

ORDINANCE NO. 3330

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FULLERTON,
CALIFORNIA, AMENDING FULLERTON MUNICIPAL CODE SECTION
14.01.015 PERTAINING TO FLOOD ZONE DEVELOPMENT

WHEREAS, U.S. Congress passed the National Flood Insurance Act of 1968 and established the National Flood Insurance Program (NFIP).

WHEREAS, the Federal Emergency Management Agency (FEMA) administers NFIP, enabling property owners in participating communities to purchase flood insurance as protection against flood losses in exchange for state and community floodplain management regulations that reduce future flood damages.

WHEREAS, the City of Fullerton joined the NFIP in 1977 (City of Fullerton Ordinance No. 2164), adopting program rules and regulations for its implementation.

WHEREAS, California Building Standard Code (CBSC), California Code of Regulations (CCR), Title 24 also contains flood provisions that meet or exceed minimum requirements of the NFIP, included in Code of Federal Regulations (CFR), Title 44.

WHEREAS, City Council desires to amend the Fullerton Municipal Code to comply with NFIP minimum requirements included in Title 44, CFR and with higher flood provisions included in Title 24, CCR, CBSC and to reflect current review and permitting process for development in Special Flood Hazard Areas.

WHEREAS, City staff analyzed and determined that the Municipal Code amendments set forth in this Ordinance are not a "project" pursuant to CEQA and/or are exempt.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FULLERTON ORDAIN AS FOLLOWS:

SECTION 1. City Council incorporates the foregoing Recitals and makes a part hereof.

SECTION 2. City Council finds this Ordinance content does not constitute a project or is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2), (3) and 15061(b)(3) because the City does not anticipate the proposed changes would result in a direct or reasonably foreseeable indirect physical change in the environment nor do the changes have potential to create a significant effect on the environment. City Council enacts the changes in this ordinance to mitigate threats to public peace, health and safety from storms and flooding and can see with certainty that this ordinance will not have a significant adverse effect on the environment.

SECTION 3. City Council amends Fullerton Municipal Code Title 14, Division 1, Section 15 to read in its entirety as set forth in Attachment 1.

SECTION 4. City Council authorizes and directs staff to file a Notice of Exemption for this Ordinance adoption.

SECTION 5: If a final judgment of a court of competent jurisdiction holds any section, subsection, subdivision, sentence, clause, phrase or portion of this Ordinance invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance. City Council declares that it would have adopted this Ordinance and each section, subdivision, sentence, clause, phrase or portion of this Ordinance irrespective of a court of competent jurisdiction declaring one or more sections, subdivisions, sentences, clauses, phrases or portions of this Ordinance invalid.

SECTION 6: City Council directs the City Clerk to publish this Ordinance, entirely or in summary, in the manner provided by law and in accordance with procedures normally taken.

SECTION 7: The City Clerk shall certify to the passage of this Ordinance and publish the Ordinance as required by law. The Ordinance shall take effect thirty days after adoption.

SECTION 8: City Council repeals all previous ordinances, or parts thereof, conflicting or inconsistent with provisions of this Ordinance upon the effective date of this Ordinance and declares them of no further force and effect.

ADOPTED BY THE FULLERTON CITY COUNCIL ON MARCH 5, 2024.

ATTEST:

Nicholas Dunlap
Mayor

Lucinda Williams, MMC
City Clerk

Date

Attachments:

Attachment 1 - FMC Text

14.01.15 Flood Zone Development.

A. General provisions

1. Statutory authority. The Legislature of the State of California has, in Government Code Sections 65302, 65560, and 65800, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.
2. Statement of Purpose. It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by legally enforceable regulations applied uniformly throughout the community to all publicly and privately owned land within flood prone, mudslide [i.e. mudflow] or flood related erosion areas. These regulations are designed to:
 - a. Protect human life and health;
 - b. Minimize expenditure of public money for costly flood control projects;
 - c. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 - d. Minimize prolonged business interruptions;
 - e. Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in areas of special flood hazard;
 - f. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future blighted areas caused by flood damage;
 - g. Ensure that potential buyers are notified that property is in an area of special flood hazard;
 - h. Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions;
3. Findings of Fact
 - a. The flood hazard areas of the City of Fullerton are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
 - b. These flood losses are caused by uses that are inadequately elevated, floodproofed, or protected from flood damage. The cumulative effect of obstructions in areas of special flood hazards which increase flood heights

and velocities also contributes to flood losses.

4. Compliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the requirements (including violations of conditions and safeguards) shall constitute a misdemeanor. Nothing herein shall prevent the City of Fullerton from taking such lawful action as is necessary to prevent or remedy any violation.
5. Abrogation and Greater Restrictions. This ordinance is not intended to repeal, abrogate, or impair any existing ordinances including land development regulations, subdivision regulations, zoning ordinances, stormwater management regulations, or building codes, nor any existing easements, covenants, or deed restrictions. In the event of an overlap or conflict between these regulations and any other ordinance, code, regulation, easement, covenant, or deed restriction, whichever imposes the more stringent restrictions shall prevail.
6. Interpretation. In the interpretation and application of these regulations, all provisions shall be:
 - a. Considered as minimum requirements.
 - b. Liberally construed in favor of the governing body.
 - c. Deemed neither to limit nor repeal any other powers granted under state statutes.
7. Warning and Disclaimer of Liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Fullerton, any officer or employee thereof, the State of California, or the Federal Emergency Management Agency, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.
8. Severability. This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid.
9. Applicability

- a. Establishment of Flood Hazard Areas. The areas of special flood hazard identified by Federal Emergency Management Agency (FEMA) in the Flood Insurance Study (FIS) for Orange County, California and Incorporated Areas, dated December 3, 2009, and accompanying Flood Insurance Rate Maps (FIRMs), and all subsequent amendments and/or revisions thereto, are hereby adopted by reference and declared to be a part of this chapter. Maps and studies that establish flood hazard areas are on file at the City of Fullerton, Public Works/Engineering Department at 303 West Commonwealth Avenue, Fullerton, CA 92832 and at the FEMA Map Services Center, <https://msc.fema.gov>
- b. Scope. The following rules and regulations shall apply to all building permits and other permits to perform any work within flood hazard areas identified in the City of Fullerton.
- c. Permit Required. A permit shall be obtained before proceeding with any construction or development, as defined in [14.01.015.B, *Definitions*], within any area of special flood hazard established pursuant to Section 9.A above.

B. Definitions.

1. "AO zone" means a zone of shallow flooding designated on the Flood Insurance Rate Map in which flooding occurs during conditions of a one-hundred-year frequency storm to a depth of from one to three feet, and where the product of the flood depth, in feet, and the velocity of the floodwaters in feet per second, is less than fifteen.
2. "Base flood" means the flood having a one-percent chance of being equaled or exceeded in any given year (also called the "100-year flood").
3. "Base flood elevation" (BFE) means the elevation shown on the Flood Insurance Rate Map for Zones AE and AH that indicates the water surface elevation resulting from a flood that has a 1 percent or greater chance of being equaled or exceeded in any given year.
4. "Basement" means any portion of a building having its floor subgrade (below ground level) on all sides.
5. "Development" means any manmade change to improved or unimproved real estate, including but not limited to, buildings or other structures, temporary structures, temporary or permanent storage of materials, mining, dredging, filling, grading, paving, excavations, drilling operations, flood control projects, and other land-disturbing activities.
6. "Flood or flooding" means a general and temporary condition of partial or complete inundation of normally dry land from (i) the overflow of inland or tidal waters; (ii) the unusual and rapid accumulation or runoff of surface waters from

any source.

