

City of Bandon

**PLANNING COMMISSION MEETING AGENDA
DOCUMENTATION**

**DATE:
10/22/2020**

**SUBJECT:
Amendment to the Bandon Municipal Code – Proposed
Hazards Overlay Zone**

**ITEM NO:
4.1**

BACKGROUND:

See attached staff report, proposed Ordinance 1636, and “Attachment A”.

SUBMITTED BY:



Megan Lawrence, City Planner



STAFF REPORT

CITY OF BANDON
PLANNING DEPARTMENT
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Planning Action: Legislative - Zoning Ordinance Text Amendment

Application File Name (Number): Hazards Overlay Zone (HOZ)

Request: Amend Bandon Municipal Code Title 16 and 17, adding relevant definitions, removing zone-specific geotechnical reporting requirements, and adopting Chapter 17.78 Hazard Overlay Zone (HOZ).

Lead City Staff: Megan Lawrence, City Planner

Hearing Date: October 22, 2020

Subject Property/Location/Size: Zoning Ordinance Text Amendment affecting approximately 630 properties within the City of Bandon.

Current Zone Designation: CD-1, CD-2, CD-3, CD-R1, CD-R2

Relevant Dates: In April 2020, the City of Bandon received a grant from the Department of Land Conservation and Development (DLCD) to continue work on a long-standing Hazards Overlay Zone project. On June 16, 2020 and August 27, 2020, the Bandon Planning Commission held work sessions to review the proposed updated material.

Purpose of Staff Report:

Staff reports provide the Planning Commission and community members with information regarding proposed ordinance language.

Ordinances Referenced:

- 17.116 – Zone Changes and Amendments
- 17.20 – Controlled Development 1 Zone
- 17.24 – Controlled Development 2 Zone
- 17.28 – Controlled Development 3 Zone
- 17.32 – Controlled Development Residential 1 Zone
- 17.36 – Controlled Development Residential 2 Zone

I. Relevant Facts

Background – History of Application

The City was made aware by the Land Use Board of Appeals (LUBA) in 2011 that provisions in the City’s development code regarding geologic hazards and the standards of their assessment in the development code, fail to meet the “clear and objective” standards of the Oregon Land Use system. The City began work immediately to update the zoning code and bring geologic assessment reviews into compliance, launching a Hazards Overlay Zone (HOZ) zone code text amendment project. After extensive work by staff, the Planning Commission, and City Council, the proposed HOZ ordinance was never adopted and the project was tabled in 2016 due to planning staff turnover and lack of public support.

In April of 2020, after realizing an upward development trend in the community, the planning department applied for and received a grant from the DLCD to continue work on the long-needed Hazards Overlay Zone ordinance amendment project.

The Bandon Planning Commission held work sessions to review a new HOZ proposal in June and August of 2020. With positive community feedback on the updated proposal, a public hearing before the planning commission was scheduled for October 22, 2020 to formally review the proposed HOZ.

Detailed Description of the Site and Proposal

Staff prepared the following ordinance language in response to the direction of the Planning Commission. The proposed overlay will apply the same geologic assessment review standards and criteria as currently required in the Controlled Develop zones, however these requirements will now be applied to properties city-wide that are potentially affected by a known natural hazard. Only landslide and liquefaction hazards are considered in the HOZ proposal, there are existing chapters of the zoning code that address other hazards related to flood, wetland, riparian, etc.

“Section 1. Amend the Bandon Municipal Code (BMC), Chapter 16.42 to include:

“Geoprofessional: refers to a Registered Geologist (RG), Certified Engineering Geologist (CEG), Professional Engineer (PE), and Geotechnical Engineer (GE).

- Registered Geologists (RG) provide geologic maps and documents and are licensed by the Oregon State Board of Geologist Examiners (OSBGE).
- Certified Engineering Geologists (CEG) provide engineering geologic reports and are licensed by the Oregon State Board of Geologist Examiners (OSBGE). They apply geologic data, principles and interpretation to naturally occurring materials so that geologic factors affecting planning, design, construction and maintenance of civil engineering works are properly recognized and utilized. As defined under ORS 672 and OAR 809.
- A Geotechnical Engineer (GE) is a Professional Engineer (PE) with the specific training, expertise, and experience to qualify as a Geotechnical Engineer (GE). GEs provide geotechnical engineering reports and are licensed by the Oregon Board of Examiners for Engineering and Land Surveying (OSBEELS).”

