

## STAFF REPORT

**Date:** Tuesday, June 28, 2016

**To:** Bryan H. Montgomery, City Manager

**From:** Kevin Rohani, P.E. Public Works Director/ City Engineer

**Subject:** Ordinance Making Amendments to Chapter 12 of Title 6 of the Oakley Municipal Code Dealing with Floodplain Management and to Chapter 9 of Title 3 Dealing with Development Agreements

Approved and Forwarded to City Council:

  
Bryan H. Montgomery, City Manager

### Background and Analysis

The proposed amendments are a City-initiated action to bring the City Municipal Code into compliance with the recently-amended Oakley General Plan 2020 Health and Safety Element. The amendments below apply to Chapter 12 of Title 6 Floodplain Management and Section 9.3.018. The changes are consistent with the requirements of the Central Valley Flood Protection Act of 2008 (SB 5, 2007) and its subsequent amendments, which require that floodplain management practices conform to the urban level of flood protection standards.

### Summary and Recommendation

The recently-amended General Plan, in Section 8.2.C states that the City should "maintain a uniform set of flood damage prevention standards in cooperation with the appropriate County, State, and Federal agencies, and update the Floodplain Management Ordinance, Chapter 6.12 of the Municipal Code, to reflect the most recent federal and State standards relating to flood prevention and protection." Below is a summary of changes that are proposed to be made to the Floodplain Management chapter of the Municipal Code.

#### Summary of Changes to Section 6.12.104 Findings of Fact

- Special flood hazard areas are now referred to as "flood hazard zones," an umbrella term that is defined in the Definition section.
- New finding has been added that reads, "The City of Oakley is subject to the urban level of flood protection criteria."

## Summary of Changes to Section 6.12.110 Definitions

- Added definitions for:
  - A Zone
  - As-builts
  - Building
  - Flood hazard zone
  - Levee
  - Levee system
  - Urban level of flood protection

## Summary of Changes to Section 6.12.112 Lands to Which This Chapter Applies

- Section now reads that, “This chapter shall apply to all Special Flood Hazard Areas, and to other flood hazard zones when applicable, within the jurisdiction of the City of Oakley, as shown on the maps described in Section 6.12.114 and using best available data.”

## Summary of Changes to Section 6.12.114 Basis for Establishing Special Flood Hazard Areas

- This section now references the September 30, 2015 FIS and FIRM.

## Summary of Changes to Section 6.12.126 Development Permit Application

- Added language to clarify that the Floodplain Administrator must verify that the required level of protection has been determined.

## Summary of Changes to Section 6.12.130 Duties and Responsibilities of the Floodplain Administrator

- Itemizes and describes permits to be reviewed
- Sets requirements for base flood elevation determination

## Summary of Changes to Section 6.12.138 Standards for Subdivisions

- Added text from 6.12.130 6(b)
- Added reference to LOMR-F submittal if fill is used in a Special Flood Hazard Area.

## Summary of Changes to Section 6.12.144 Floodways

- Added language to clarify the procedure until a regulatory floodway is adopted.

Summary of Changes to Section 6.12.152  
Conditions for Variances

- Added language to clarify the definition of “minimum necessary.”

NEW Section added: Chapter 6.12.154  
Construction or Development in Flood Hazard Zone; Findings

- Added chapter to comply with provisions of state law that require the City to make specific findings prior to approving certain land use entitlements and other permits for property, development projects, or subdivisions located within a flood hazard zone.

**Fiscal Impact**

There are no fiscal impacts associated with this action.

**Conclusion**

Staff recommends that the City Council introduces the ordinance by title only.

**Attachments**

- 1) Ordinance \_\_-16
- 2) Chapter 12 of Title 6 with Track Changes

ORDINANCE NO. \_\_ -16

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OAKLEY MAKING AMENDMENTS TO  
CHAPTER 12 OF TITLE 6 OF THE OAKLEY MUNICIPAL CODE, DEALING WITH THE FLOODPLAIN  
ORDINANCE**

The City Council of the City of Oakley does ordain as follows:

Section 1. Chapter 12 of Title 6, Floodplain Management, is hereby amended to read as follows:

**6.12.102 Statutory Authorization.**

This chapter is designed to promote the public health, safety and general welfare of the citizens of the City of Oakley and is enacted pursuant to the authority of 42 United States Code Sections 4001 through 4128; see especially 42 U.S.C. Section 4022; Government Code Sections 25120 through 25132; Title 44 of the United States Code of Federal Regulations at Section 60.3, (and "all applicable associated" Technical Bulletins); Health and Safety Code Section 450; and California Constitution, Article XI, Section 7 and Government Code Sections 65302, 65560 and 65800.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

**6.12.104 Findings of Fact.**

- a. The flood hazard zones of the City of Oakley are areas 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. Those flood losses are caused by inadequate drainage facilities and the cumulative effect of obstructions in flood hazard zones, which increase flood heights and velocities. Those losses may result when structures are inadequately anchored, elevated, flood proofed, or protected from flood damage.
- c. The City of Oakley has experienced serious flooding, which has resulted in substantial property damage and the potential for loss of life. Adoption of a legally enforceable floodplain management ordinance which fully complies with the rules of the National Flood Insurance Program (NFIP) administered by the Federal Emergency Management Agency (FEMA) will allow the City to continue its participation in the NFIP. The continued participation of the City in the NFIP is desirable and promotes the public health, safety and welfare in that it provides

insurance and Federal assistance in the event of flood(s) within the City's jurisdiction. In the absence of such insurance, the City's vulnerability to damage and loss resulting from flood events may be substantial and potential flood damage represents an immediate threat to the public, health, safety and welfare.

d. The City of Oakley is subject to the urban level of flood protection criteria.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.106 Statement of Purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- a. To protect human life and health;
- b. To minimize expenditure of public money for costly flood control projects;
- c. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- d. To minimize prolonged business interruptions during flooding;
- e. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone, and sewer lines, and streets and bridges located in flood hazard zones;
- f. To help maintain a stable tax base by providing for the use and development of flood hazard zones subject to review by permit and application of flood damage reduction standards so as to minimize future flood blight areas;
- g. To provide information to the general public regarding flood hazard zones in the City of Oakley;
- h. To clearly establish that those who occupy the flood hazard zones should assume responsibility for their actions and the losses they may suffer; and
- i. To ensure that potential buyers are notified if property is in an flood hazard zone.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.108 Methods of Reducing Flood Losses.

