

	<b>CITY OF BELVEDERE – ADMINISTRATIVE POLICY MANUAL</b>		
	<b>POLICY 14.7</b>		
	<b>ADMINISTRATION OF SUBSTANTIAL IMPROVEMENT REQUIREMENT FOR PROJECTS WITHIN DESIGNATED FLOODPLAINS</b>		
	<b>DESIGNATED FLOODPLAINS</b>		
<b>Adoption Date:</b>	3/8/2021	<b>Adopted by:</b>	City Council Resolution No. 2021-04
<b>Revised Date:</b>	-	<b>Revised by:</b>	-
<b>Authority:</b>	City Council		

**14.7.1 BACKGROUND**

We intend the following Administrative Policies to help ensure the consistent and predictable application of floodplain regulations to projects within the City’s flood zones. No one policy shall be dispositive. For example, if a project is not subject to floodplain regulations under one policy or Municipal Code section, it may still be subject to such regulations pursuant to another policy or Municipal Code section.

The Federal Emergency Management Agency (“FEMA”) has designated two floodplain areas in Belvedere, which are the AE and VE Zones. Projects in these Zones are subject to the Floodplain Management Code sections in the Belvedere Municipal Code, Chapter 16.20, and applicable FEMA regulations.

Pursuant to Chapter 16.20, any construction project that constitutes a “substantial improvement” is required to be elevated a minimum of 1 foot above Base Flood Elevation (“BFE”), with minor differences between the separate zones. Municipal Code, section 16.20.040 provides that a “substantial improvement” is any project where the cost equals or exceeds 50% of the market value of the structure prior to the start of construction. Municipal Code section 16.20.035(AK) further provides that “market value” is the appraised valuation for the property minus the land value as determined by an appraiser.

To assist in establishing whether a project constitutes a substantial improvement subject to Floodplain regulations, an applicant submits with the Design Review application an estimate of construction costs and an appraisal of the structure. If the Floodplain Administrator calculates that the cost of the project equals or exceeds 50% of the structure’s appraised value, then the project is a substantial improvement and must be elevated pursuant to Floodplain rules.

However, there have been questions raised regarding the accuracy of some structure appraisals and project cost estimates. If an applicant wishes to avoid raising the structure pursuant to Floodplain requirements, there is an incentive to overvalue the structure and undervalue the estimated cost of construction. For example, if the appraised value of the structure appears high, and/or the cost of construction appears low, the cost of construction will be less likely to meet the 50% threshold required for a substantial improvement, thereby avoiding Floodplain

regulations.

The intent of the following policies is to provide tools for the Floodplain Administrator to make the “substantial improvement” determination by confirming the accuracy of both the appraised value of a structure and the estimated costs of construction. These tools will help provide consistent and predictable determinations for whether a project constitutes a substantial improvement and must be raised per Floodplain regulations.

If the Floodplain Administrator determines that a project constitutes a substantial improvement subject to floodplain regulations, then the Floodplain Administrator shall inform the Planning Commission of this determination in writing at the time the project is reviewed by the Planning Commission. This determination will advise the Planning Commission’s review of the project.

### **14.7.2 COMMENTS**

#### **1. Demolition In Flood Zone Presumptively Substantial Improvement Subject to Floodplain Regulations**

This Administrative Policy provides that any project located in a designated flood zone that meets the definition of a demolition in BMC section 19.08.136, determined at the time of building permit issuance, is presumptively a substantial improvement subject to Floodplain regulations, unless the individual facts and circumstances of the project indicate otherwise. BMC section 19.08.136, defines demolition as:

