

**KEY QUESTIONS AND ISSUES OF FLOODPLAIN HOMEOWNERS
ON PROPOSED ANN ARBOR FLOODPLAIN ORDINANCE
Old West Side Homeowners 10/8/20**

1. Q: Is it a key regulatory intent of this ordinance to remove non-compliant (i.e., non-elevated) homes and other structures from the city's floodplains (which the City expects will expand over time to encompass even more properties)? Is this ordinance part of the City's long-term strategy for re-shaping land use in Ann Arbor?

A: No. The City's flood mitigation priorities are identified in the 2017 Hazard Mitigation Plan. The Floodplain Management Overlay Zoning District is identified as one of the highest priorities. Structure removal is identified to occur on a voluntary basis, with assistance provided by the City in securing FEMA grants. Priorities for the next 5-year period will be determined in the 2022 HMP development process.

2. Q: What is the current estimated cost in Ann Arbor for elevating an existing occupied structure above the proposed new Flood Protection Elevation level? What range of costs - in dollars per square foot of building footprint - should homeowners expect to incur to elevate homes typical of those in Ann Arbor's floodplains?

A: The requirement to elevate homes is one of the minimum requirements for communities to participate in the National Flood Insurance Program (NFIP). The City has participated in the NFIP since 1982. In December of 1999 the State of Michigan adopted the Michigan Building Codes that required structures to be elevated 1 foot above the base flood elevation. The proposed ordinance change, to elevate 1 foot above the 0.2% flood elevation, essentially adds one foot of elevation to the existing requirements. The cost estimate to elevate a typical house one foot higher than the current requirements is about \$2000.00. This cost is easily recovered in flood insurance savings in just a few years.

3. Q: Can the City provide to homeowners a table similar to Table 3-3 in FEMA's 2009 Homeowners' Guide to Retrofitting that contains current dollar estimates for Ann Arbor based on type of construction, existing foundation, and expected building elevation level, which are the key drivers of cost for a given property?

A: Elevation costs around \$2000.00 per foot for the typical style of construction in Ann Arbor. The proposed ordinance change, to elevate 1 foot above the 0.2% flood elevation, essentially adds one foot of elevation to the existing requirements.

4. Q: Has the City estimated what portion of the building stock that will become subject to this new ordinance will be either technically or economically infeasible for owners to elevate?

A: No. Elevation is already required. The requirement to elevate homes is one of the minimum requirements for communities to participate in the National Flood Insurance Program (NFIP). The City has participated in the NFIP since 1982. In December of 1999 the State of Michigan adopted the Michigan Building Codes that required structures to be elevated 1 foot above the base flood elevation. The proposed ordinance change, to elevate 1 foot above the 0.2% flood elevation, essentially adds one foot of elevation to the existing requirements.

5. Q: Why does the City of Ann Arbor propose - other than for its own convenience - to disallow the use of fair market value appraisals conducted by state-licensed appraisers? Valuations based on "2 times SEV" systematically and significantly understate actual "Fair Market Value" (FMV) for many or even most Ann Arbor properties. Why should Ann Arbor homeowners be faced with consequential regulatory decisions based on an artificial definition that underestimates the true market value of their properties?

A: The City Assessor has expertise in appraisals, while the City Building and Planning staff do not. The proposed code language will codify current City staff practice, which has been the method used for more than the past 30 years. As such, the proposal is not a change. If a property owner disagrees with the figures determined by the Assessor, they may appeal that with the Assessor through their normal appeal process. Additionally, the purpose of the NFIP Substantial Improvement requirement is to eventually require the structure to be elevated or floodproofed. Using market value methods with a higher outcome is counter to that NFIP goal.

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6. Q: Is the City of Ann Arbor – which appears to be an outlier in comparison with other NFIP CRS communities – aware of how these other cities have addressed the challenge of ensuring that their homeowners are regulated on the basis of the true market value of their homes? Most use Fair Market Value appraisals; some rely on formulas for upward adjustment of assessed values with provision for final decisions based on appraisals, if desired by the homeowner. These other approaches are much fairer to the interests of homeowners. Were these other approaches excluded for reasons other than the City's own administrative convenience? Why would these approaches not also work in Ann Arbor?

A: Requiring an appraisal, which cost several thousand dollars, would be a burden on permit applicants, and would add a great deal of time to the permitting process. The City Assessor has expertise in appraisals, while the City Building and Planning staff do not. The proposed code language will codify current City staff practice, which has been the method used for more than the past 30 years. As such, the proposal is not a change. If a property owner disagrees with the figures determined by the Assessor, they may appeal that with the Assessor, through the normal appeal process. Additionally, the purpose of the NFIP Substantial Improvement requirement is to eventually require the structure to be elevated or floodproofed. Using market value methods with a higher outcome is counter to that NFIP goal.

7. Q: Is the City willing to reconsider or revise its approach to determining market value in order to better balance the public benefits of flood zone regulation and the private costs imposed on existing property owners? If not, what are the impediments to using another approach?