In order to accomplish its purpose, this chapter includes methods and provisions for:

- a. Restricting or prohibiting land uses that create a danger to health, safety, and property due to water inundation or erosion hazards or that result in damaging increases in erosion, flood heights, or velocities;
- b. Requiring that land use areas vulnerable to floods be protected against flood damage at the time of initial construction including facilities such as utilities, which serve them;
- c. Requiring that the design of streets and public access facilities include consideration of accessibility under the base flood conditions for emergency service vehicles and any rescue and relief operations;
- d. Controlling and limiting the alteration of natural floodplains, stream channels, and natural protection barriers that help accommodate or channel flood waters;
- e. Controlling filling, grading, dredging, and other development which may increase flood damage;
- f. Preventing or regulating the construction of flood barriers that will unnaturally divert floodwaters or that may increase flood hazards in other areas;
- g. Requiring orderly development of drainage facilities within watershed areas as development occurs;
- h. Recognizing the importance and beneficial functions of natural floodplains; and
- i. Requiring that all new construction and substantial improvements within floodplains be constructed in such a manner that flood damage will be minimized.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.110 Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

"A Zone." See "Special flood hazard area."

"Appeal" means a request for a review of the Floodplain Administrator's interpretation of any provision of this chapter or decision on a request for a variance.

"Area of shallow flooding" means a designated AO, AH, or VO Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does

not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"As-builts" are a revised set of drawing submitted by a contractor upon completion of a project or a particular job. They reflect all changes made in the specifications and working drawings during the construction process, and show the exact dimensions, geometry, and location of all elements of the work completed under the contract.

"Base flood" means a flood having a one percent chance of being equaled or exceeded in any given year (also called the "one hundred (100) year flood").

"Base flood elevation (BFE)" means the elevation above "mean sea level" to which the base flood will rise as determined by FEMA or the Floodplain Administrator. This elevation is shown on the Flood Insurance Rate Map for Zones AE, AH, A1-30, VE, and V1-V30.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Building." See "Structure."

"Breakaway walls" are any type of walls, whether solid or lattice and whether constructed of concrete, masonry, wood, metal, plastic, or any other suitable building material, that are not part of the structural support of the building, and that are designed to break away under abnormally high tides or wave action without causing any damage to the structural integrity of the building on which they are used or any buildings to which they might be carried by flood waters. A breakaway wall shall have a safe design loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot. Use of breakaway walls must be certified by a registered engineer or architect and shall meet the following conditions:

- a. Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and
- b. The elevated portion of the building shall not incur any structural damage due to the effects of wind and water loads acting simultaneously in the event of the base flood.

"Building permit" shall mean a: building permit, plumbing permit, electrical permit, or mechanical permit issued by the City of Oakley Building Department.

"Coastal high hazard area" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. It is the area subject to high velocity

waters, including coastal and tidal inundation or tsunamis. The area is designated on a FIRM as Zone V1-V30, VE or V.

"Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, and storage of equipment or materials.

"Encroachment" means the advance or infringement of uses, fill, excavation, buildings, permanent structures, or development into a floodplain that may impede or alter the flow capacity of a floodplain.

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed, including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets are completed on or before the effective date of the ordinance codified in this chapter.

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets.

"Flood or flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- a. The overflow of flood waters; and/or
- b. The unusual and rapid accumulation or runoff of surface waters from any source; and/or
- c. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water accompanied by a severe storm or by an unanticipated force of nature such as flash flood or an abnormal tidal surge or by some similarly unusual and unforeseeable event that results in flooding as defined in this definition.

"Flood Boundary and Floodway Map" means the official map described in Section 6.12.114 on which FEMA or the Federal Insurance Administration (FIA) has delineated both the areas of flood hazard and the floodway.

"Flood hazard zone" means an area subject to flooding that is delineated as either a Special Flood Hazard Area (FEMA 100-year floodplain) or other areas with flood risk, such as the 200-

or 500-year floodplains, or areas that are at risk of flooding from levee failure. The identification of flood hazard zones does not imply that areas outside the flood hazard zones, or uses permitted within flood hazard zones, will be free from flooding or flood damage.

"Flood Insurance Rate Map (FIRM)" means the official map described in Section 6.12.114 on which FEMA or FIA has delineated both the Special Flood Hazard Areas (SFHAs) and the risk premium zones applicable to the community.

"Flood Insurance Study (FIS)" means the official report described in Section 6.12.114 provided by the FIA that includes flood profiles, the FIRM, the Flood Boundary and Floodway Map, and in some areas, the base flood elevation.

"Flood-related erosion" means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

"Flood-related erosion area" or "flood-related erosion prone area" means a land area adjoining the shore of a lake or other body of water, which because of the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

"Flood-related erosion area management" means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control work, and floodplain management regulations.

"Flood resistant" means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduces flood damage, generally allowing flood waters to enter and exit the building without causing any significant damage to the structures or their contents.

"Flood resistant materials" means any building material capable of withstanding direct and prolonged (at least seventy-two (72) hours) contact with flood waters without sustaining significant damage (any damage requiring more than low-cost cosmetics repair-such as painting). Acceptable materials are specified in "technical bulletins" and/or as approved by the Floodplain Administrator.

"Floodplain or flood-prone area" means any land area susceptible to being inundated by water from any source (see definition of "flood or flooding").

"Floodplain Administrator" is the individual appointed to administer and enforce the floodplain management regulations, including the issuance of floodplain permits. The Floodplain Administrator, as used in this chapter, shall mean the City Engineer or a person under his or her supervision.

"Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control work, and floodplain management regulations.

"Floodplain management regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance, and erosion control regulations), and other applications of the police power that control development in flood-prone areas. This term describes Federal, State, or local regulations in any combination thereof that provide standards for preventing and reducing flood loss and damage.

"Floodplain permit" means a permit required of all development which occurs in any area designated by FEMA as a SFHA and as required by the Floodplain Administrator.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to nonresidential structures that eliminate flood damage to real estate or improved real property, water and sanitary facilities, and nonresidential structures and their contents.

"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. The floodway shall be as designated on the FIRMs and/or as designated by the Floodplain Administrator whether or not a floodplain is shown on the FIRM. Also referred to as "regulatory floodway."

"Floodway fringe" means that area of the floodplain on either side of the "regulatory floodway" where encroachment may be permitted.

"Fraud and victimization," as related to Sections 6.12.148 through 6.12.152, means that a variance granted must not cause fraud on or victimization of the public. In examining this requirement, the Zoning Administrator will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for fifty (50) to one hundred (100) years. Buildings that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs,

inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

"Freeboard" means a factor of safety usually expressed in feet above a base flood elevation for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

"Functionally dependent use" means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; it does not include long-term storage or related manufacturing facilities.

"Governing body" is the local governing unit, i.e., county or municipality, that is empowered to adopt and implement regulations to provide for the public health, safety, and general welfare of its citizenry.

"Hardship," as used in the definition of "variance" herein, means the exceptional hardship that would result from a failure to grant the requested variance. The City requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of ones neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

"Highest adjacent grade" means the highest natural (i.e., undisturbed) elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic structure" means any structure that is:

- a. Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing in 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 of the Interior 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 the 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 with approved programs.

"Levee" means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

"Levee system" means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accord with sound engineering practices.

"Lowest floor" means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood resistant enclosure, usable solely for 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 nonelevation design requirements of this chapter. This definition allows attached garages to be built at grade (with adequate venting). Below grade garages and storage areas are not allowed as they are considered to be basements.

"Manufactured home" means a structure, transportable in one or more sections, that 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 (180) consecutive days and neither continuously licensed nor "road ready."

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for sale or rent.

"Market value" shall be determined by estimating the cost to replace the structure in new condition and adjusting that cost figure by the amount of depreciation which has accrued since the structure was constructed. The cost of replacement of the structure shall be based on a square foot cost factor determined by reference to a building cost estimating guide recognized by the building construction industry. The amount of depreciation shall be determined by taking into account the age and physical condition but shall not include economic or other forms of external obsolescence. Use of replacement costs or accrued depreciation factors

different from those contained in recognized building cost estimating guides may be considered only if such factors are included in a report prepared by an independent professional appraiser and supported by a written explanation of the differences.

"Mean sea level" means, for purposes of the NFIP, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's FIRM are referenced.

"New construction," for floodplain management purposes, means structures for which the "start of construction" commenced on or after June 26, 2000, the effective date of the City of Oakley's floodplain management ordinance, and includes any subsequent improvements to such structures.

"Obstruction" includes but is not limited to any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material that may alter, impede, retard, or change the direction and/or velocity of the flow of water because of (a) its location in, along, across, or projecting into any watercourse, (b) its propensity to snare or collect debris carried by the flow of water, or (c) its likelihood of being carried downstream.

"One hundred (100) year flood" means a flood that has a one percent annual probability of being equaled or exceeded. See "Base flood."

"Person" means an individual or his or her agent, firm, partnership, association, or corporation, or any agent of the aforementioned groups, or this State or its agencies or its political subdivisions.

"Public safety and nuisance," as related to the issuance of variances under this chapter, means that the granting of a variance must not result in anything that is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake or river, bay, stream, canal, or basin.

"Reconstruction" means to perform major construction or modifications to an existing structure that makes the existing structure like or better than new. Reconstruction does not cover normal or routine maintenance unless otherwise specified in the definition of "historical structures" herein.

"Recreational vehicle" means a vehicle that is:

- a. Built on a single chassis;

- b. Four hundred (400) square feet or less when measured at the largest horizontal projection;
- c. Designed to be self-propelled or permanently towable by a light duty truck; and
- d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Remedy a violation" means to bring a structure or other development into compliance with State or local floodplain management regulations, or if that is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this chapter or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

"Sand dunes" means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

"Special Flood Hazard Area (SFHA)" means an area having special flood or flood-related erosion hazards, and shown on FIRM as Zone A, AO, A1-30, A99, AH, VO, V1-30 or V.

"Start of construction" includes substantial improvement and means the date the building permit was issued, if the actual start of construction, repair, reconstruction, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either (a) 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 (b) the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; the installation of streets and/or walkways; excavation for a basement, foundations, footings, or piers or the erection of temporary forms; and installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building or manufactured home, including a gas or liquid storage tank, that is principally above ground.

"Substantial damage" means damage of any origin sustained by a structure sufficiently extensive that the cost of restoring the structure to its before-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

"Substantial improvement" means any reconstruction, rehabilitation, addition, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the "start of construction" of the improvement. The term includes structures that have incurred "substantial damage," regardless of the actual repair work performed.

The percentage figure shall be added to any successive building permits that may be issued or have been issued within a contiguous ten (10) year span. "Substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- a. Any project for improvement of a structure, not required because of flood damage, that is necessary to comply with existing State or local health, sanitary, or safety code specifications that are the minimum necessary to assure safe living conditions; or
- b. Any alteration of an "historic structure," if the alteration will not preclude the structure's continued designation as an "historic structure."

"Technical bulletin" means bulletins developed by the Federal Emergency Management Agency (FEMA), the California Department of Water Resources (CA DWR), or the Floodplain Administrator. Bulletins clarify specific requirements of Federal, State, or local laws pertaining to floodplain management.