Section 2. Amend the Bandon Municipal Code (BMC), Chapters 17.20, 17.24, 17.28, 17.32, and 17.36 by deleting from those chapters the following:

“C. Plans shall be reviewed to assess the possible presence of any geologic hazard. If any part of the subject lot is in an area designated as a moderate or severe hazard area on the Bandon Bluff Inventory Natural Hazards Map or if any geologic hazard is suspected, the planning commission shall require a report to be supplied by the developer which satisfactorily evaluates the degree of hazard present and recommends appropriate precautions to avoid endangering life and property and minimize erosion. The burden of proof is on the landowner to show that it is safe to build.

1. The following identifies the reports which may be required:

- a. Soils Report. This report shall include data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading, design criteria for corrective measures, and options and recommendations covering the carrying capabilities of the sites to be developed in a manner imposing the minimum variance from the natural conditions. The investigation and report shall be prepared by a professional civil engineer currently registered in the state of Oregon.
- b. Geology Report. This report shall include an adequate description, as defined by the city manager or designate, of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions in the proposed development, and opinions and recommendations as to the carrying capabilities of the sites to be developed. The investigation and report shall be prepared by a professional geologist currently registered in the state of Oregon.
- c. Hydrology Report. This report shall include an adequate description, as defined by the city manager or designate, of the hydrology of the site, conclusions and recommendations regarding the effect of hydrologic conditions on the proposed development, and options and recommendations covering the carrying capabilities of the sites to be developed. The investigation and report

shall be prepared by a professional civil engineer currently registered in the state of Oregon.

d. The planning commission may waive any of these reports if it decides that they are irrelevant to the site.”

Section 3. Adopting Chapter 17.78 – Hazard Overlay Zone (Attachment A).”

Project Impact

To mitigate previous concerns that a HOZ based on local resources would be less credible than the 1970’s era requirements, that the City lacked resources to properly maintain a HOZ map, and concerns from the developer community that a HOZ would be too restrictive and costly; Staff reviewed the 2012-2016 HOZ project extensively prior to beginning work on the current proposal.

The current proposal has eliminated a map created and maintained by the City of Bandon, proposing instead to utilize the Coastal Atlas, an interactive map system created and maintained by DLCD using the most current scientific data available, to identify properties with potential natural hazards that may be subject to the proposed HOZ. There are several exemptions included to allow for small scale development and other ordinary activities without extensive geotechnical reporting, like vegetation maintenance and structural repairs. To encourage property owners to develop responsibly, the level of geoprofessional their project requires will be left to property owner’s discretion. Consideration has also been given to the geologic assessment review standards and procedures in use by other Oregon coastal communities and Coos County, to ensure a regionally cohesive approach to natural hazards planning and regulation.

The current hazards standards for properties located in Controlled Development zones affect nearly 1,000 tax lots. While the Hazards Overlay Zone expands these regulations to properties city-wide, the actual impact of the HOZ is limited only to properties with “high” or “very high” landslide or liquefaction susceptibility, which impacts about 600 tax lots. A large portion of potentially affected properties are in City or common ownership, zoned for Natural Resources or are bluff adjacent properties that are already subject to the City’s natural hazards regulations; less than 400 property owners are impacted by the proposed ordinance.

The Planning Commission, through discussion at the June work session, directed staff to implement all comments received by Coastal Shores Specialist, Meg Reed, of the DLCD.

Staff worked directly with DLCD to incorporate their comments into a second draft of the HOZ for planning commission review at the August 27, 2020 work session. After review of the second draft, the planning commission directed staff to schedule a public hearing.

II. Procedural – Required Burden of Proof

The proposed request is a legislative amendment, subject to the requirements of 17.116.020 which are as follows:

The Planning Commission (and ultimately the City Council) shall *“review the proposed amendments to the text of the zoning ordinance to determine consistency with the comprehensive plan and that the amendment will not adversely affect the city’s or the developer’s ability to satisfy land use, transportation and utility service needs or capacities. The proposed amendment shall also be reviewed to determine the suitability of the uses proposed in terms of slope, geologic stability, flood hazard, wetlands, and other relevant hazard or resource considerations.”*

Staff believes that this amendment complies with the requirements for a legislative amendment.

III. Recommendations

Staff recommends that the Planning Commission recommend adoption of the proposed ordinance amendment and “Attachment A” to the City Council.