A: The City is not evaluating other approaches to the current practice, which codifies the current practice, which has been the method used for more than the past 30 years. Additionally, the purpose of the NFIP Substantial Improvement requirement is to eventually require the structure to be elevated or floodproofed. Using market value methods with a higher outcome is counter to that NFIP goal.

8. Q: Why is the City proposing to adopt an aggressive 10-year Substantial Improvement accumulation period when very few communities across the nation (including those exposed to much higher flooding risks than Ann Arbor) have done so? Most have no accumulation period in their ordinances, a few a 5-year period. This decision is optional (not required by federal or state regulations) and unnecessarily constrains legitimate needs of homeowners to manage both planned improvements and unexpected repairs that may be needed.

A: The concept comes from Community Rating System and is a recommended best practice. No points are provided for calculating Substantial Improvement for anything less than a 5-year period. Half the points in that section are available for calculating over a 5-year period and the maximum points are available for calculating in a 10-year period.

9. Q: How compelling is the argument for a 10-year accumulation period based on the City's desire to increase its FEMA Community Rating score when having the accumulation period provides only 90 additional points out of 13,000 possible total points?

A: It takes 500 points to move up a class within the CRS. A class represents another 5% discount on flood insurance policies. 90 points represents 18% of the points necessary to move up a class. The proposed ordinance changes include numerous higher standards so that the cumulative effect should in a class improvement.

10. A: Do Ann Arbor Building Department records in any way substantiate the need for anything longer than a 5-year accumulation period in order to minimize the 'staging or phasing' of home improvement and repair projects? What is the evidence that in Ann Arbor phasing one project is a big enough problem to justify restricting property owners from performing independent renovation and repair projects?

A: Since the Michigan Building Codes does not identify a Substantial Improvement accumulation period, staff could interpret that as the life of the structure, and that is the current interpretation. So, in effect we are currently applying a cumulative calculation period, but it is not recognized in the CRS. 10-years will clarify this issue for both the City Staff and the permit applicant and gain the City the maximum points available within the CRS.

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11. Q: Is the City willing to reconsider or revise its approach to strike a better balance between the public benefits of flood zone regulation and the private costs imposed on existing property owners? If not, what are the impediments to having a better balance?

A: City staff recommends the 10-year cumulative Substantial Improvement period.

12. Q: Could the City please share the exact definition of Substantial Improvement it plans to include in the ordinance and which homeowner activities requiring permits (improvements, maintenance, repairs, other) will be counted for Substantial Improvement purposes and which, if any, will not be?

A: We will continue to use the same definitions that are in the Michigan Building Codes, which are there to comply with the NFIP. These definitions have been in use since the early 1980s. When there are differences in the definitions between the building, residential, and rehabilitation codes, the definition from the code applicable to the specific permit will be used. Substantial Improvement is a fairly complex concept to interpret, which is evident as FEMA has a 174-page guidance document to assist in the application of it - Substantial Improvement / Substantial Damage Desk Reference.

13. Q: Could the City please state clearly and unequivocally what is covered by the Exemption for Historic Structures and what is not? Are repairs to Historic Structures that require permits covered by the exemption or not?

A: This question is unrelated to the proposed Floodplain Management Overlay Zoning District as the Historic Structure exemption from the Substantial Improvement threshold is in the Michigan Building Codes, and the City doesn't have the authority to change the Michigan Building Codes. The Historic structure exemption remains exactly the same as it has since the early 1980s.

14. Q: Are all structures (both Historic and Non-Historic) that experience 'Substantial Damage' (defined as damage from any cause where repairs are $\geq 50\%$ of structure's pre-damage market value) required to be brought into compliance (i.e., elevated) or abandoned and demolished?

A: This question is unrelated to the proposed changes to City Code, but about current Michigan Building Codes. Yes, substantially damaged non-historic structures are required to meet the flood resistant construction standards. Substantially damaged historic structures are required to meet the flood resistant construction standards if the damage renders the structure non-historic.

15. Q: Which structures among those substantially damaged (repairs are $\geq 50\%$ of structure's pre-damage market value) will not be allowed to be rebuilt at all (i.e., cannot be rebuilt under the ordinance even if it were possible to elevate them)?

A: Residential structures are proposed to be prohibited in the floodway, as they are already prohibited in the 50% of our floodways where the State has jurisdiction.

16. Q: How will structures be evaluated for 'Substantial Damage' (SD – repairs are $\geq 50\%$ of structure's pre-damage market value)? Will this be the proposed '2 x SEV' value to calculate Substantial Improvements for building permit purposes, or will the SD process be different in any way (e.g., appraised Fair Market Value or something else)? If the City determines that SD threshold has been reached, but the homeowner disagrees, how does the disagreement get resolved? Is there an appeal process? Would the SD determination be made on the basis of the ordinance definition of market value or on some other basis?

A: Regardless if the proposed ordinance changes are approved or not, 2 x SEV will be used to determine market value in a substantial damage determination. If a property owner disagrees with the figures determined by the Assessor, they may appeal that with the Assessor through their normal appeal process.

17. Q: If the owner of a Historic Structure elects to elevate the structure to comply with the floodplain ordinance, but the change alters the appearance of the building so that it would no longer maintain its status as a Historic Structure – is this allowed under the City's historic preservation ordinance? Can the owner effectively "opt out" of a Historic District in order to elevate the home?

