



City of Rockaway Beach

City Council Workshop Agenda

Date: Wednesday, November 13, 2024

Time: 4:30 P.M. – 5:40 P.M.

Location: Rockaway Beach City Hall, 276 HWY 101 – 2nd Floor Conference Room

Watch live stream here: corb.us/live-stream

View meeting later here: corb.us/city-council

Join here to attend remotely:

<https://us06web.zoom.us/j/84099328830?pwd=FHpeZRf79VvfED0GQk0M4apdi5yFqC.1>

Meeting ID: 840 9932 8830

Passcode: 302706

Dial by your location

253 215 8782 US (Tacoma)

What is a City Council Workshop? Workshops are intended to allow for preliminary discussions by the City Council and staff. Workshops are held to present information to the Council so that the Council is prepared for upcoming regular meetings. Workshops are subject to Oregon's public meeting law and must be noticed accordingly. No final City Council decisions are made during workshops. The public is encouraged to attend workshops but may not participate unless expressly asked.

Note: Agenda item times are estimates and are subject to change.

1. CALL TO ORDER (4:30 p.m.)

2. ROLL CALL

3. COUNCIL BRIEFING/DISCUSSION

a. Review of FEMA BiOp Pre-Implementation Compliance Measures (PICM) (4:31 p.m.)

b. Review of Ordinance 2024-06: An Ordinance Amending City of Rockaway Beach Zoning Ordinance 143 Section 4.050 Sign Requirements (5:15 p.m.)

c. Review of Grievance Process Policy Related to Public Meetings Law (5:25 p.m.)

d. Community Grant Update (5:30 p.m.)

e. Discussion Regarding Moving January 8th Regular Council Meeting to January 15th (5:35p.m.)

4. ADJOURNMENT (5:40 p.m.)

Rockaway Beach City Hall is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to City Hall at 503-374-1752.



City of Rockaway Beach, Oregon

276 S. Highway 101, PO Box 5

Rockaway Beach, OR 97136

503.374.1752

STAFF REPORT

Date: November 6, 2024
To: City Council
From: Luke Shepard, City Manager
Subject: FEMA Biological Opinion Pre-Implementation Compliance Measures (PICM)

ISSUE STATEMENT

The City Council must select a pre-implementation compliance measure (PICM) in order to comply with the FEMA Biological Opinion (BiOp).

BACKGROUND

Rockaway Beach, like the majority of local communities in Oregon, is a participating member of the National Flood Insurance Program (NFIP). The flood insurance offered by this program is important because most home insurance policies do not cover flood damage and homes and businesses in high-risk areas with mortgages from government-backed lenders are required to have flood insurance. Participating in the NFIP allows property owners in the floodplain to buy affordable and federally-administered flood insurance.

The federal agency responsible for implementing and administering the NFIP is the Federal Emergency Management Agency (FEMA). Participation in the NFIP requires local communities to adopt a FEMA-approved floodplain development ordinance, which regulates development in the floodplain in accordance with federal requirements. The floodplain is established by FEMA-created maps, which show areas and properties that would experience flooding in a 100-year storm event.

Rockaway Beach has significant floodplain within City limits, and much of it is privately-owned. Because there is significant floodplain in the City, staff regularly processes permits for development within the floodplain.

In 2004, a lawsuit was filed against FEMA alleging that development activities allowed under the NFIP in the Puget Sound area were harmful to threatened and endangered species by impacting critical habitat. A similar lawsuit was filed against FEMA in 2009. This lawsuit alleged that floodplain development in Oregon was harmful to threatened and endangered species. FEMA settled that case by agreeing to consult the National Marine Fisheries Services (NMFS) on how to address the impacts that NFIP development has on these species.

In 2016, NMFS released a final "Biological Opinion" (Oregon BiOp) regarding FEMA's implementation of the NFIP in Oregon. The Oregon BiOp found that FEMA's implementation of the

NFIP in Oregon reduces the quantity and quality of habitat that jeopardizes the continued existence of certain threatened or endangered species (specifically salmonid species and Southern Resident killer whales).

Since 2016, FEMA has been working on implementing the Oregon BiOp. In March 2023, FEMA's draft implementation plan started the National Environmental Policy Act (NEPA) process to evaluate the plan's impacts. FEMA anticipates that a Final Implementation Plan will be released in 2026 and will fully implement the plan in 2027.

In July of 2024, FEMA notified NFIP communities that in the interim, communities will be required to implement a "Pre-Implementation Compliance Measure" (PICM) to address the BiOp while FEMA's plan is in review. These measures are intended to ensure that the threatened and endangered species identified by the BiOp are adequately protected.

FEMA is requiring NFIP communities to select one of three PICM pathways by December 1, 2024, and to fully implement the chosen pathway by July 31, 2024. The three options are:

1. Prohibit all new development within the floodplain.
2. Evaluate impacts on a permit-by-permit basis
3. Adopt the 2024 FEMA-issued model ordinance.

Staff does not recommend Option #1, since there are two other pathways that will allow for continued development within the floodplain.

Options #2 and #3 are both intended to ensure that floodplain development meets the primary goal of FEMA's draft implementation plan, which is to achieve "no net loss" of natural floodplain functions that contribute to habitat for ESA-listed species, like floodplain storage, water quality, and vegetation. FEMA is requiring the City to impose the following standards:

1. No net loss of fish-accessible and egress-able undeveloped space within the floodplain
2. No net increase of impervious surface within the floodplain (unless stormwater runoff is detained and treated)
3. No net loss of trees that are 6 inches or greater in diameter at breast height (dbh) within the floodplain.

Under Option #2, the City would need to require a separate Habitat Assessment for almost all floodplain development permits to show what functions the floodplain in question serves to threatened or endangered species, and how the development would impact these functions. The onus and costs of preparing the Habitat Assessment would fall on the applicant. The development would be required to have an end result of "no net loss" to habitat functions. If applicable, the Habitat Assessment would have to include mitigation measures to make up for the loss of habitat functions in the floodplain.

Option #2 has advantages and disadvantages. One advantage is that it takes much less work for the City to implement. Another advantage is that it allows the City to take a 'wait and see' approach to

the PICM process. The City could wait to fully implement a measure until the final Environmental Impact Statement is released and FEMA finalizes its implementation plan.

One downside to Option #2 is the additional cost placed on development in the floodplain. In their guide to preparing habitat assessments, FEMA states that:

A permit applicant should weigh the cost of preparing an assessment and mitigation plan, should one be needed, against the cost of locating the project outside the SFHA [Special Flood Hazard Area]. It may cost less in time and money to simply avoid the SFHA.