The Commission is encouraged to recommend any other changes to the requirements or standards as deemed necessary to ensure that the proposed amendment is appropriate for review by the City Council.

ORDINANCE NO. 1636

AN ORDINANCE AMENDING BANDON MUNICIPAL CODE TITLE 16 AND 17, REMOVING ZONE SPECIFIC GEOTECHNICAL REPORTING AND ADOPTING CHAPTER 17.78 HAZARD OVERLAY ZONE

WHEREAS the Planning Commission and the City Council having held work sessions and public hearings after all due notice to consider the implementation of the legislation providing for the hazard overlay zone and adoption of the official hazard overlay zone map, and deleting hazard requirements within specified zones;

NOW THEREFORE the City of Bandon ordains as follows:

Section 1. Amend the Bandon Municipal Code (BMC), Chapter 16.42 to include:

Geoprofessional: refers to a Registered Geologist (RG), Certified Engineering Geologist (CEG), Professional Engineer (PE), and Geotechnical Engineer (GE).

- Registered Geologists (RG) provide geologic maps and documents and are licensed by the Oregon State Board of Geologist Examiners (OSBGE).
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Section 2. Amend the Bandon Municipal Code (BMC), Chapters 17.20, 17.24, 17.28, 17.32, and 17.36 by deleting from those chapters the following requirements:

“C. Plans shall be reviewed to assess the possible presence of any geologic hazard. If any part of the subject lot is in an area designated as a moderate or severe hazard area on the Bandon Bluff Inventory Natural Hazards Map or if any geologic hazard is suspected, the planning commission shall require a report to be supplied by the developer which satisfactorily evaluates the degree of hazard present and recommends appropriate precautions to avoid endangering life and property and minimize erosion. The burden of proof is on the landowner to show that it is safe to build.

1. The following identifies the reports which may be required:

a. Soils Report. This report shall include data regarding the nature, distribution and strength of existing soils, conclusions and recommendations for grading, design criteria for corrective measures, and options and recommendations covering the carrying capabilities of the sites to be developed in a manner imposing the minimum variance from the natural conditions. The investigation and report shall be prepared by a professional civil engineer currently registered in the state of Oregon.

b. Geology Report. This report shall include an adequate description, as defined by the city manager or designate, of the geology of the site, conclusions and recommendations regarding the effect of geologic conditions in the proposed development, and opinions and recommendations as to the carrying capabilities of the sites to be developed. The investigation and report shall be prepared by a professional geologist currently registered in the state of Oregon.

c. Hydrology Report. This report shall include an adequate description, as defined by the city manager or designate, of the hydrology of the site, conclusions and recommendations regarding the effect of hydrologic conditions on the proposed development, and options and recommendations covering the carrying capabilities of the sites to be developed. The investigation and report shall be prepared by a professional civil engineer currently registered in the state of Oregon.

d. The planning commission may waive any of these reports if it decides that they are irrelevant to the site.”

Section 3. Adopting Chapter 17.78 – Hazard Overlay Zone (Attachment A).

PASSED to Second Reading this ____ day of _____, 2020.

ADOPTED by the Common Council and APPROVED by the Mayor of the City of Bandon this ____ day of _____, 2020.

Mary Schamehorn, Mayor

Attest:

Dan Chandler, City Manager

HAZARD OVERLAY ZONE (HO)

Sections

- 17.78.010 Purpose**
- 17.78.020 Applicability**
- 17.78.030 Geologic Assessment Review**
- 17.78.040 Geologic Report Standards**
- 17.78.050 Decisions of Geologic Assessment Reviews**
- 17.78.060 Development Standards for Uses Subject to Review**

17.78.010 Purpose

The purpose of the Hazard Overlay Zone is to protect people, lands and development in areas that have been identified as being subject to geologic hazards and to apply review standards to all proposed development activity within the areas subject to geologic hazards by:

- a) Identifying areas subject to natural hazards (Landslide, Coastal Erosion, and Liquefaction);
- b) Assessing the risks to life and property posed by new development in areas of known natural hazard susceptibility; and
- c) Applying standards to the siting and design of new development on lands subject to natural hazards that will reduce the risk to life and property from these hazards.