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A: This question is unrelated to the proposed code changes. Historic District Commission approval is required before a permit to elevate a house in the Historic District could be issued.

18. Q: What is the expected average savings in annual FEMA flood premiums per homeowner that Ann Arbor is forecasting from adoption of this ordinance? Please translate this into average expected dollars of savings per homeowner per year.

A: A move to Class 5 is expected, which moves the flood insurance discount from 20 to 25%, thus an additional 5% discount. Assuming an average policy currently runs in the range of \$3000.00 per year, that would be a savings of \$150 per policy.

19. Q: Should those of us who have much less expensive private flood insurance expect any benefit from adoption of this ordinance in our flood premiums? If so, what would this be in dollars per policy per year?

A: No, the CRS discount is typically not recognized by private insurance carriers.

City Staff Concern with Private Flood Insurance - Private flood insurance involves significant risk as there is no guarantee that a renewal will be offered by private market flood insurance providers. The policy can be cancelled before or after a catastrophe, and there is a 30 day wait to get back into the NFIP and homeowners could lose the grandfathered or discounted rate that they previously had with the NFIP before opting out.

20. Q: If – as the City's Floodplain Manager has said publicly - FEMA will inevitably have to write and price its flood insurance policies on the basis of property-specific risk - with significant negative impacts on the availability and cost of FEMA policies for non-elevated structures - then how significant and lasting will the projected savings based on a community rating turn out to be? An additional 5 – 10% discount on an exorbitant policy premium may not materially alter the economics of FEMA flood insurance for most owners.

A: As the NFIP moves toward actuary rates, the benefit of the CRS discount will increase not be diminished.

21. Q: Has the City considered in its policy-making process whether the adoption of this floodplain ordinance will impede or even make it impossible for homeowners (and potential future purchasers) to access conventional or other mortgage loans for floodplain properties in the city that are not elevated?

A: The requirement to elevate homes is one of the minimum requirements for communities to participate in the National Flood Insurance Program (NFIP). The City has participated in the NFIP since 1982. In December of 1999 the State of Michigan adopted the Michigan Building Codes that required structures to be elevated 1 foot above the base flood elevation. The proposed ordinance change, to elevate 1 foot above the 0.2% flood elevation, essentially adds one foot of elevation to the existing requirements. Elevating structures higher will lower insurance rate significantly. However, the proposed code change will not require any more structures to be elevated than the current requirements.

22. Q: Has the City considered the impact of the ordinance on property insurance policies that cover non-flood hazards such as fire, wind, tornado, vandalism, etc.? Most are based on a repair or replacement obligation that is founded on the assumption that damaged or destroyed buildings will be repaired or restored to the pre-damaged state (not to an enhanced state elevated above the floodplain).

A: The requirement to elevate or floodproof structures after substantial damage has existed in code since the City joined the NFIP in 1982.

23. Q: Will the City reach out to other FEMA Community Rating System communities with similar ordinances and to local real estate and insurance professionals to learn strategies they recommend to Ann Arbor homeowners to deal with the consequences that the City's ordinance imposes on them?

A: Other CRS community ordinances were reviewed in the drafting of the proposed Floodplain Management Overlay Zoning District.

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- 24. Q:** Why has the City not used the sophisticated GIS systems it has told us it possesses (capable of identifying all properties in and adjacent to the floodplains and then linking them to other systems with taxpayer names and address information) to directly notify all affected property owners of the proposed regulations and invite them to public meetings? Why was the decision made to not directly notify property owners of something of such significant importance to them?

A: Notification that exceeds a certain number of properties is not noticed on a per property basis, pursuant to State Law and City Code. The notice procedures followed are consistent with law and practice.

- 25. Q:** Could the City please explain the timing of the rollout of this regulatory initiative in the midst of the pandemic? This project was not listed as either a High or Moderate Priority on the Planning Commission's Work Plan for this year and suddenly became a fast-tracked priority at the apparent behest of the Planning Department (rather than the Planning Commission or City Council, to judge from online documents). Why? What changed?

A: By no means has this ordinance revision been fast tracked. The ordinance project was identified in the 2007 Flood Mitigation Plan and work on the project started in 2008. The project was carried over in the 2012 Hazard Mitigation Plan (HMP), then with much more detail in the 2017 HMP Update. The 2017 HMP specifically identified the Floodplain Management Overlay Zoning District as a high priority and identified 2019 as the timeframe to start the project back up, which it was. It has followed a similar process as other code text changes.

- 26. Q:** How and why did the City decide that it was permissible to dispense with stakeholder focus groups for this initiative as was expected in 2015 (according to Planning Commission documents online)? Those documents show that Planning Department staff believed that this regulatory initiative warranted the hiring of consultants to conduct a public engagement process that was expected to take at least six or seven months and involve multiple public meetings and stakeholder focus group meetings. Clearly, this has not happened – to the detriment of citizen participation in our policy-making processes.

A: The Floodplain Management Overlay Zoning District proposal has followed a similar process as other code text changes.