"Urban level of flood protection" means the level of protection that is necessary to withstand flooding that has a 1-in-200 chance of occurring in any given year using criteria consistent with, or developed by, the California Department of Water Resources. "Urban level of flood protection" shall not mean shallow flooding or flooding from local drainage that meets the criteria of the national FEMA standard of flood protection.

"Variance" means a grant of relief from the requirements of this chapter that permits construction in a manner that would otherwise be prohibited by this chapter.

"Violation" means the failure of a structure or other development to comply with this chapter. A structure or other development without an elevation certificate, other certifications, or other

evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

"Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, where specified, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

"Watercourse" means a lake, river, creek, stream, wash, arroyo, channel, or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.112 Lands to Which This Chapter Applies.

This chapter shall apply to all Special Flood Hazard Areas, and to other flood hazard zones when applicable, within the jurisdiction of the City of Oakley, as shown on the maps described in Section 6.12.114 and using best available data.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.114 Basis for Establishing Special Flood Hazard Areas.

SFHAs have been identified by FEMA or the FIA in a scientific and engineering report entitled "Flood Insurance Study for Contra Costa County, California and Incorporated Areas," dated September 30, 2015 with an accompanying FIRM and Flood Boundary and Floodway Map. All subsequent amendments to and/or revisions of the study and maps are hereby adopted by reference and declared to be a part of this chapter. That FIS and the accompanying maps are on file with the City of Oakley at 3633 Main Street, Oakley, CA 94561. The FIS describes the minimum area of applicability of this chapter and may be supplemented by studies for other areas that allow implementation of this chapter, and that are recommended by the Floodplain Administrator. Within the SFHA identified in the FIS, accompanying maps, and supplemental studies, one foot of freeboard is required.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.116 Compliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violations of the requirements, including violations of conditions and safeguards established in connection with conditions, shall constitute an infraction punishable as provided in

Government Code Section 25132. Nothing herein shall prevent the City Council of the City of Oakley from taking such lawful action as is necessary to prevent or remedy any violation.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### **6.12.118 Abrogation and Greater Restrictions.**

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### **6.12.120 Interpretation.**

In the interpretation and application of this chapter, all provisions shall be:

- a. Considered as minimum requirements;
- b. Liberally construed in favor of the City; and
- c. Deemed neither to limit nor repeal any other powers granted under State statutes.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### **6.12.122 Warning and Disclaimer of Liability.**

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the flood hazard zones or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the City, any officer or employee thereof, or the FIA for any flood damages that result from reliance on this chapter or any administrative decision made thereunder.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### **6.12.124 Establishment of Floodplain Permit.**

A floodplain permit shall be obtained from the City of Oakley before construction, issuance of a grading permit or building permit, and commencement of development on any property within any flood hazard zone established in Section 6.12.114. Application for a floodplain permit shall be made on forms furnished by the City's Floodplain Administrator and may include but not be limited to: plans in triplicate drawn to scale showing the nature, location, dimensions, and

elevation of the area in question; and the location of existing or proposed structures, fill, storage of materials, drainage facilities, or other development defined in this chapter. Specifically, the following information is required:

- a. Proposed elevation, in relation to mean sea level, of the lowest floor, including basement, of all structures. In Zone AO or VO, elevation of highest adjacent grade and proposed elevation of lowest floor of all structures;
- b. Proposed elevation, in relation to mean sea level, to which any structure will be floodproofed;
- c. All appropriate certifications listed in Section 6.12.130;
- d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and
- e. Description of the extent to which grading is proposed within the flood hazard zone.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

#### **6.12.126 Development Permit Application.**

Prior to a variance permit, land use permit, development plan permit, or tentative map application being deemed complete on any property within a flood hazard zone established in Section 6.12.114, an applicant must provide verification from the Floodplain Administrator that the required flood zone, BFE, minimum finished floor elevation, and the required level of protection has been determined.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

#### **6.12.128 Designation of the Floodplain Administrator.**

The City Engineer of the City of Oakley shall be the Floodplain Administrator but may designate a person under his or her supervision, including the Floodplain Manager, to administer and implement this chapter by granting or denying floodplain permits in accordance with its provisions.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

#### **6.12.130 Duties and Responsibilities of the Floodplain Administrator.**

The duties and responsibilities of the Floodplain Administrator shall include but not be limited to the following:

a. Permit Review.

- 1) 1) Review all floodplain permits to determine that the permit requirements of this Chapter have been satisfied;
- 2) Review written statements required to be submitted by each applicant that all other required State and Federal permits have been obtained;
- 3) Review floodplain permits for compliance with FEMA requirements for elevation of structures above the floodplain plus freeboard;
- 4) Review floodplain permit for compliance with FEMA requirements so that the proposed development does not adversely affect the carrying capacity of the areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this chapter, "adversely affect" means that the cumulative effect of the proposed development, when combined with all other existing and expected development, will increase the water surface elevation of the base flood more than one foot at any point.
- 5) Review all development permits to determine that all Conditional Letters of Map Revision (CLOMR) and Conditional Letters of Map Revision Based on Fill (CLOMR-F) for projects within a SFHA are approved prior to issuance of a grading permit. An approved CLOMR allows for construction activities and land preparation as specified in the "start of construction" definition.
- 6) Review all development permits to determine that all LOMR and LOMR-F for all flood control projects within a SFHA are approved prior to the issuance of building permits or "start of construction." At the discretion of the Floodplain Administrator, building permits may be issued based upon a CLOMR. As-builts for the approved grading plan shall be submitted to the Floodplain Administrator for review and approval upon completion of grading.

b) Use, Review , and Development of Other Base Flood Elevation Data.

When base flood elevation data has not been provided in accordance with Section 6.12.114, the Floodplain Administrator shall require, obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source to administer Sections 6.12.134 through 6.12.146.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.132 Appeals.

The Zoning Administrator of the City of Oakley shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this chapter.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.134 Standards of Construction.

In all SFHAs, the following standards are required:

a. Anchoring.