7. "Variance" means a grant of relief by community from the terms and conditions of the floodplain management regulations.
8. "Flood Insurance Rate Map (FIRM)" means an official map of the City of Fullerton on which the Federal Emergency Management Agency (FEMA) has delineated both the special flood hazard areas and the risk premium zones applicable to the community. A copy of the FIRMs are on file in the office of the City Engineer.
9. "Flood Insurance Study" means the official report provided by the Federal Emergency Management Agency containing the Flood Insurance Rate Map (FIRM), the Flood Boundary and Floodway Map (FBFM), the water surface elevation of the base flood and supporting technical data.
10. "Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.
11. "Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. Also referred to as "Regulatory Floodway."
12. "Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.
13. "Historic structure" means any structure that is:
 - a. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - b. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - c. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or
 - d. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either by an approved state program as determined by the Secretary of the Interior or

directly by the Secretary of the Interior in states without approved programs.

14. "Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for the parking of vehicles, building access or storage, in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.
15. "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than one hundred eighty consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers and other similar vehicles.
16. "Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
17. "New Construction" for floodplain management purposes, means development for which the "start of construction" commenced on or after October 1, 1971, and includes any subsequent improvements to such structures.
18. "One-hundred-year Flood." See base flood.
19. "Recreational vehicle" means a vehicle that is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light-duty truck, and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use. A recreational vehicle is ready for highway use when it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions.
20. "Special flood hazard area (SFHA)" means an area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. It is shown on FIRM as Zone A, AO, AE, A99, or, AH.
21. "Start of construction" means and includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement or other improvement was within one hundred eighty days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a

manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

22. "Structure" means a walled and roofed building that is principally above ground; this includes a gas or liquid storage tank or a manufactured home.
23. "Substantial Damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
24. "Substantial Improvement" means any repair, reconstruction, rehabilitation, alteration, addition or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. When the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:
 - a. Any project for improvement of a structure to correct existing violations or state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
 - b. Any alteration of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."
25. "Violation" means the failure of a structure or other development to be fully compliant with this ordinance or the flood provisions of the building code, as applicable. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

C. Administration

1. The City Engineer, or his/her designee, is hereby appointed to administer and implement the regulations of this chapter. The City Engineer shall coordinate with and provide comments to the Building Official to administer and enforce the flood provisions of the building code and to ensure compliance with the applicable provisions of these regulations.
2. Duties and Responsibilities of the City Engineer shall include, but not limited to:

- a. Review all permit requests for development, construction and substantial improvements for and to buildings, structures and properties for compliance with the goals and objectives of the National Flood Insurance Program;
- b. Cooperate with Federal, State, and local agencies and private firms which undertake to study, survey, map and identify floodplain or flood-related erosion areas, and to cooperate with neighboring communities with respect to the management of adjoining floodplain and/or flood-related erosion areas in order to prevent aggravation of existing hazards;
- c. Notify the Federal Insurance Administrator in writing whenever the boundaries of the city have been modified by annexation or deannexation;
- d. Shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, until such data has been provided by the Federal Insurance Administration, as criteria for evaluating new construction, substantial improvements or other developments in zone A.
- e. All Letters of Map Change (LOMC) including Letters of Map Amendment (LOMA) and Letters of Map Revision (LOMR) are approved and included in the record prior to issuance of building permits. Building Permits shall not be issued based on Conditional Letters of Map Amendment (CLOMA) or Conditional Letters of Map Revision (CLOMR).
- f. Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA, within six (6) months of availability, the data and information necessary to maintain the Flood Insurance Rate Maps when the analyses indicate changes in base flood elevations, flood hazard area boundaries, or floodway designations;
- g. Amend the floodplain management regulations and notify FEMA, in order to include all flood-prone areas within newly acquired areas by means of annexation, incorporation, or otherwise, of another area to enforce the provisions of this chapter; and
- h. Submit or assure that the permit applicant submits technical or scientific data to FEMA for a LOMR, within six (6) months of information becoming available or project completion, whichever comes first
- i. Review all permit applications to determine if the proposed development in AE zones adversely affects the flood carrying capacity of the area of special flood hazard. For purposes of this chapter, "adversely affects" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot to any point.
- j. Notify, in riverine situations, adjacent communities and the State Department

of Water Resources prior to any alteration or relocation of a watercourse, and submit copies of such notification to the Federal Emergency Management Agency (FEMA).

