c) Specifically, the following information is required:

(i) Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures. Plans must show that the elevation of lowest habitable floor is at least ~~one (1) foot~~ three (3) feet above the base flood elevation;

(ii) Elevation in relation to mean sea level to which any structure has been floodproofed;

(iii) Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the applicable floodproofing standards of this Section.

(d) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

(e) A conditional letter of map revision (CLOMR) shall be required for applications that would alter the course, elevations, or delineations of floodplains based on riverine or overland flow. Upon approval by the Floodplain Administrator, the CLOMR shall be submitted to FEMA. Approval by FEMA shall be required to obtain the floodplain development permit.

(f) All applications for a floodplain development permit must be approved by the Floodplain Administrator.

(4) *Use of Other Base Flood Data.* Where base flood elevation data has not been provided on the FIRM or in the Flood Insurance Study, the Floodplain Administrator may review and reasonably utilize base flood elevation and floodway data available from Federal, State, or other sources as criteria for requiring that new construction, substantial improvements, or other development within the floodplain are administered in accordance with Subsection (6) of this Section.



(5) *Submittal Requirements for Certificate of Occupancy.* The following shall be required prior to the issuance of any certificate of occupancy for any structure in the SFHA:

- (a) A letter of map change (LOMC) approved by the Floodplain Administrator and FEMA to remove the structure from the SFHA; or
- (b) A LOMC approved by the Floodplain Administrator, documentation that the LOMC has been submitted to FEMA, and a FEMA elevation certificate completed and signed by a registered professional engineer or land surveyor indicating the structure is above the base flood indicated in the LOMC submittal.

(6) *Development Standards.* No final subdivision, condominium, or other record of survey plat shall be approved, nor shall any development permit be issued for property located within the SFHA or within one hundred (100) feet of the high point of the bank of Provo River until the following criteria have been complied with:

- (a) All applicable development permits for the proposed construction or improvements shall be obtained from Federal, State, or local governmental agencies from which prior approval is required.
- (b) All proposals for new construction, redevelopment, or for substantial improvements to existing structures within the SFHA (including manufactured homes) must be designed (or modified) to meet the performance standards of Section [18.03.020](#), Provo City Code.
- (c) All proposals for construction or improvements (including replacements) must be provided with water supply systems or sanitary sewage systems which are designed to minimize or eliminate infiltration of flood waters into the system and discharges from the system into flood water. On-site waste disposal systems must be located so as to avoid impairment of them, or contamination from them, during flooding. All public utilities including sewer, gas, electricity, and water systems shall be located and constructed to minimize or eliminate flood damage.
- (d) No structure, earth fill, or parking lot in connection with any industrial, commercial, or residential development, or any other surface obstruction to water flow, except bridges, flood control devices, public restrooms, and public recreational facilities, may be located closer than one hundred (100) feet to the high point of the bank of Provo River. [However, an encroachment into the required 100-foot setback may be allowed after ~~without~~ review](#)

and approval of a project plan application if the project is part of a larger development or approval of a minor project plan application if the proposed project is a single-family structure or accessory structure, subject to the following requirements:

1. Provide access to the River at intervals not exceeding 400 linear feet of river frontage.
2. Provide a minimum 40-foot maintenance easement in favor of Provo City. The easement shall be measured from the top of the bank extending a minimum of 40 feet into the parcel.
3. In areas where the river bank acts as a levee or where the Special Flood Hazard Area extends beyond the high bank of the river, a minimum 100-foot setback shall be maintained. A reduced setback may be approved where improvements to such levee are constructed in a manner consistent with FEMA regulations.

(e) All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(f) Any encroachments such as fill, new construction, substantial improvements, and other development within the floodway that would result in any increase in flood levels during the occurrence of the base flood discharge are prohibited.

(h) Location of any structural storage facilities for chemicals, explosives, buoyant materials, flammable liquids, or other toxic materials which could be hazardous to public health, safety, and welfare shall be floodproofed to prevent flotation of storage containers or damage to storage containers which could result in the escape of toxic materials into flood waters.

(Enacted 2020-15)



**PUBLIC WORKS**  
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## **Public Works Staff Report**

### **Hearing Date: 11/10/2021**

PLOTA20210362 – Ordinance Text Amendment: Provo River Setback Requirements

#### **Item#6 Summary:**

Community and Neighborhood Services requests an Ordinance Text Amendment to Provo City Code Chapter 15.05-180 to increase the elevation requirement of the lowest habitable floor within the Special Flood Hazard Area and revise the 100 foot setback requirement to the Provo River.

#### **Staff Recommendation:**

Public Works has reviewed the Ordinance Text Amendment, and recommends **Approval**, subject to the following conditions.

#### **Conditions of Approval:**

- Provide access to the river at intervals not exceeding 400 lineal feet of river frontage.
- Provide a minimum 40 feet maintenance easement in favor of Provo City. The easement shall be measured from the top of bank, extending a minimum of 40 feet into the project.
- In areas where the river bank acts as a levee or where the FEMA floodplain extends beyond the high bank of the river, a minimum of 100 foot setback shall be maintained. A reduced setback may be approved where improvements to such levee are constructed in a manner acceptable to FEMA, and as approved by the floodplain administrator.
- Public Works recommends completion of a comprehensive Provo River Corridor Master Plan prior to making revisions to the current setbacks.

Dave Decker, Public Works Director  
David Day, Development Engineering Coordinator