- 1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- 2) All manufactured homes shall meet the anchoring standards of Section 6.12.140.

b. Construction Materials and Methods.

- 1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- 2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- 3) All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- 4) In Zone AH, AO or VO, all new construction and substantial improvements shall be constructed with drainage paths adequate to guide floodwaters around and away from proposed structures.

c. Elevation and Floodproofing.

- 1) New construction and substantial improvement of any structure shall have the lowest floor, including basement, elevated to or above the base flood elevation plus the required foot of freeboard. Nonresidential structures may meet the standards in subsection (c)(3) of this section. Upon the completion of the substructure, but prior to completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered professional engineer or surveyor or verified by the building inspector to be properly elevated. Such certification or verification shall be provided to the Floodplain Administrator.
- 2) New construction and substantial improvement of any structure in Zone AH, AO, or VO shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM plus the required foot of

freeboard, or at least two feet, if no depth number is specified. Nonresidential structures may meet the standards in subsection (c)(3) of this section. Upon the completion of the substructure but prior to completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered professional engineer or surveyor or verified by the building inspector to be properly elevated. Such certification or verification shall be provided to the Floodplain Administrator.

3) If the difference in elevation between the lowest floor and the ground below the lowest floor is 6.6 feet or greater, the applicant will provide the Floodplain Administrator with a deed restriction. The deed restriction will be recorded and will run with the property (not the applicant). The restriction will limit the area below the lowest floor to be used only for building access, storage, and parking of vehicles and will not allow this area to be developed into habitable space.

4) Nonresidential construction shall either be elevated in conformance with subsection (c)(1) or (2) of this section, or together with attendant utility and sanitary facilities:

a) Be floodproofed so that, below the base flood level plus freeboard, the structure is watertight with walls substantially impermeable to the passage of water;

b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and

c) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator; or

d) The Floodplain Administrator may allow the nonresidential structure to be made "flood resistant." Flood resistant structures shall comply with subsection (c)(5) of this section.

5) All new construction and substantial improvements with fully enclosed areas below the lowest floor, excluding basements, that are usable solely for parking of vehicles, building access, or storage, and that are subject to flooding shall be designed to equalize hydrostatic flood forces on exterior walls automatically by allowing for the entry and exit of floodwaters. Designs for meeting that requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

a) Have a minimum of two openings with a total net area of not less than one square inch for every one square foot of enclosed area subject to flooding. 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, if they permit the automatic entry and exit of floodwaters.

d. Manufactured homes shall also meet the standards in Section 6.12.140.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.136 Standards for Utilities.

- a. All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the system into flood waters.
- b. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding. All septic tanks shall be adequately anchored to resist flotation, collapse, or lateral movement.
- c. On-site water supply systems shall be located to avoid impairment to them or contamination of them during flooding.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.138 Standards for Subdivisions.

- a. All applications for tentative map approval are incomplete unless the tentative maps identify the flood hazard zone, the elevation of the base flood, and the flood elevation necessary to assess the urban level of flood protection. Developments consisting of more than ten (10) new insurable structures or more than 5 acres will be required to determine the above elevations by developing a detailed hydrology and hydraulic study, including but not limited to a back water analysis. Developments of ten (10) or fewer insurable structures or fewer than 5 acres will be required to determine the above elevations by using standards acceptable to the Floodplain Administrator.
- b. All final subdivision improvement plans shall provide the elevation of pads, streets, and the lowest floors of all proposed structure(s). If the site is in a SFHA and is filled above the base flood, as-built information for the lowest floor, pad, and lowest adjacent grade elevations shall be certified by a registered professional engineer or surveyor and provided as part of an application for a letter of map revision based on fill (LOMR-F) to the Floodplain Administrator.
- c. All subdivision proposals shall be consistent with the need to minimize flood damage.
- d. All subdivision proposals shall have public utilities and facilities such as road, sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- e. All subdivisions shall provide adequate drainage to reduce exposure to flood hazards.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.140 Standards for Manufactured Homes.

a. All manufactured homes to be placed or substantially improved within an SFHA (Zones A1-30, and AH), as shown on the study and maps described in Section 6.12.114, shall:

- 1) Be elevated and anchored to a foundation such that the lowest floor of the manufactured home is at or above the base flood elevation, plus the required foot of freeboard.
- 2) Be securely anchored to an adequately designed foundation system to resist flotation, collapse, or lateral movement in accordance with California Health and Safety Code Sections 18613.4 or 18551.

b. Subsection (a) of this section shall apply to:

- 1) Manufactured homes to be placed or substantially improved in an expansion to an existing manufactured home park or subdivision;
- 2) Manufactured homes to be placed or substantially improved outside of a manufactured home park or subdivision; and
- 3) Manufactured homes to be placed in a manufactured home park or subdivision established on or after the effective date of the ordinance codified in this chapter.

c. Subsection (a)(1) of this section shall not apply to manufactured homes to be placed or substantially improved in an existing manufactured home park or subdivision, except:

- 1) Where the repair, reconstruction, or improvement of the streets, utilities, and pads equals or exceeds fifty percent (50%) of the streets, utilities, and pads before the repair, reconstruction, or improvement is commenced; or
- 2) The manufactured home has incurred "substantial damage" as a result of a flood.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.142 Standards for Recreational Vehicles.

All recreational vehicles placed on sites within an SFHA (Zones A1-30, AH, and AE) on the FIRM shall:

- a. Be on the site for fewer than one hundred eighty (180) consecutive days; or
- b. Be fully licensed, insured, and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or integral jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

c. Meet the permit requirements of Section 6.12.124 and the elevation and anchoring requirements for manufactured homes in Section 6.12.140.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.144 Floodways.