17.78.020 Applicability

The following areas are considered potentially geologically hazardous and are therefore subject to the requirements of this section:

- a) All lands partially or completely within "high" or "very high" landslide susceptibility areas as mapped in DOGAMI Open File Report 0-16-02, "Landslide susceptibility overview map of Oregon".
- b) All lands partially or completely within "high" or "very high" liquefaction susceptibility as mapped in DOGAMI OPEN-FILE REPORT O-13-06, "Ground motion, ground deformation, tsunami inundation, co-seismic subsidence, and damage potential maps for the 2012 Oregon Resilience Plan for Cascadia Subduction Zone Earthquakes."
- c) All lands along the oceanfront.

17.78.030 Geologic Assessment Review

1. Except for activities identified in Subsection 2 of this section as exempt, any new development or substantial improvement, as defined in Title 15, in an area subject to the provisions of this section shall require a Geologic Assessment Review.
2. The following development activities are exempt from the requirement for a Geologic Assessment Review:

- a. Maintenance, repair, or alterations to existing structures that do not alter the building footprint or foundation and do not constitute substantial improvement as defined in Title 16.
- b. Exploratory excavations under the direction of a certified engineering geologist or registered geotechnical engineer;
- c. Construction of structures for which a building permit is not required;
- d. Yard area vegetation maintenance and other vegetation removal on slopes less than 25%;
- e. Maintenance and reconstruction of public and private roads, streets, parking lots, driveways, and utility lines, provided the work does not extend outside of the previously disturbed area;
- f. Maintenance and repair of utility lines, and the installation of individual utility service connections;
- g. Emergency response activities intended to reduce or eliminate an immediate danger to life, property, or flood or fire hazard;
- h. Construction/erection of beachfront protective structures subject to regulation by the Oregon Parks and Recreation Department under OAR 736, Division 20; and
- i. Any development or activity to be conducted on a site for which a certified engineering geologist has determined that there are no high or very high geologic hazards present. The City of Bandon is not liable for any type of certification that a geologic hazard is not present on site.

3. Application, review and appeals for a Geologic Assessment Review shall be in accordance with the requirements for plan review as set forth in BMC 17.120. Applications for a Geologic Assessment Review may be made prior to or concurrently with any other type of application required for the proposed use or activity. Geologic Assessment Review shall be completed prior to any ground disturbance.

4. All applications for Geologic Assessment Review shall be accompanied by a Geologic Report prepared by a qualified geoprofessional (as defined in Title 16) that meets the content requirements of section 17.78.040, at the applicant's expense.

17.78.040 Geologic Report (Engineering Geologic Report and Geotechnical Engineering Report) Standards

1. The Geologic Report shall include the required elements of this section and one of the following:

- a. A statement that the use and/or activity can be accomplished without measures to mitigate or control the risk of geologic hazard to the subject property resulting from the proposed use and/or activity;
 - b. A statement that there is an elevated risk posed to the subject property by geologic hazards that requires mitigation measures in order for the use and/or activity to be undertaken safely sited on the property; or
 - c. A certification that there are no high or very high geological hazards present on site. If such is certified by a licensed professional, then a Geologic Hazard Review application is not required. The City of Bandon is not liable for any type of certification that a geologic hazard is not present on site.
2. Geologic Reports required pursuant to this section shall be prepared consistent with standard geologic practices employing generally accepted scientific and engineering principles, and shall at a minimum contain the applicable provisions of "Guideline for Preparing Engineering Geologic Reports," 2nd Edition, 5/30/2014, published by the Oregon Board of Geologist Examiners.
3. For oceanfront property, reports shall also address the "Geological Report Guidelines for New Development on Oceanfront Properties," prepared by the Oregon Coastal Management Program of the Department of Land Conservation and Development, in use as of the effective date of this section.
4. Geologic Reports required by this section shall include a statement from the preparer of the report that all of the applicable content requirements of this subsection have been addressed or are not applicable to the review. The report shall also include a description of the qualification of the licensed professional or professionals that prepared the report.
5. For the purposes of Section 17.78.040, a Geologic Report refers to both engineering geologic reports and geotechnical engineering reports.
6. Geologic Reports required by this section shall be valid for a period of five years from the date of preparation of such report. No extensions to this time line shall be granted. The city assumes no responsibility for the quality or accuracy of such reports.