Another downside is that Option #2 still requires a development code amendment. Requiring a Habitat Assessment with no code authority leaves local jurisdictions open to challenge. The FEMA-DLCD floodplain ordinance does not contain any discussion of a Habitat Assessment, let alone provide cities the authority to require one. Therefore, any such Code amendment language would need to be drafted by City staff from scratch.

Under Option #3, the City would update the Rockaway Beach Zoning Ordinance (specifically, Sections 3.092-3.098) to adopt and incorporate the newest iteration of the FEMA model floodplain ordinance. One version was released in August of 2024, but FEMA is updating it to reflect “clear and objective” standards. No Habitat Assessment would be required under the model code, but new development would still be required to meet the same standards of no net loss to habitat functions.

The primary advantage of Option #3 is that the City likely is required to have the full Model Ordinance adopted to ensure flood insurance for City residents needing it. Another advantage is that flood plain developers would not be required to submit a habitat assessment, which could save applicants time and money. Additionally, it would be easier and more consistent for the City to administer these regulations, as they would not require reviewing a separate Habitat Assessment for each permit.

The disadvantages of Option #3 are that it would take staff time to implement, both up front and if the code needs to be modified again once the FEMA’s implementation plan is officially finalized. Also, the current version is likely not defensible as a ‘clear and objective’ housing regulation. However, FEMA is in the process of addressing that issue and should have an updated Model Ordinance available in December. If Option #3 is selected, amendment proceedings would commence thereafter.

As mentioned above, the City has until December 1, 2024 to notify FEMA which PICM the City has selected. Staff requests that the Council come to a consensus on which approach, if any, to take. If the City does not take any action, it will default into Option #2 – the permit-by-permit approach.

LEGAL REVIEW

This staff report was drafted by the City’s general legal counsel, and modified by the City Manager.

CITY MANAGER’S COMMENT

Select a PICM Option for staff to convey to FEMA. Of the three options, Option # 3 is recommended by staff.

COUNCIL OPTIONS

The Council may:

- Approve staff's recommended Option 3: Motion: **"I make a motion to initiate an amendment to the Rockaway Beach Zoning Ordinance and direct staff to move forward with the adoption of a tailored version of the updated 2024 FEMA Model Ordinance."**
- Initiate a Code amendment to implement PICM Option #1 to prohibit all new development in the floodplain.
- Initiate a Code amendment to implement PICM Option #2 to evaluate compliance on a permit-by-permit basis.
- Provide other or no direction, as desired.

ATTACHMENTS

- DLCD Frequently Asked Questions (FAQ)

FOR MORE INFORMATION

Staff Contact: Luke Shepard, City Manager

Telephone: (503) 374-1752

Staff E-Mail: citymanager@corb.us



Frequently Asked Questions about Pre-Implementation Compliance Measures

October 4, 2024

Disclaimer: This FAQ is general guidance based on the information available to DLCD staff at this time. It is not a DLCD decision. It is not legal advice for any specific situation. Cities and counties should consult their legal counsel for advice on specific decisions.

Table of Contents

What are “Pre-Implementation Compliance Measures”?	1
What led up to PICM?	2
What is the role of the Oregon Department of Land Conservation and Development in PICM?	2
What does a city or county need to do now?	3
Does Pathway 3 “Prohibit floodplain development” require a moratorium?	3
Is a “Measure 56 Notice” required for PICM short-term options?	5
Will the state waive legislative adoption requirements?	6
What if a city or county cannot complete the ordinance process by December 1, 2024?	7
Is the model ordinance clear & objective?	7
What is changing for cities and counties for letters of map revision based on fill?	7
Are there any Measure 49 implications to adopting the PICM model ordinance?	8
Where can I find additional information or ask questions about PICM?	9
What if a city or county received a PICM letter in error, or did not receive a PICM letter?	10
What area does the BiOp cover?	10

What are “Pre-Implementation Compliance Measures”?

In July 2024, the Federal Emergency Management Agency (FEMA) sent a letter to cities and counties in Oregon instructing them to make short term changes to how the city or county regulates development

in flood hazard areas. FEMA describes these short-term actions as “pre-implementation” because they are occurring before FEMA fully implements long-term changes to the National Flood Insurance Program (NFIP) to comply with the Endangered Species Act.

What led up to PICM?

In 2009, environmental advocacy organizations sued the Federal Emergency Management Agency (FEMA) alleging that FEMA violated the Endangered Species Act by not consulting with National Marine Fisheries Services (NMFS) about how the National Flood Insurance Program (NFIP) could jeopardize threatened species. FEMA resolved the lawsuit by formally consulting with NMFS to review the impact of the NFIP. In April 2016, NMFS issued its [Biological Opinion](#) (BiOp) that concludes that the NFIP in Oregon jeopardizes the survival of several threatened species, including salmon, sturgeon, eulachon, and orcas. The BiOp contained a reasonable and prudent alternative (RPA) with recommendations from NMFS to FEMA on how to avoid jeopardizing the threatened species. In October 2021, FEMA issued a draft implementation plan on how to reduce the negative impacts of the NFIP on threatened species.

In 2023, FEMA started reviewing the draft implementation plan using a National Environmental Policy Act (NEPA) process, which is still underway. Under the NEPA process FEMA will analyze whether there are additional alternatives or changes to the 2021 draft implementation plan to consider.

In September 2023, environmental advocacy organizations filed a lawsuit alleging that FEMA has been too slow to implement the BiOp. Plaintiffs included the [Center for Biological Diversity](#), the [Northwest Environmental Defense Center](#), [Willamette Riverkeeper](#), and [The Conservation Angler](#). See also coverage in the [Oregonian](#).

In July 2024, FEMA announced a new program of pre-implementation compliance measures (PICM or short-term measures) for the BiOp, separate from the NEPA full implementation (long-term measures) process. FEMA hosted four [PICM webinars](#) in July and August, and is planning additional outreach to assist NFIP communities in the fall of 2024. Some of the PICM pathways are included in the 2016 BiOp under RPA, element 2.

FEMA now has two separate, but similar processes: NEPA evaluation of the full implementation plan, and interim action through PICM. FEMA’s webpage [“Endangered Species Act Integration in Oregon”](#) contains information about both processes, but does not clearly distinguish between the two processes.