- k. Require that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained.
 - l. Interpretation of FIRM Boundaries. Make interpretations where needed, as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section G hereof.
 - m. Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps when the analyses indicate changes in base flood elevations, flood hazard area boundaries, or floodway designations.
3. Duties and Responsibilities of the Building Official shall include, but not limited to:
- a. Permit only substantial new development within the AO, A, and AE zones which is appropriate in light of the probability of flood damage and the need to reduce flood losses, is an acceptable social and economic use of the land in relation to the hazards involved and does not increase the danger to human life;
 - b. Maintain for public inspection records of all permits, certificates, variances, and pertinent correspondence relative to the review, approval or denial of all requests for developments and permits within the flood hazard areas designated as zones AO, A, and AE on the Flood Insurance Rate Maps;
 - c. Maintain for public inspection and furnish upon request, for the determination of applicable flood insurance risk premium rates within AO, A, and AE zones, any certificates of floodproofing and information on the elevation of the level of the lowest floor including the basement, of all new or substantially improved structures and include whether or not such structures contain a basement, and if the structure has been floodproofed, the elevations to which the structure has been floodproofed;
 - d. Substantial improvement and substantial damage determinations. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, Building Official, shall:

- i. Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.
- ii. Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, when applicable, to the market value of the building or structure.
- iii. Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage.
- iv. Notify the applicant when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the building code is required and notify the applicant when it is determined that work does not constitute substantial improvement or repair of substantial damage.
- e. Review all permit applications for substantial improvements or new construction within the AO, A, and AE zones to determine whether proposed building sites will be reasonably safe from flooding. Upon review of a permit application, the Building Official may approve the application by his endorsement of the building permit application or by issuance of an appropriate permit or certificate, may conditionally approve the permit application, or may deny the permit.

D. Elevation Data. All development or permit applications submitted for properties within the AO, A, and AE zones shall be accompanied with elevation data, based upon city datum, showing the property, and the elevation relationship between the proposed improvement and the depth number (AO) and base flood elevation (A and AE) shown on the Flood Insurance Rate Map. Upon completion of any such development or improvement, the as-built elevation of the first floor level and the basement, if any, shall be submitted to the Building Official. No development, structure, or property improvement shall be finally approved or accepted until this as-built data has been satisfactorily submitted and recorded.

E. Other Permits Required. The applicant shall obtain all other required state and federal permits prior to initiating work authorized by these regulations and shall provide documentation of such permits to the Building Official. Such permits include but are not limited to the California State Water Resources Control Board for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.

F. Development Standards.

1. General Standards. In all areas of special flood hazard, all new construction and substantial improvements, including erection and placement of prefabricated buildings and manufactured homes shall be:
 - a. designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure or improvement;
 - b. constructed with materials and utility equipment and services resistant to flood damage;
 - c. constructed by methods and practices that minimize flood damage.
 - d. Electrical, heating, ventilation, plumbing and air-conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
 - e. All new construction and substantial improvements within zones AH or AO shall be required to have adequate drainage paths on slopes to guide floodwater around and away from structures.
2. Subdivisions
 - a. All subdivision proposals shall be consistent with the need to minimize flood damage;
 - b. Where the proposed development is greater than fifty (50) lots or five (5) acres, whichever is the lesser, and base flood elevations are not included on the FIRM, they shall be determined by the applicant;
 - c. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
 - d. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.
3. Utilities