*19.08.136 Demolition. “Demolition,” for the purposes of this Title and Title 20, means the razing of a building, removal of a dwelling unit, or the removal of more than fifty percent of the total exterior wall and roof area from the grade up, including all exterior openings. Removing a residential second unit or converting a duplex into a single unit is considered a demolition. The following activities shall not be considered to be demolitions within the meaning of this definition: a retrofit (see Section 19.08.458); maintenance, repair and/or replacement of exterior surfaces, so long as the materials are consistent with the requirements of Section 20.04.140 “Materials and colors used;” and other maintenance efforts deemed by the Building and Planning Departments to be minor in nature and scope. It is the intent of this definition to ensure that all alterations to existing structures that are part of a major project for the remodel, alteration, construction, or repair of a home or accessory structure are reviewed by the City through a Design Review process, pursuant to Title 20 of the Belvedere Municipal Code.*

A substantial improvement is a project where the cost of a project equals or exceeds 50% of the value of the structure prior to construction. In most cases, the cost of construction to replace a demolition – which is defined as including the removal of more than 50% of exterior wall and roof areas – will exceed 50% of the structure’s value, thereby qualifying as a substantial improvement. However, the Administrative Policy provides that the Floodplain Administrator retains discretion to determine, based on the unique facts of the particular case, that a demolition does not constitute a substantial improvement.

## **2. Preferred Appraisal Method and Independent Third Party Appraisals and Evaluations**

The City finds that in most circumstances, the “Actual Cash Value” appraisal method, which is accepted by FEMA, is accurate and should be used. The Actual Cash Value appraisal method evaluates the cost to replace a structure on the same parcel with a new structure of like-kind and quality, minus depreciation due to age and use.

The Administrative Policy provides that initial appraisals submitted with building permit applications shall use the Actual Cash Value approach, unless the Floodplain Administrator in his/her discretion determines otherwise, based on the particular property.

The Administrative Policy also allows the City to hire an independent licensed appraiser to evaluate the appraisal submitted by an applicant, and/or perform an independent appraisal of a structure. All costs for any such appraisal and/or analysis shall be paid by the applicant. The third-party appraiser shall use the Actual Cash Value appraisal methodology unless otherwise determined by the Floodplain Administrator based on the particular property.

## **3. Standardized Per Square-Foot Cost Estimate**

Establishing an accurate project cost estimate is an important component in determining whether a project constitutes a substantial improvement.

An applicant submits an estimated project cost with a building permit application. In most cases an applicant’s project cost estimate is a rough estimate by the architect, designer, and/or property owner. These estimates may be inaccurate because a contractor has not been selected, final “build” drawings have not been prepared, or other reasons. If estimate project costs increase after issuance of a building permit, the project may trigger the 50% threshold for substantial improvement, compelling the City to rescind project approvals, require modification of the project, or require the home to be raised pursuant to Floodplain regulations.

To avoid this outcome, and to provide predictable and accurate project cost estimates, the Administrative Policy provides that the Floodplain Administrator may compare the applicant’s estimated project costs with an estimated project cost using a standardized cost per square foot set forth in the latest version of the Craftsman National Building Cost Manual (the “NBCM”). The NBCM provides a national and statewide average per square foot valuation for construction within specific regions of all 50 states, including the Bay Area, and considers the size and configuration of the home, as well as the type of construction.

For example, the most common type of home built in Belvedere’s Floodplain qualifies as luxury construction. The NBCM provides a cost per square foot of construction as \$388.89 for luxury construction in the Bay Area with a local area multiplier of 27%. For a 2,600 square foot home, staff would initially multiply the square footage of the project by the cost per square foot, \$388.89. This totals \$1,011,114.00. That total would then be adjusted with the local area modifier of 27%. This totals \$1,284,114.78. Therefore, the total cost of construction for this project would be \$1,284,114.78, or \$493.89 per square foot.

Additionally, for projects consisting of remodels, staff has developed a scope of work valuation worksheet to evaluate and document the valuation of the proposed construction. Staff would utilize a percentage of the square foot valuation provided above for areas of the proposed remodel, with a higher percentage being given to areas commonly known to have higher construction costs, such as kitchens and bathroom, as well as, areas with more extensive construction.

If the NBCM project cost estimate is greater than the project cost estimate submitted by the applicant, the NBCM cost estimate shall be used in the substantial improvement analysis. The Floodplain Administrator has the discretion to use the applicant's project cost estimate if appropriate based on facts and circumstances of a particular project.