17.78.050 Decisions of Geological Assessment Reviews

A decision on a Geologic Assessment Review shall be based on the following standards:

1. The Geologic Report shall meet the content standards set forth in Section 17.78.040.
2. In approving a Geologic Assessment Review, the decision maker may impose any conditions which are necessary to ensure compliance with the provisions of this section or with any other applicable provisions of the City of Bandon Land Use and Development Code.
3. In the event the decision maker determines that additional review of the Geologic Report by an appropriately licensed and/or certified professional is necessary to

determine compliance with this section, the City of Bandon may retain the services of such a professional for this purpose. The applicant shall be responsible for all costs associated with the additional review. The results of that evaluation shall be considered in making a decision on the Geologic Assessment Review.

17.78.060. Development Standards for Uses Subject to Review

In addition to the conditions, requirements and limitations imposed by a required Geologic Report, all uses subject to a Geologic Assessment Review shall conform to the following requirements:

1. Historical, Cultural, and Archaeological Resources: All activities and uses subject to Geologic Assessment Reviews proposed for areas of historical, cultural, or archaeologically sensitive areas, as identified in the City of Bandon Comprehensive Plan, shall require consultation with the appropriate Tribe prior to the commencement of any and all ground disturbing activity. Proof of this consultation shall be provided as a part of application submission.

2. Hazard Disclosure Statement: All applications for new development or substantial improvements subject to Geologic Assessment Review shall provide a Hazard Disclosure Statement signed by the property owner that acknowledges:

- a. The property is subject to potential natural hazards and that development thereon is subject to risk of damage from such hazards;
- b. The property owner has commissioned an engineering geologic report for the subject property, a copy of which is on file with City of Bandon Planning Department, and that the property owner has reviewed the Geologic Report and has thus been informed and is aware of the type and extent of hazards present and the risks associated with development on the subject property;
- c. The property owner accepts and assumes all risks of damage from natural hazards associated with the development of the subject property.

3. Mitigation measures: If on-site structural mitigation measures are required as a condition of approval, the applicant shall, prior to the issuance of zoning compliance, record on the title to the subject property a notification that includes a description of the measures or improvements and that also specifies the obligation of the property owners to refrain from interfering with such measures or improvements and to maintain them.

4. Safest site requirement: All new construction shall be limited to the recommendations, if any, contained in the Geologic Report; and

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

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

5. Minimum Oceanfront Setbacks: In areas subject to the provisions of this section, the building footprint of all new development or substantial improvement subject to a Geologic Assessment Review shall be set back from the ocean shore a minimum twenty-five (25) feet from the top of the bank or greater if recommended by the Geologic Report.

6. Erosion Control Measures: A certified engineering geologist, geotechnical engineer, or qualified civil engineer shall address the following standards:

- a. Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction;
- b. Development plans shall minimize cut or fill operations so as to prevent off-site impacts
- c. Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;
- d. Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;
- e. Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;
- f. Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching, seeding, planting, or armoring with rolled erosion control products, stone, or other similar methods;
- g. All drainage provisions shall be designed to adequately carry existing and potential surface runoff from the twenty year frequency storm to suitable drainageways such as storm drains, natural watercourses, or drainage swales. In no case shall runoff be directed in such a way that it significantly decreases the stability of known landslides or areas identified as unstable slopes prone to earth movement, either by erosion or increase of groundwater pressure;

- h. Where drainage swales are used to divert surface waters, they shall be vegetated or protected as necessary to prevent offsite erosion and sediment transport;
- i. Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:
 - i. Energy absorbing devices to reduce runoff water velocity;
 - ii. Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;
 - iii. Dispersal of water runoff from developed areas over large undisturbed areas;
- j. Disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures; and
- k. Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, site monitoring and clean-up activities.

7. Certification of compliance: Permitted development shall comply with the recommendations in the required Geologic Report.

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

8. Restoration and replacement of existing structures:

- a. A building or structure that is nonconforming under Section 17.108 that is destroyed by fire, other casualty or natural disaster shall be subject to the casualty loss provisions contained in Section 17.108. Application of the provisions of this section to a property shall not have the effect of rendering it nonconforming.

- b. A building or structure that conforms to the Municipal Code that is destroyed by fire, other casualty or natural disaster may be replaced with a building or structure of up to the same size provided a Geologic Report is prepared by a qualified geoprofessional. A Geologic Report prepared pursuant to this subsection shall adhere to the Geologic Report Standards outlined in this section. All recommendations contained in the report shall be followed.

Add to:

Definitions 16.42.010

Geoprofessional: refers to a Registered Geologist (RG), Certified Engineering Geologist (CEG), Professional Engineer (PE), and Geotechnical Engineer (GE).

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