What is the role of the Oregon Department of Land Conservation and Development in PICM?

FEMA and the state provide funds to the Oregon Department of Land Conservation and Development (DLCD) for staff to help cities and counties participate in the NFIP. DLCD floodplain staff do not set program policies and cannot make decisions on behalf of FEMA. As FEMA provides more information about what they are requiring through PICM, DLCD floodplain staff will try to explain the program to cities and counties.

Frequently Asked Questions about Pre-Implementation Compliance Measures

While the floodplain staff at DLCD have a coordinating role communicating with FEMA, cities and counties are always free to communicate directly with FEMA staff. In this role, DLCD staff provided feedback on the full implementation plan (long-term measures) through the NEPA process. DLCD staff provided information about how the land use planning system in Oregon would affect the full implementation plan. DLCD did not have an opportunity to play a similar role while FEMA developed PICM.

On September 26, 2024, Governor Tina Kotek sent a [letter to FEMA](#) expressing concerns about PICM, similar to concerns raised in a [letter from members of congress](#) in August. DLCD will work with FEMA to address the governor's concerns.

What does a city or county need to do now?

FEMA is requiring cities and counties to select one of three PICM short-term paths by December 1, 2024:

- Pathway 1: Adopt the [PICM model floodplain management ordinance](#) that considers impacts to fish habitat and requires mitigation to a no net loss standard.
- Pathway 2: Review individual development proposals and require permit-by-permit habitat mitigation to achieve no net loss using "Floodplain Habitat Assessment and Mitigation" guidance from FEMA.
- Pathway 3: Prohibit all new development in the floodplain.

FEMA is also requiring cities and counties to gather additional data on local floodplain permitting starting January 31, 2025, and submit an annual report to FEMA starting January 2026.

If a city or county does not choose a PICM path by December 1, 2024, then FEMA expects the city or county to use Pathway 2 for permit-by-permit habitat assessment and mitigation.

Once local planning staff review the FEMA documents ([PICM model ordinance](#) and [habitat assessment guidance](#)), planning staff may want to discuss the PICM paths with other internal local staff, and their local legal counsel. A starting point could be to determine how much developable land is within the Special Floodplain Hazard Area (SFHA). With that data to inform local decision making, staff might want to report to decision makers and the public explaining the situation and may find this FAQ useful as background. An informational work-session could be helpful to explore options for what may or may not work at the local level. DLCD staff ([regional representatives](#) and [flood hazards staff](#)) are available for technical assistance; however, many questions will need to go to FEMA. Use the dedicated email address: FEMA-R10-MIT-PICM@fema.dhs.gov.

Does Pathway 3 "Prohibit floodplain development" require a moratorium?

No. A city or county has at least two options for prohibiting development in the special flood hazard area: temporary moratorium or permanent rezoning.

Option A: Temporary Moratorium

[ORS 197.520 to 197.540](#) defines a process for a city or county to declare a moratorium to temporarily prevent all development in a specific area. Typically, a city or county would declare a moratorium where there are insufficient public facilities, which would not apply in this case. ORS 197.520(3) allows a different type of moratorium if a city or county demonstrates there is a compelling need based on the findings below:

For urban or urbanizable land:

- That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas;
- That the moratorium is sufficiently limited to ensure that a needed supply of affected housing types and the supply of commercial and industrial facilities within or in proximity to the city or county are not unreasonably restricted by the adoption of the moratorium;
- Stating the reasons alternative methods of achieving the objectives of the moratorium are unsatisfactory;
- That the city or county has determined that the public harm which would be caused by failure to impose a moratorium outweighs the adverse effects on other affected local governments, including shifts in demand for housing or economic development, public facilities and services and buildable lands, and the overall impact of the moratorium on population distribution; and
- That the city or county proposing the moratorium has determined that sufficient resources are available to complete the development of needed interim or permanent changes in plans, regulations or procedures within the period of effectiveness of the moratorium.

For rural land:

- That application of existing development ordinances or regulations and other applicable law is inadequate to prevent irrevocable public harm from development in affected geographical areas;
- Stating the reasons alternative methods of achieving the objectives of the moratorium are unsatisfactory;
- That the moratorium is sufficiently limited to ensure that lots or parcels outside the affected geographical areas are not unreasonably restricted by the adoption of the moratorium; and
- That the city or county proposing the moratorium has developed a work plan and time schedule for achieving the objectives of the moratorium.

Moratoriums are legally complicated. This description is only a summary of the law. A city or county should consult carefully with their legal counsel to determine whether and how a moratorium would work in their specific situation, and to review the applicable timelines for which a moratorium may be in place and circumstances for extending a moratorium.

Option B: Permanent Rezoning

A city or county could permanently rezone the land within the special flood hazard area to a zone that would not permit development. This would not be appropriate for all cities and counties, but could be appropriate if the area in the SFHA is relatively small, unlikely to develop, or publicly owned.

Is a “Measure 56 Notice” required for PICM short-term options?

Most likely yes, but cities and counties should consult with their legal counsel on how the notification requirements apply in the specific local circumstances.

Background on Measure 56 Notices

Cities and counties in Oregon are required to send a notice to landowners before “rezoning” property. This requirement was originally enacted through Ballot Measure 56 in 1998, and is codified in [Oregon Revised Statutes \(ORS\) 227.186](#) for cities and [ORS 215.503](#) for counties. The requirement uses a broad definition of rezoning that includes any change that “limits or prohibits land uses previously allowed.” DLCD maintains a [webpage on the landowner notification requirement](#).

Pathway 1 – Model ordinance

Cities and counties staff should carefully review current zoning and development regulations for property within the SFHA. If properties are zoned for open space or conservation, then the [PICM model ordinance](#) might not further limit uses.

If properties are zoned for residential, commercial or industrial use, the [PICM model ordinance](#) would likely limit those uses, and the Measure 56 notification requirement could apply. Most local floodplain codes require owners to obtain a permit for development in the floodplain. Permit processing varies for each city or county. Oregon’s model floodplain Ordinance (version 2020) meets minimum NFIP standards. However, the updated [PICM model ordinance](#) contains new standards in section 6.0 (highlighted in yellow) which could limit currently allowed uses, in which case the Measure 56 notification requirement would apply.

Pathway 2 – Permit-by-permit habitat assessment and mitigation

Cities and counties should carefully review any existing requirements for habitat mitigation. Most cities and counties do not require mitigation for habitat impacts, so the city or county would be adopting a new ordinance to require assessment and mitigation for development in flood hazard areas. These new development regulations would most likely limit currently allowed uses, and thus the Measure 56 notification requirement would apply.