Within SFHAs established in Section 6.12.114 are areas designated as floodways. A floodway is an extremely hazardous area because of the velocity of floodwaters that carry debris and potential projectiles and because of the potential for erosion. Floodways may or may not be specifically designated on the FIRM Maps; their existence will be as determined by the Floodplain Administrator. Encroachments, including fill, new construction, substantial improvements, and other development, are not allowed in a floodway unless certification by a registered professional engineer is provided demonstrating that the encroachment(s) shall not result in any increase in flood levels during the occurrence of the base flood discharge. Allowed new construction and improvements shall comply with all applicable flood hazard reduction provisions of Sections 6.12.148 through 6.12.152. Until a regulatory floodway is adopted, no new construction, substantial development, or other development (including fill) shall be permitted within Zones A1-30 and 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 one foot at any point within the City of Oakley.”

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.146 Coastal High Hazard Areas.

Within coastal high hazard areas established in Section 6.12.114, the following standards shall apply:

a. All new construction and substantial improvements shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the lowest horizontal portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood elevation plus the required foot of freeboard. The pile or column foundation, and the structure attached and hereto, shall be anchored to resist flotation, collapse, or lateral movement from the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood plus freeboard. Wind loading values used shall be those required by applicable State or local building standards.

b. All new construction shall be located on the landward side of the reach of mean high tide.

- c. All new construction and substantial improvements shall have the space below the lowest floor free of obstructions or constructed with breakaway walls. Such temporarily enclosed space shall not be used for human habitation.
- d. Fill shall not be used for structural support of buildings.
- e. Manmade alteration of sand dunes that would increase potential flood damage is prohibited.
- f. The Floodplain Administrator shall obtain and maintain the following records:
  - 1) Certification by a registered engineer or architect that a proposed structure complies with subsection (a) of this section.
  - 2) The elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings or columns) of all new and substantially improved structures and whether such structures contain a basement.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.148 Nature of Variances.

The variance criteria set forth in this chapter are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this chapter would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

It is the duty of the City to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below flood level are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this chapter are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

## 6.12.150 Appeal Process.

a. The Zoning Administrator of the City of Oakley shall hear and decide appeals and requests for variances from the requirements of this chapter.

b. The Zoning Administrator shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this chapter.

c. In passing upon such applications, the Zoning Administrator shall consider all technical evaluations, all relevant factors, the standards specified in this chapter, and all other relevant factors including but not limited to the following:

- 1) The danger that materials may be swept onto other lands to the injury of others;
- 2) The danger to life and property due to flooding or erosion damage;
- 3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the owner and future owners of the property and on the community;
- 4) The importance of the services provided by the proposed facility to the community, if applicable;
- 5) The necessity to the facility of a waterfront location, if applicable;
- 6) The availability of alternative locations for the proposed use that are not subject to flooding or erosion damage;
- 7) The compatibility of the proposed use with existing and anticipated development;
- 8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- 9) The safety of access to the property in time of flood for ordinary and emergency vehicles;
- 10) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
- 11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

d. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, if the factors in subsection (c) of this

section have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance will increase.

e. Upon consideration of the factors of subsection (c) of this section and the purposes of this chapter, the Zoning Administrator may attach such conditions to the granting of variances as deemed necessary to further the purposes of this chapter.

f. Appeals from Zoning Administrator decisions may be made to the Planning Commission and City Council in the time and manner provided in Chapter 1.8, as amended by Ordinance No. 06-00, and upon payment of the fees prescribed therein.

g. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances granted to the FIA upon request.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.152 Conditions for Variances.

a. Variances may be issued for the reconstruction, rehabilitation, or restoration of "historic structures" upon a determination that the proposed restoration or rehabilitation will not preclude the structure's continued designation as an historic structure, and that the minimum necessary variance is to preserve the historic character and design of the structure without regard to the procedures set forth in the remainder of this section.

b. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

c. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. "Minimum necessary" means to afford relief with a minimum of deviation from the requirements of this chapter.

d. Variances shall only be issued upon:

1) A showing of good and sufficient cause;

2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

3) A determination that the granting of a variance will neither result in increased flood heights, additional threats to public safety, or extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

e. Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use; provided, that the provisions of subsections (a) through (d) of this section are satisfied, and that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

f. Any applicant to whom a variance is granted shall be given written notice over the signature of the Floodplain Administrator that:

1) The issuance of a variance to construct a structure below the base flood level will result in significantly increased premium rates for flood insurance. Insurance premiums as high as \$25 for \$100 of insurance coverage are possible; and

2) Such construction below the base flood level increases risks to life and property. It is required that a copy of the notice shall be recorded by the Floodplain Administrator in the Office of the County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.154 Construction or Development in Flood Hazard Zone; Findings.

Prior to approval of a development agreement, a discretionary permit or other discretionary entitlement resulting in construction of a new building or construction resulting in an increase in allowed occupancy for an existing building, or approval of a tentative map, or a parcel map, the Floodplain Administrator must make one of the below-stated findings:

- a) The flood management facilities provide the urban level of flood protection for projects in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection for projects in nonurbanized areas;
- b) The city has imposed conditions on the project that will protect the property to the urban level of flood protection in urban and urbanizing areas or the National Emergency Management Agency standard of flood protection in urbanized areas;
- c) The local flood management agency has made adequate progress (as defined in California Government Code Sec. 65007) on the construction of a flood protection system that will result in flood protection equal to or greater than the urban level of flood protection in urban or urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in non-urbanized areas for projects located within a flood hazard zone, intended to be protected by the system;

- d) The project in an undetermined risk area has met the urban level of flood protection;
- e) The property is located in an area of potential flooding of 3 feet or less from sources other than local drainage (i.e. localized conditions that may occur anywhere in a community, such as localized rainfall, water from stormwater and drainage problems, and water from temporary water and wastewater distribution system failure) or potential flooding from local drainage that meets the criteria of the national Federal Emergency Management Agency standard of flood protection;
- f) The property is located within a watershed with a contributing area of 10 or fewer square miles.

Section 2. Subparagraph (c) is hereby added to Section 9.3.018 of the Oakley Municipal Code, to read as follows:

- c) The City Council shall not approve the agreement unless it makes one of the findings in Section 6.12.154 of the Oakley Municipal Code.