All on-site sewer, water, gas, electrical, and other utility service and systems, and all repairs, alterations or modifications thereto within the special flood hazard area shall be constructed and installed to minimize or eliminate flood damage to them and to minimize or eliminate infiltration into them. On-site waste disposal systems shall be located to avoid impairment to them, or contamination from them during flooding.
4. Building Requirements.
 - a. Residential. All new construction and substantial improvements of residential structures shall have the lowest floor (including basement)

elevated at least 1 foot above the base flood elevation in AE zone; elevated above the highest adjacent grade to a height at least 1 foot above the depth number specified in feet on the FIRM, or elevated at least 3 feet above the highest adjacent grade if no depth number is specified in AO zone; elevated to or above the base flood elevation in A zone (base flood elevation shall be determined in accordance with Section C.2.d). Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered civil engineer or licensed land surveyor, and verified by the community building inspector to be properly elevated. Such certification and verification shall be provided to the Building Official.

- b. Nonresidential. All new construction and substantial improvements of nonresidential structures within flood hazard zones shall either be elevated to conform with Section 4.a, above or, together with attendant utility and sanitary facilities, be completely floodproofed to or above that level, so that any space below that level is watertight with walls substantially impermeable to passage of water, and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
 - c. Manufactured Homes. All new and replacement manufactured homes including substantial improvement of manufactured homes installed in flood hazard zones be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above one foot above the base flood elevation and be securely fastened to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. Methods of anchoring are authorized to include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State and local anchoring requirements for resisting wind loads and seismic loads.
5. Design. All methods and details of floodproofing nonresidential structures as required above shall be based upon calculations and design prepared by a registered civil engineer or architect who shall certify floodproofing methods are adequate to withstand the flood depth, pressures, velocities, impact and uplifted forces and other factors associated with depth of flooding in the AO, A, and AE zones shown on the Flood Insurance Rate Map. Such certification shall be provided to the Building Official. For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered design professional or must meet or exceed the following minimum criteria: A minimum of two openings on at least two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than

one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters. Buildings with more than one enclosed area must have openings on exterior walls for each area to allow flood waters to pass automatically.

6. Recreational Vehicles.

All recreational vehicles placed in flood hazard zones will either (1) be on the site for fewer than 180 consecutive days; or (2) be fully licensed and ready for highway use; or (3) meet the permit requirements and the elevation and anchoring requirements for manufactured homes in Section 4.c. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions

7. Floodways.

Since floodways are an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply.

- a. Until a regulatory floodway is adopted, no new construction, substantial development, or other development (including fill) shall be permitted within Zone AE, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other development, will not increase the water surface elevation of the base flood more than 1 foot at any point within the City of Fullerton.
- b. Within an adopted regulatory floodway, the City of Fullerton shall prohibit encroachments, including fill, new construction, substantial improvements, and other development, unless certification by a registered professional engineer is provided demonstrating through hydrologic and hydraulic analyses that the proposed encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- c. If items 7.a and 7.b. above are satisfied, all new construction, substantial improvement, and other proposed new development shall comply with all other applicable flood hazard reduction provisions of this chapter.

G. Variance Procedure

1. Variances from the rules and regulations contained herein for the regulation of construction and building within identified flood hazard areas may be considered, upon application, in accordance with the following procedures:
 - a. Form. Any person requesting a variance shall submit a written

application to the Director of Community and Economic Development Department. The application shall contain all relevant data and shall clearly state the applicant's basis of appeal.