Pathway 3 – Prohibit floodplain development

If a city or county declares a temporary moratorium under ORS 197.520 to 197.540, then the Measure 56 notification requirements would likely apply because a moratorium would limit or prohibit uses that would otherwise be allowed.

If a city or county rezones land or amends development regulations to permanently prohibit development within the SFHA, then the city or county should carefully review the previous zoning and allowed uses for each parcel. If some properties were previously zoned for open space or conservation, then the prohibition on development is not likely to be a limitation on future use. If some properties are zoned for residential, commercial or industrial use, then the prohibition on development would limit those uses, and thus the Measure 56 notification requirement would apply.

A city or county may not want to completely prohibit all development in the floodplain and may want to think about explicitly adding in activities exempt from the no net loss standards as listed in section 6.3 of the [PICM Model Ordinance](#). Some of the exempt activities include normal maintenance of structures, street repairs, habitat restoration activities, routine agricultural practices, and normal maintenance of above ground utilities and would still require a local floodplain development permit. However, if a city or county wishes to include activities beyond those listed in section 6.3, then the city or county will likely need to adopt the model ordinance or require permit-by-permit habitat mitigation for the uses that are still allowed. It may be simpler to choose pathway 1 (model ordinance) or pathway 2 (permit-by-permit) instead. Cities and counties should communicate with FEMA about any exemptions.

Will the state waive legislative adoption requirements?

Each city or county has its own requirements for adopting an ordinance. The state has no authority to waive those requirements.

[ORS 197.610 through 197.625](#) requires cities and counties to submit notice to DLCD 35 days before the first hearing to adopt a change to a comprehensive plan or a land use regulation. The statute does not authorize DLCD to waive this requirement. If it is not possible to send the notice 35 days prior to the hearing, cities and counties should send the notice as soon as possible. The notice can include a draft ordinance that will be revised before adoption. If a city or county does not provide notice 35 days prior to the hearing, this does not invalidate the ordinance. A party that did not appear before the local government in the proceedings would be allowed to appeal the ordinance.

DLCD has no authority to waive the required Measure 56 notification to landowners that is described above.

What if a city or county cannot complete the ordinance process by December 1, 2024?

Start the process of evaluating the PICM pathways as soon as possible. Keep FEMA informed via their PICM inbox FEMA-R10-MIT-PICM@fema.dhs.gov regarding your PICM path and progress.

Send questions to FEMA early in the process to give them time to respond, and document when replies are received.

Communicate often to FEMA to update them on your status and expected adoption date.

Is the model ordinance clear & objective?

Background on Clear and Objective Standards

Oregon Revised Statutes [197A.400](#) requires cities and counties to:

“adopt and apply only clear and objective standards, conditions and procedures *regulating the development of housing*, including needed housing, on land within an urban growth boundary.”
[emphasis added.]

The legislature amended this statute to include areas within unincorporated communities and rural residential zones. The amendment takes effect on July 1, 2025.

Reviewing Model Ordinances

DLCD plans to review the existing [Oregon Model Flood Hazard Ordinance](#) to identify standards for residential development that may not be clear and objective. Over the past year, DLCD also reviewed an early draft of the model ordinance in the NEPA process for the full implementation of the BiOp. DLCD identified several aspects of that early draft model ordinance that may not be clear and objective and suggested that FEMA revise those aspects. DLCD has not yet determined whether the [PICM Model Ordinance](#) has only clear and objective standards.

What is changing for cities and counties for letters of map revision based on fill?

FEMA has temporarily suspended processing of applications for letters of map revision based on fill (LOMR-F) and conditional letters of map revision based on fill (CLOMR-F) as of **August 1, 2024**. FEMA is doing this to remove any perceived incentive to using fill and to avoid potentially negative effects on habitat for threatened species.

FEMA is not prohibiting fill in the SFHA, rather they are suspending the opportunity for owners or developers to revise floodplain maps to be released from mandatory flood insurance. Therefore, if fill is used for structure elevation and there is a federally backed mortgage on the property, flood insurance will still be required. Cities and counties should continue to enforce their existing floodplain ordinance on regulations regarding placement of fill in flood hazard areas.

Frequently Asked Questions about Pre-Implementation Compliance Measures

If an applicant asks for a community acknowledgement form (CAF) for a CLOMR-F or LOMR-F for a project not covered in the exceptions below, it would be wise to [contact FEMA](#) before signing.

Exceptions for L/CLOMR-F processing:

- Projects that are undergoing Section 7 consultation via an alternative federal nexus
- LOMR-Fs for already processed CLOMR-Fs
- CLOMRs required for habitat restoration projects

What are the Measure 49 implications to the PICM pathways?

Measure 49 could apply in some situations, but it is unlikely that a city or county would have to pay compensation to a landowner. Cities and counties should consult with their legal counsel to analyze their specific situation.

Background:

[Ballot Measure 49](#) was approved by Oregon voters in 2007. Its initial impact was on property owners who acquired their property before land use regulations were established in the 1970's and 1980's. In many cases, those owners were permitted to build up to three houses, even though the current zoning would not allow new houses.

Measure 49 also applies to future changes in land use regulations. Those provisions are codified in [ORS 195.300 to 195.336](#). If a state or local government enacts a land use regulation that restricts a residential use and reduces the fair market value of a property, then the owner can apply for just compensation. The compensation can be monetary, or a waiver to allow the owner to use the property without applying the new land use regulation. This requirement does not apply if the new regulation is for the protection of public health and safety.

Pathway 1 – Model ordinance

If a property owner applied for just compensation as a result of a city or county adopting the PICM model ordinance, the city or county would process the claim as provided in ORS 195.300 through 314. This includes evaluating the claim to determine whether it is valid, and then deciding whether to waive the regulation or pay monetary compensation.

First, determine whether the claimant owned the property before the city or county adopted the new regulations in the model ordinance.

Next determine whether the new regulations restrict the use of the property for single-family dwellings. The statute does not include a specific definition of “restrict” in this context. If the new ordinance has the effect of completely prohibiting residential use, then it clearly restricts the use. If the new ordinance allows single-family dwellings, but places design standards or conditions of development, these likely do not restrict the use.