Section 3. This ordinance shall take effect and be in force and effect thirty (30) days from and after the date of its passage. The City Clerk shall cause the ordinance to be published within fifteen (15) days after its passage in a newspaper of general circulation, or by publishing a summary of the ordinance, posting a certified copy of the proposed ordinance in the office of the City Clerk at least five (5) days prior to the City Council meeting at which the ordinance is to be adopted, and within fifteen (15) days after its adoption, publishing a summary of the ordinance with the names of the Council members voting for and against the ordinance.

The foregoing ordinance was adopted with the reading waived at a regular meeting of the Oakley City Council on June 28<sup>th</sup> by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

---

Kevin Romick, Mayor

ATTEST:

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Libby Vreonis, City Clerk

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Date

CHAPTER 12  
FLOODPLAIN MANAGEMENT

6.12.102 Statutory Authorization.

This chapter is designed to promote the public health, safety and general welfare of the citizens of the City of Oakley and is enacted pursuant to the authority of 42 United States Code Sections 4001 through 4128; see especially 42 U.S.C. Section 4022; Government Code Sections 25120 through 25132; Title 44 of the United States Code of Federal Regulations at Section 60.3, (and "all applicable associated" Technical Bulletins); Health and Safety Code Section 450; and California Constitution, Article XI, Section 7 and Government Code Sections 65302, 65560 and 65800.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

6.12.104 Findings of Fact.

- a. The ~~flood hazard zones~~ ~~special flood hazard areas (SFHA)~~ of the City of Oakley are areas 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. Those flood losses are caused by inadequate drainage facilities and the cumulative effect of obstructions in ~~areas of special flood hazard~~ ~~flood hazard zones~~, which increase flood heights and velocities. Those losses may result when structures are inadequately anchored, elevated, flood proofed, or protected from flood damage.
- c. The City of Oakley has experienced serious flooding, which has resulted in substantial property damage and the potential for loss of life. Adoption of a legally enforceable floodplain management ordinance which fully complies with the ~~recently revised~~ rules of the National Flood Insurance Program (NFIP) administered by the Federal Emergency Management Agency (FEMA) will allow the City to continue its participation in the NFIP. The continued participation of the City in the NFIP is desirable and promotes the public health, safety and welfare in that it provides insurance and Federal assistance in the event of flood(s) within the City's jurisdiction. In the absence of such insurance, the City's vulnerability to damage and loss resulting from flood events may be substantial and potential flood damage represents an immediate threat to the public, health, safety and welfare.

d. The City of Oakley is subject to the urban level of flood protection criteria.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.106 Statement of Purpose.

It is the purpose of this chapter to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- a. To protect human life and health;
- b. To minimize expenditure of public money for costly flood control projects;
- c. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- d. To minimize prolonged business interruptions during flooding;
- e. To 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 zones;
- f. To help maintain a stable tax base by providing for the use and development of ~~areas-of-special~~ flood hazard zones subject to review by permit and application of flood damage reduction standards so as to minimize future flood blight areas;
- g. To provide information to the general public regarding ~~special~~ flood hazard zones in the City of Oakley;
- h. To clearly establish that those who occupy the ~~areas-of-special~~ flood hazard zones should assume responsibility for their actions and the losses they may suffer; and
- i. To ensure that potential buyers are notified if property is in an ~~area-of-special~~ flood hazard zone.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.108 Methods of Reducing Flood Losses.

In order to accomplish its purpose, this chapter includes methods and provisions for:

- a. Restricting or prohibiting land uses that create a danger to health, safety, and property due to water inundation or erosion hazards or that result in damaging increases in erosion, flood heights, or velocities;
- b. Requiring that land use areas vulnerable to floods be protected against flood damage at the time of initial construction including facilities such as utilities, which serve them;

- c. Requiring that the design of streets and public access facilities include consideration of accessibility under the base flood conditions for emergency service vehicles and any rescue and relief operations;
- d. Controlling and limiting the alteration of natural floodplains, stream channels, and natural protection barriers that help accommodate or channel flood waters;
- e. Controlling filling, grading, dredging, and other development which may increase flood damage;
- f. Preventing or regulating the construction of flood barriers that will unnaturally divert floodwaters or that may increase flood hazards in other areas;
- g. Requiring orderly development of drainage facilities within watershed areas as development occurs;
- h. Recognizing the importance and beneficial functions of natural floodplains; and
- i. Requiring that all new construction and substantial improvements within floodplains be constructed in such a manner that flood damage will be minimized.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

#### 6.12.110 Definitions.

Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

"A Zone." See "Special flood hazard area."

"Appeal" means a request for a review of the Floodplain Administrator's interpretation of any provision of this chapter or decision on a request for a variance.

"Area of shallow flooding" means a designated AO, AH, or VO Zone on the Flood Insurance Rate Map (FIRM). The base flood depths range from one to three feet; a clearly defined channel does not exist; the path of flooding is unpredictable and indeterminate; and velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

"As-builts" are a revised set of drawing submitted by a contractor upon completion of a project or a particular job. They reflect all changes made in the specifications and working drawings during the construction process, and show the exact dimensions, geometry, and location of all elements of the work completed under the contract.

"Base flood" means a flood having a one percent chance of being equaled or exceeded in any given year (also called the "one hundred (100) year flood").

"Base flood elevation (BFE)" means the elevation above "mean sea level" to which the base flood will rise as determined by FEMA or the Floodplain Administrator. [This elevation is shown on the Flood Insurance Rate Map for Zones AE, AH, A1-30, VE, and V1-V30.](#)

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

["Building." See "Structure."](#)

"Breakaway walls" are any type of walls, whether solid or lattice and whether constructed of concrete, masonry, wood, metal, plastic, or any other suitable building material, that are not part of the structural support of the building, and that are designed to break away under abnormally high tides or wave action without causing any damage to the structural integrity of the building on which they are used or any buildings to which they might be carried by flood waters. A breakaway wall shall have a safe design loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot. Use of breakaway walls must be certified by a registered engineer or architect and shall meet the following conditions:

- a. Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and
- b. The elevated portion of the building shall not incur any structural damage due to the effects of wind and water loads acting simultaneously in the event of the base flood.