- b. A Flood Area Variance Board is appointed, comprised of Planning Manager, City Engineer, and Building Official. Upon receipt of a request for variance, Variance Board, or their designees, shall consider the evidence presented, and based upon the review criteria included in this section, shall render a decision, and notify the applicant, in writing, of such decision. All such decisions shall be rendered within thirty days of receipt of the application.
- c. An applicant to whom a variance is granted shall be given written notice, signed by the Director of Community and Economic Development Department of the granting of the variance and any conditions applied thereto by the Flood Area Variance Board. Such notice shall also contain the fact that construction below the flood levels indicated on the Flood Insurance Rate Map may increase risk to life and property and may result in increased flood insurance premium rates.
- d. When it is alleged, there is an error in any decision or determination made by the team comprised of City Engineer, Building Official, and Planning Manager, in the interpretation or enforcement of these regulations, the applicant shall file the written appeal the Director of Community and Economic Development within fifteen days of the written action. The application, along with a staff report setting forth the requirements and other information regarding the requested variance, shall then be sent to the Planning Commission, who shall hear the appeal. A copy of the report shall also be sent to the owner or applicant making the appeal at least three days prior to any hearing or action by the Planning Commission. Upon receipt of the report, the Planning Commission shall review the matter at its first regular meeting held, but not less than ten days after its receipt. The decision of the Planning Commission approving, conditionally approving, or denying the appealed variance or conditions thereof shall be final unless a further appeal to the City Council is made within ten days after action by the Planning Commission. If a further appeal is made, the written appeal shall be filed with the City Clerk and shall set forth the grounds and reasons for appeal. The City Council may sustain, modify, or overrule any such requirements, ruling, finding or disapproval of the Planning Commission. The City Council shall consider such appeal within thirty days of its filing with the City Clerk. Notification by mail of the time and place at which the appeal will be considered by Council shall be sent to the applicant or owner not less than ten days prior to the meeting at which the appeal will be considered. The decision of the City Council shall be final,

and upon making its decision, the City Clerk shall make a written report of the outcome directly to the applicant or owner and to the various City departments.

2. Considerations for issuance of variances. In reviewing applications for variances, all technical evaluations, all relevant factors, all other requirements of these regulations and the building code, as applicable, and the following shall be considered:
 - a. The danger to life and property due to possible flooding and erosion.
 - b. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on current and future owners
 - c. The importance of the services rendered to the community by the proposed facility.
 - d. The availability of alternate locations not subject to flooding for the proposed use.
 - e. The compatibility of the proposed use with existing and anticipated development.
 - f. The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - g. The expected heights, velocity, and duration of the floodwaters expected at the site of the proposed development.
 - h. The relationship of the proposed use to the City general plan and floodplain management program for the area.
 - i. The costs of providing services during and after flood conditions, including maintenance and repair of public facilities and utilities such as streets, sewers, watermains, gas and electrical systems.
 - j. The danger that materials and debris from the site may be swept by floodwaters onto other lands to the detriment and injury of others.
 - k. Generally, variances may be issued for new construction and substantial improvements, as hereinafter defined, to be erected on a lot or parcel of one-half acre or less in size, contiguous to and surrounded by lots or parcels with existing structures constructed below the base flood level, as shown on the Flood Insurance Rate Map, providing the above items have been fully considered. As the lot or parcel size increases beyond the one-half acre, the technical justification required for issuing the variance increases. Upon consideration of the above factors and any evidence presented by the applicant, the Flood Area Appeal Board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this section.

3. Requirements for the Granting of Variances. Variances shall only be issued upon the following:
 - a. A determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - b. A showing of good and sufficient cause.
 - c. A determination that failure to grant the variance would result in hardship to the applicant.
 - d. A determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nuisances, fraud on or victimization of the public, or conflict with other City codes.
 - e. Variances shall not be issued within any designated AO, A, and AE zones if any increase in flood levels during the base flood discharge would result.
 4. A variance shall not be issued for any proposed development in a floodway when any increase in flood levels would result during the base flood discharge.
 5. A variance may be authorized to be issued for the repair, improvement, or rehabilitation of a historic structure upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the structure's continued designation as a historic structure, and the variance is the minimum necessary to preserve the historic character and design of the structure.
 6. The Building Official will maintain a permanent record of all variance actions, including justification for their issuance, and report such variances issued to FEMA upon request.
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