Next, determine whether the regulations “restrict or prohibit activities for the protection of public health and safety” as provided in ORS 195.305(3)(b). Many aspects of regulating floodplains are based on safety; however, some of the regulations in the [PICM model ordinance](#) are based on improving fish habitat. This could result in complicated analysis to determine whether the habitat requirements restrict development beyond the restriction already created by regulations based on safety.

Next, review the property appraisals submitted by the claimant to determine whether the property value was actually reduced. Property in a flood hazard area may already have a low value. The property may still have value for agricultural use which would offset the loss due to the regulation.

If a property owner has a valid claim, then the city or county would decide to pay monetary compensation or to waive some regulations. The city or county is not required to waive all regulations, only “to the extent necessary to offset the reduction in the fair market value of the property” ORS 195.310(6)(b). The city or county could still apply regulations based on safety, and could still apply regulations that existed prior to adopting the [PICM model ordinance](#).

Pathway 2 – Permit-by-permit habitat assessment and mitigation

The results would be similar to pathway 1. In most cases the habitat mitigation requirement would not prevent development, and the owner would likely not be entitled to just compensation. If the habitat mitigation requirements did prevent development, then the owner could apply for just compensation. The city or county would use the steps described above to determine whether it is a valid claim, and decide to waive some of the requirements, or pay monetary compensation.

Pathway 3 – Prohibit floodplain development

A temporary moratorium would likely not lead to a claim for just compensation because it is not a new land use regulation. Also, a temporary moratorium is unlikely to significantly affect fair market value because potential buyers know that the moratorium will end.

Rezoning to prohibit all development within the SFHA would likely be a basis for a claim for just compensation, especially for a property entirely within the SFHA. If a property includes area inside and outside the SFHA, and the owner could still develop the same number of dwellings in a different location, then the owner would likely not be able to make a claim for just compensation.

The city or county would use the steps described above to determine whether it is a valid claim, and decide to waive some of the requirements, or pay monetary compensation.

Where can I find additional information or ask questions about PICM?

FEMA has a webpage for [Endangered Species Act Integration in Oregon](#). Email questions to the PICM email address: FEMA-R10-MIT-PICM@fema.dhs.gov.

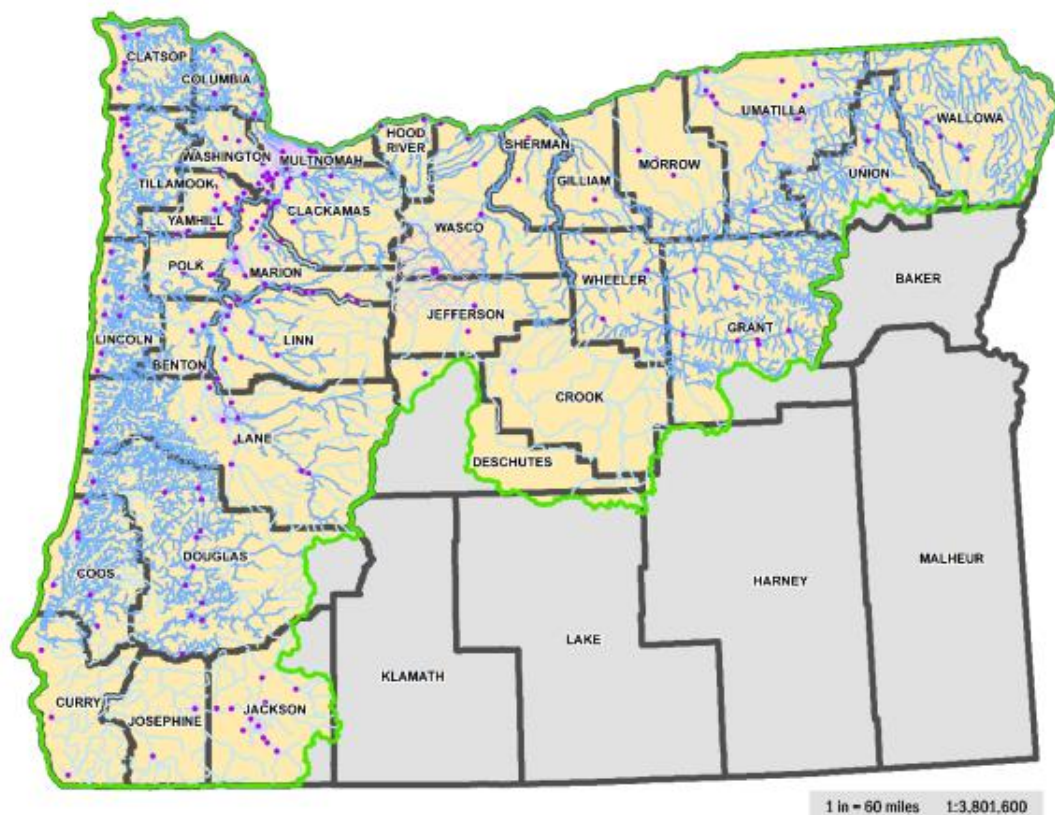
While DLCD staff are not responsible for PICM implementation, we are available to offer technical assistance. Email or call Oregon's NFIP Coordinator at DLCD, Deanna Wright, deanna.wright@dlcd.oregon.gov, 971-718-7473.

What if a city or county received a PICM letter in error, or did not receive a PICM letter?

Staff may contact FEMA's PICM inbox at: FEMA-R10-MIT-PICM@fema.dhs.gov to receive the letter, or you may contact DLCD staff. FEMA staff sent the email announcements to the city or county floodplain staff and the letter was mailed to each individual city or county chief elected officer. If you believe your community is outside of the BiOp action area (map instructions below), but you received a PICM letter, please contact FEMA PICM inbox for verification.

What area does the BiOp cover?

Below is a snapshot image of the Oregon NFIP BiOp Action Area:



OREGON NFIP BIOP ACTION AREA

2021.09.28

The BiOp is applicable in Special Flood Hazard Areas (SFHA) within the mapped salmon recovery domains for Oregon communities that participate in the NFIP. The BiOp covers approximately 90 percent of participating Oregon NFIP communities but does not apply to five counties.

[NOAA Fisheries GIS mapping application tool](#)

FEMA has published [directions](#) on how to determine if a proposed development or project area is within the BiOp area.