#### **4. Time Period of Inactivity Between Construction Projects**

FEMA regulations prohibit the “phasing” of construction projects. Phasing construction projects is defined as separating a large construction/remodel project into multiple smaller projects to keep the total project valuation under the Substantial Improvement threshold.

In order to address this issue, this policy requires a minimum of one year of construction inactivity between projects. The one-year timeframe will begin at the finalization of the initial building permit. Any subsequent building permits will not be issued until a minimum of one year following a building permit final. Should a building permit need to be issued during the time of required inactivity, the valuation of the initial building permit and any other building permit issued during that time, will be added together for the purposes of making a Substantial Improvement designation.

Additionally, during the time of construction inactivity, the site and structure must be safe and habitable, as determined by the Building and Planning Departments. The structure and/or site shall appear finished and shall not appear incomplete or unfinished in any way during the time of required inactivity between projects. A complete or finished appearance may require the installation of site improvements, landscaping, or other features required by the Planning and Building Departments.

### **14.7.3 POLICY/PROCEDURE**

#### **1. A Demolition in Flood Zone Presumed Substantial Improvement for Floodplain Regulation Purposes.**

If a project located in a designated floodplain constitutes a “demolition” as defined in Belvedere Municipal Code chapter 19.08, determined at the time of building permit issuance, then the project presumptively will be considered a substantial improvement pursuant to Belvedere Municipal Code chapter 16.20 and as such, must comply with all applicable Floodplain regulations. In his or her discretion, based on unusual facts or circumstances, the Floodplain Administrator may determine a demolition is not a substantial improvement and is not required to satisfy Floodplain regulations.

## **2. Use of Independent Licensed Appraisers and Preferred Appraisal Method**

The Actual Cash Value appraisal method evaluates the cost to replace a structure on the same parcel with a new structure of like-kind and quality, minus depreciation due to age, use, and neglect. The Actual Cash Value appraisal method is accepted by FEMA.

The initial appraisal submitted with a Design Review application shall use the Actual Cash Value approach, unless otherwise agreed to by the Floodplain Administrator based on the facts and circumstances of the particular property. All submitted appraisals shall use FEMA approved appraisal methodologies. Currently, FEMA approved appraisal methodologies can be found at <https://www.fema.gov/media-library-data/20130726-1535-20490-4788/unit8.pdf>

Additionally, in its discretion, the City may hire an independent licensed appraiser to evaluate any appraisals submitted by an applicant, and/or perform an independent appraisal of a structure's fair market value. The applicant shall pay all costs of such evaluations and/or appraisals. Appraisals and appraisal evaluations shall use the Actual Cash Value appraisal methodology, unless otherwise directed by the Floodplain Administrator based on the facts and circumstances of the particular property.

## **3. Standardized Per Square-Foot Cost Estimate**

In his or her discretion, the Floodplain Administrator may analyze the accuracy of an applicant's estimated project cost by comparison with the standardized project cost per square foot construction established in the latest version of the Craftsman National Building Cost Manual (the "NBCM"). If the NBCM project cost estimate is greater than the project cost estimate submitted by the applicant, the NBCM cost estimate shall be used in the substantial improvement analysis. Notwithstanding anything to the contrary in this section, the Floodplain Administrator may use the applicant's project cost estimate if appropriate based on the facts and circumstances of the particular project.

## **4. Time Period of Construction Inactivity Between Projects**

Unless there is a period of at least 12 months of construction inactivity between the finalization of an initial building permit and the issuance of subsequent building permits, the value of such projects will be added together for purposes of making a Substantial Improvement determination. During this time of construction inactivity, the site and structure must be safe and habitable as determined by the Planning and Building Departments. Each project must receive final inspection approval from the City. The structure/site must appear in finished form and shall not appear incomplete in any way during the time of inactivity between projects. This may require the installation of site improvements, landscaping, or other features required by the Planning Department.