**CITY OF ROCKAWAY BEACH, OREGON
ORDINANCE NO. 2024-06**

**AN ORDINANCE AMENDING CITY OF ROCKAWAY BEACH ZONING
ORDINANCE 143 SECTION 4.050 SIGN REQUIREMENTS**

WHEREAS, the City of Rockaway Beach (“City”) recognizes that certain amendments to the Rockaway Beach Zoning Ordinance are needed to allow for the placement of signs on municipal properties and open spaces, address non-conforming signs, and align discrepancies regarding home occupation signs noted in other sections of the code (“Proposed Amendments”);

WHEREAS, through regular Planning Commission meetings in April and May 2024, City staff worked with the Planning Commission to develop the Proposed Amendments to address the deficiencies in the current ordinance;

WHEREAS, on August 16, 2024, the City provided proper notice of the Proposed Amendments to the Department of Land Conservation and Development;

WHEREAS, on October 17, 2024, the Rockaway Beach Planning Commission conducted a properly noticed public hearing on the Proposed Amendments, and having received no objections, recommended that City Council adopt the Proposed Amendments;

WHEREAS, on _____, 2024, the City Council conducted a properly noticed public hearing and first and second reading on the Proposed Amendments; and

WHEREAS, based upon all materials relevant to the proposal, staff reports, findings made by the Rockaway Beach Planning Commission, and testimony and comments submitted at the public hearings, both orally and in writing, the Rockaway Beach City Council has made the findings of fact as set forth in Exhibit A.

NOW, THEREFORE, The City of Rockaway Beach ordains as follows:

Section 1. Findings. The City Council hereby adopts the Findings of Fact set forth in the above recitals and attached as Exhibit A as its basis for adopting the Proposed Amendments to the Rockaway Beach Zoning Ordinance.

Section 2. Amendments. The Rockaway Beach Zoning Ordinance 143, Section 4.050 is hereby amended, in total, as follows:

Section 4.050. Sign Requirements.

1. Placement. No sign shall be placed in or extend over a required street right-of-way except sidewalks. Signs over sidewalks shall not be less than 8 feet from the sidewalk grade. Where no sidewalk exists, the 6 feet of right-of-way on either side of the street shall be considered the sidewalk.
2. Measurements. The following shall be used in measuring a permanent sign to determine compliance with this Chapter:
 - a. Signs shall be limited to the following:

- i. Commercial uses, other than motel, hotel, or timeshare condominium; one square foot of sign area for each lineal foot of street frontage, but not to exceed 75 square feet in area.
 - ii. Motel, hotel, or timeshare condominiums; 75 feet in area.
 - iii. Light industrial; 24 square feet in area.
 - iv. Nonresidential uses such as churches or schools; 12 square feet in area.
 - v. Multifamily and condominiums; 12 square feet in area.
 - vi. Home occupation; 1 square foot in area.
 - b. Sign area shall be calculated such that one side of an opposing-sided or non-parallel sign may be used for the purposes of measuring square footage. The larger side must be used for the determining factor.
 - c. Off premise signs shall be no larger than 24 square feet in area.
3. Sandwich board signs. For the purposes of this section, "sandwich board sign" means a sign which consists of two panels hinged or attached at the top or side, designed to be movable and stand on the ground.
- a. One nonilluminated sandwich board sign, with each face not exceeding eight square feet in area, shall be allowed per business.
 - b. Sandwich board signs must be placed directly in front of the associated establishment.
 - c. The sandwich board sign shall not be located within a street or street right-of-way, except that where sidewalks exist, such a sign may be located on a public sidewalk. The sign shall not obstruct pedestrian traffic. If located on a public or private sidewalk, it shall be placed either adjacent to the curb or adjacent to the building so as to allow a 36-inch minimum walkway.
 - d. Sandwich board sign area shall not be deducted from the aggregate sign area allowed in Section 4.050(3).
 - d.e. Nonprofit and community organizations without an associated establishment may display a sandwich board sign during special events in public open spaces related to the event. All dimensions and placement standards outlined in Sections (a) through (d) shall apply.
4. Short Term Rental (STR) Signs. Signage requirements specific to Short Term Rentals (STRs) are governed by Section 113.04(C) of the Rockaway Beach Code of Ordinances. All sign regulations for STRs shall follow the requirements outlined in that section, as defined and enforced separately from the standards in Section 4.050.
- 4.5. Prohibitions. The following are expressly prohibited, unless specifically stated otherwise in this Chapter:
- a. There shall be no moving or flashing signs.
 - b. Light from a sign shall be directed away from a residential use or zone and shall not be located so as to detract from a motorist's view.
 - c. External light sources for a sign shall be directed downward and shielded to limit direct illumination of any object other than the sign.
- 5.6. Nonconforming Signs. Nonconforming permanent signs existing at the time this 2025 Ordinance becomes effective, may continue, subject to the restrictions in this section:
- a. A nonconforming sign shall not be:
 - i. Expanded in size or height that increases nonconformity; or
 - ii. Relocated.

- b. A nonconforming permanent sign may be maintained or altered, including changing the face or repair, provided no changes are made that would increase nonconformity.
- i. If a nonconforming sign is destroyed by wind, fire, rain or by any other natural disaster, the sign shall not be replaced and shall lose its nonconformity and any remaining portions shall be removed; any new signage erected in its place shall comply with the provisions of this Chapter.
- 6-7. Exempt Signs. The following signs are exempt from regulations under this Chapter:
- a. Signs erected or maintained by or on behalf of a federal, state, county, or local governmental body.

Section 3. Unamended Provisions. All unamended provisions of Ordinance No. 143 shall remain in full force and effect.

Section 4. Severability. A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section, or part of this ordinance shall not affect the validity of the remaining parts to this ordinance.

Section 5. Effective Date. Pursuant to the Rockaway Beach City Charter, this ordinance shall become effective on the thirtieth day after its adoption.

1st reading by the Rockaway Beach City Council _____.

2nd reading by the Rockaway Beach City Council _____.

Adopted and Approved by the Rockaway Beach City Council _____.

Charles McNeilly, Mayor

City Council	Aye/Nay
Mary McGinnis	/
Tom Martine	/
Kristine Hayes	/
Alesia Franken	/
Penny Cheek	/

Attest:

Melissa Thompson, City Recorder

Existing Sign Requirements
Rockaway Beach Zoning Ordinance: Section 4.050

Section 4.050. Sign Requirements.

- (1) No sign shall be placed in or extend over a required street right-of-way except sidewalks. Signs over sidewalks shall not be less than 8 feet from the sidewalk grade. Where no sidewalk exists, the 6 feet of right-of-way on either side of the street shall be considered the sidewalk.
- (2) There shall be no moving or flashing signs, and light from a sign shall be directed away from a residential use or zone, and shall not be located so as to detract from a motorist's view.
- (3) Signs shall be limited to the following:
 - (a) Commercial uses, other than motel, hotel, or timeshare condominium; one square foot of sign area for each lineal foot of street frontage, but not to exceed 75 square feet in area.
 - (b) Motel, hotel, or timeshare condominiums; 75 feet in area.
 - (c) Light industrial; 24 square feet in area.
 - (d) Nonresidential uses such as churches or schools; 12 square feet in area.
 - (e) Multifamily and condominiums; 12 square feet in area.
 - (f) Home occupation; 4 square feet in area.
- (4) Sign area shall be calculated such that one side of an opposing-sided or non-parallel sign may be used for the purposes of measuring square footage. The larger side must be used for the determining factor.
- (5) Off premise signs shall be no larger than 24 square feet in area.
- (6) Sandwich board signs. For the purposes of this section, "sandwich board sign" means a sign which consists of two panels hinged or attached at the top or side, designed to be movable and stand on the ground.
 - (a) One nonilluminated sandwich board sign, with each face not exceeding eight square feet in area, shall be allowed per business.
 - (b) Sandwich board signs must be placed directly in front of the associated establishment.
 - (c) The sandwich board sign shall not be located within a street or street right-of-way, except that where sidewalks exist, such a sign may be located on a public sidewalk. The sign shall not obstruct pedestrian traffic. If located on a public or private sidewalk, it shall be placed either adjacent to the curb or adjacent to the building so as to allow a 36- inch minimum walkway.
 - (d) Sandwich board sign area shall not be deducted from the aggregate sign area allowed in Section 4.050(3).

RESOLUTION NO. 2024-XX

A RESOLUTION ADOPTING A PUBLIC MEETINGS LAW GRIEVANCE POLICY

WHEREAS, Oregon House Bill 2805 created mandatory prerequisites for submitting Public Meetings Law complaints to the Oregon Government Ethics Commission (OGECE); and

WHEREAS, ORS 192.705 provides the requirements for filing a written grievance and the governing body's required response; and

WHEREAS, OAR 199-050-0070 clarifies the process for submitting a written grievance alleging a Public Meetings Law violation to a public body.

NOW, THEREFORE, BE IT RESOLVED THAT:

Section 1. The City Council of the City of Rockaway Beach hereby adopts the City of Rockaway Beach Public Meetings Law Grievance Policy, attached as Exhibit A.

Section 2. This Resolution shall be effective immediately upon adoption.

APPROVED AND ADOPTED BY THE CITY COUNCIL THE 11th DAY OF DECEMBER 2024.

APPROVED

Charles McNeilly, Mayor

ATTEST

Melissa Thompson, City Recorder



**CITY OF ROCKAWAY BEACH
PUBLIC MEETINGS LAW GRIEVANCE POLICY**

POLICY NUMBER: XXX.X	EFFECTIVE DATE: REVIEWED: REVISED:
CATEGORY: Administration	RELATED DOCUMENTS: Resolution 2024-XX – adopting this policy

- (1) The purpose of this policy is to establish and clearly communicate the City of Rockaway Beach procedure for receiving and responding to public meetings law complaints. This policy applies to all City of Rockaway Beach governing bodies as defined by state statute, and subject to the requirements of Public Meeting Law, ORS 192.610 to 192.705.
- (2) The City shall post on its website the person and contact information to whom a grievance may be submitted and the regular business hours during which in-person grievances will be accepted.
- (3) A person who believes that a City governing body has acted in violation of the Public Meetings Law may, within 30 calendar days from the date of the meeting where the alleged violation occurred, file a written grievance with the City Recorder via in-person delivery during regular business hours, first-class mail or email.
- (4) The written grievance must include the following information:
 - (a) The City governing body that allegedly violated the Public Meetings Law;
 - (b) The date of the meeting where the alleged violation occurred;
 - (c) The specific facts and circumstances that the person asserts amount to a violation of the Public Meetings Law;
 - (d) The date of the grievance; and
 - (e) The name and contact information of the person submitting the grievance.
- (5) The City Manager or designee shall, within 21 calendar days from the date the grievance was received, provide a written response to the person:
 - (a) Acknowledging receipt of the grievance; and may
 - (b) (A) Deny that the facts and circumstances as set forth in the grievance accurately reflect the conduct of the City governing body and setting forth the facts and circumstances as

determined by the City and the reasons why those facts and circumstances do not amount to a violation of ORS 192.610 to 192.705;

(B) Admit that the facts and circumstances as set forth in the grievance accurately reflect the conduct of the governing body but denying that those facts and circumstances amount to a violation of ORS 192.610 to 192.705; or

(C) Admit that the conduct of the governing body amounted to a violation of ORS 192.610 to 192.705 and setting forth the steps the governing body will take to cure the violation, including but not limited to:

(i) Rescinding the decision taken by the City governing body in violation of ORS 192.610 to 192.705; or

(ii) Acknowledging in a properly noticed and conducted public meeting held within 45 days of the governing body's original decision that:

(I) The original decision was made in violation of ORS 192.610 to 192.705;

(II) Good cause exists for the City governing body to not rescind the decision; and

(III) The City governing body's practices will be modified to ensure future violations of ORS 192.610 to 192.705 do not occur.

(6) The City Manager or designee shall send a copy of the written grievance and the City governing body's response under this section to the Oregon Government Ethics Commission at the same time the City Manager or designee responds to the person who filed the grievance.

PUBLIC MEETINGS

ORS 192.705

192.705 Filing written grievance; required response. (1) A person who believes that a governing body has acted in violation of ORS 192.610 to 192.705 may, within 30 days of the alleged violation, file a written grievance with the public body whose governing body is alleged to have violated ORS 192.610 to 192.705, setting forth the specific facts and circumstances that the person asserts amounted to a violation of ORS 192.610 to 192.705. The grievance must state the identity of the person filing the grievance and any other information required by the Oregon Government Ethics Commission by rule.

(2) A public body receiving a written grievance filed under this section shall, within 21 days of the receipt of the grievance, provide a written response to the person:

(a) Acknowledging receipt of the grievance; and

(b)(A) Denying that the facts and circumstances as set forth in the grievance accurately reflect the conduct of the governing body and setting forth the facts and circumstances as determined by the public body and the reasons why those facts and circumstances do not amount to a violation of ORS 192.610 to 192.705;

(B) Admitting that the facts and circumstances as set forth in the grievance accurately reflect the conduct of the governing body but denying that those facts and circumstances amount to a violation of ORS 192.610 to 192.705; or

(C) Admitting that the conduct of the governing body amounted to a violation of ORS 192.610 to 192.705 and setting forth the steps the governing body will take to cure the violation, including but not limited to:

(i) Rescinding the decision taken by the governing body in violation of ORS 192.610 to 192.705; or

(ii) Acknowledging in a properly noticed and conducted public meeting held within 45 days of the governing body's original decision that:

(I) The original decision was made in violation of ORS 192.610 to 192.705;

(II) Good cause exists for the governing body to not rescind the decision; and

(III) The governing body's practices will be modified to ensure future violations of ORS 192.610 to 192.705 do not occur.

(3) The public body shall send a copy of the written grievance and the public body's response under this section to the Oregon Government Ethics Commission at the time the public body responds to the person who filed the grievance. [2023 c.417 §5]

CITY OF ROCKAWAY BEACH

2024/2025

SMALL COMMUNITY GRANT



GRANT FUNDS AVAILABLE: \$<>
MAXIMUM GRANT REQUESTS: \$4,999.99

Applications open <>, 2024
Deadline to apply:
<>day, <>, 2024 at 12:00 pm

Questions? Need assistance?
Grant Manager , <>
<>@corb.us
(503) 374-1752 ext. <>



OVERVIEW

The Small Community Grant program provides support to non-profit, not-for-profit organizations, and community entities that serve the Rockaway Beach community. This grant program accepts applications twice per fiscal year. Organizations and entities may only submit one application for consideration per funding cycle.

Grant funds are available to support organizations and entities which provide:

- Assistance for essential utilities, food, medical or mental health needs, clothing, or shelter.
- Educational, cultural, social, physical, or recreational opportunities for residents.
- Positive volunteerism that enhances city aesthetics, benefits the environment, promotes positive community engagement, or support city initiatives or projects.

ELIGIBILITY

Eligible Applicants:

- Non-profit and not-for-profit organizations
- Community entities

Eligible Applicants may not have any in-progress grants and must have satisfactorily closed out all previous grants issued by the City of Rockaway Beach.

Examples of Eligible Projects:

- Healthy meals program
- Active living program
- Health services
- Early literacy program
- Youth development programs
- Small facility improvements or operational items with a lifespan of 3+ years.



GRANT TIMELINE

Applications open and publication of notice	<>, 2024
Applications due, 12:00 pm	<>, 2024
Planning Commission review and recommendations	<>, 2024
City Council award of decision	<>, 2024
Notification to Grantees; Contracts sent to grant recipients	<>, 2024
Project deadline - 12 months from City Council decision	<>, 2024
Project Expense Worksheet and Grant Close Out Form due	<>, 2024



KEY PRINCIPLES

In the application, eligible Applicants are asked to describe how the proposed project contributes to a healthy, inclusive, charitable, and equitable community. The City of Rockaway Beach believes that supporting its organizations and entities that encourage this type of community building will make a better future for everyone.

Projects funded through the Small Community Grant must predominately support or be attended by the Rockaway Beach community.

FUNDING PRIORITIES

1.

Projects that make the largest impact for Rockaway Beach residents.

2.

Projects that fill an existing need that would not be met without grant funding.

3.

Projects that bring the community together and create positive community engagement.

INELIGIBLE PROJECTS

- Tourism based/supported projects
- Day-to-day operational expenses and payroll
- Marketing and promotional projects
- Political activities and fundraising for political activities
- Projects that drive/support commerce

For profit businesses are encouraged to apply for building improvement funds and/or marketing needs through the City's Business Facade Grant and/or Marketing Grant programs.

SELECTION CRITERIA

All applications for eligible projects will be rated and ranked based on the following criteria. While the following criteria has been deemed most important, additional relevant factors beyond the score may be worthy of consideration.

Healthy Community Score (25 points)

A healthy community is one where access to fresh, healthy foods are available, educational resources are provided, physical fitness is promoted, recreational opportunities are encouraged, medical and mental health needs are met, and the environment is cared for.

- Does the project offer opportunities to improve physical or mental health?
- Does the project provide healthy opportunities to those who may not otherwise have access?
- Does the project promote healthy lifestyle changes?

Inclusive Community Score (25 points)

This score measures how well the project strengthens the local sense of community. In an inclusive community diversity is valued, social opportunities are plentiful, community involvement thrives, and residents work together to support city initiatives or projects.

- Does the project create new social opportunities for residents?
- Does the project strengthen the local sense of community or serve an underrepresented population?
- Does the project bring the community together to work towards a common goal?

Charitable Community Score (25 points)

This score measures how well the project supports local charitable efforts. Charitable communities value giving back to others, promote volunteer opportunities, and strive to meet the needs of the local community.

- Does the project offer new opportunities for residents to volunteer to better the community?
- Does the project provide services or opportunities currently lacking in the community?

Equitable Community Score (25 points)

This score measures how well the project encourages equity throughout the local community. Equitable communities provide a helping hand to residents in need and meet the needs of underserved community members.

- Does the project assist residents who need additional support?
- Does the project provide new services or assistance to underserved community members?

SCORING OVERVIEW

Baseline Scoring

Up to

Healthy Community Score	25 points
Inclusive Community Score	25 points
Charitable Community Score	25 points
Equitable Community Score	25 points

GRANT REVIEW PROCESS

The City of Rockaway Beach staff will provide guidance on applications if presented a minimum of 14 calendar days prior to the grant application deadline, <>, 2024.

Each application received will first be reviewed by the Grant Manager for completeness. If the application is incomplete or not received by the deadline, it will not be submitted to the Planning Commission for consideration.

The Planning Commission will review, score, and rank all of the applications received, then make initial scoring recommendations for funding. The Planning Commission's recommendations will be presented to the City Council at their workshop on <>, 2024.

The City Council will review the applications, the Planning Commission's recommendations, and make the award decision at their regular meeting on <>, 2024.



FUNDING PROCESS

Once the grant is awarded ~~and contract is signed~~, Grantees can start on projects.

Grant funds will be issued within two weeks of contract execution via check.

Upon completion of the project, the Grantee shall complete the Project Expense Worksheet and Grant Close Out form. The Grantee shall be scheduled to make a five-minute presentation to the City Council to publicly share how the grant funds were spent. The presenter shall not be a member of the governing body.

The City Council shall determine the grant complete through a motion at a public meeting.