"Building permit" shall mean a: building permit, plumbing permit, electrical permit, or mechanical permit issued by the City of Oakley Building Department.

"Coastal high hazard area" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. It is the area subject to high velocity waters, including coastal and tidal inundation or tsunamis. The area is designated on a FIRM as Zone V1-V30, VE or V.

"Development" means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations, and storage of equipment or materials.

"Encroachment" means the advance or infringement of uses, fill, excavation, buildings, permanent structures, or development into a floodplain that may impede or alter the flow capacity of a floodplain.

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lot on which the manufactured homes are to be affixed, including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets are completed on or before the effective date of the ordinance codified in this chapter.

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets.

"Flood or flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- a. The overflow of flood waters; and/or
- b. The unusual and rapid accumulation or runoff of surface waters from any source; and/or
- c. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water accompanied by a severe storm or by an unanticipated force of nature such as flash flood or an abnormal tidal surge or by some similarly unusual and unforeseeable event that results in flooding as defined in this definition.

"Flood Boundary and Floodway Map" means the official map described in Section 6.12.114 on which ~~the~~ FEMA or the Federal Insurance Administration (FIA) has delineated both the areas of flood hazard and the floodway.

"Flood hazard zone" means an area subject to flooding that is delineated as either a Special Flood Hazard Area (FEMA 100-year floodplain) or other areas with flood risk, such as the 200- or 500-year floodplains, or areas that are at risk of flooding from levee failure. The identification of flood hazard zones does not imply that areas outside the flood hazard zones, or uses permitted within flood hazard zones, will be free from flooding or flood damage.

"Flood Insurance Rate Map (FIRM)" means the official map described in Section 6.12.114 on which ~~the~~ FEMA or FIA has delineated both the ~~areas of special flood hazards~~ Special Flood Hazard Areas (SFHAs) and the risk premium zones applicable to the community.

"Flood Insurance Study (FIS)" means the official report described in Section 6.12.114 provided by the FIA that includes flood profiles, the FIRM, the Flood Boundary and Floodway Map, and in some areas, the base flood elevation.

"Flood-related erosion" means the collapse or subsidence of land along the shore of a lake or other body of water as a result of undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

"Flood-related erosion area" or "flood-related erosion prone area" means a land area adjoining the shore of a lake or other body of water, which because of the composition of the shoreline or bank and high water levels or wind-driven currents, is likely to suffer flood-related erosion damage.

"Flood-related erosion area management" means the operation of an overall program of corrective and preventive measures for reducing flood-related erosion damage, including but not limited to emergency preparedness plans, flood-related erosion control work, and floodplain management regulations.

"Flood resistant" means any combination of structural and nonstructural additions, changes, or adjustments to structures that reduces flood damage, generally allowing flood waters to enter and exit the building without causing any significant damage to the structures or their contents.

"Flood resistant materials" means any building material capable of withstanding direct and prolonged (at least seventy-two (72) hours) contact with flood waters without sustaining significant damage (any damage requiring more than low-cost cosmetics repair-such as painting). Acceptable materials are specified in "technical bulletins" and/or as approved by the Floodplain Administrator.

"Floodplain or flood-prone area" means any land area susceptible to being inundated by water from any source (see definition of "flood or flooding").

"Floodplain Administrator" is the individual appointed to administer and enforce the floodplain management regulations, including the issuance of floodplain permits. The Floodplain Administrator, as used in this chapter, shall mean the City Engineer or a person under his or her supervision.

"Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible,

natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control work, and floodplain management regulations.

"Floodplain management regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance, and erosion control regulations), and other applications of the police power that control development in flood-prone areas. This term describes Federal, State, or local regulations in any combination thereof that provide standards for preventing and reducing flood loss and damage.

"Floodplain permit" means a permit required of all development which occurs in any area designated by FEMA as a SFHA and as required by the Floodplain Administrator.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to nonresidential structures that eliminate flood damage to real estate or improved real property, water and sanitary facilities, and nonresidential structures and their contents.

"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. The floodway shall be as designated on the FIRMs and/or as designated by the Floodplain Administrator whether or not a floodplain is shown on the FIRM. Also referred to as "regulatory floodway."

"Floodway fringe" means that area of the floodplain on either side of the "regulatory floodway" where encroachment may be permitted.

"Fraud and victimization," as related to Sections 6.12.148 through 6.12.152, means that a variance granted must not cause fraud on or victimization of the public. In examining this requirement, the Zoning Administrator will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for fifty (50) to one hundred (100) years. Buildings that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be insured only at very high flood insurance rates.

"Freeboard" means a factor of safety usually expressed in feet above a base flood elevation for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected

size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization of the watershed.

"Functionally dependent use" means a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; it does not include long-term storage or related manufacturing facilities.

"Governing body" is the local governing unit, i.e., county or municipality, that is empowered to adopt and implement regulations to provide for the public health, safety, and general welfare of its citizenry.

"Hardship," as used in the definition of "variance" herein, means the exceptional hardship that would result from a failure to grant the requested variance. The City requires that the variance be exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of ones neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

"Highest adjacent grade" means the highest natural (i.e., undisturbed) elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic structure" means any structure that is:

- a. Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing in 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 of the Interior 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 the 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 with approved programs.

"Levee" means a man-made structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

"Levee system" means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accord with sound engineering practices.

"Lowest floor" means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood resistant enclosure, usable solely for 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 nonelevation design requirements of this chapter. This definition allows attached garages to be built at grade (with adequate venting). Below grade garages and storage areas are not allowed as they are considered to be basements.

"Manufactured home" means a structure, transportable in one or more sections, that 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 (180) consecutive days and neither continuously licensed nor "road ready."

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for sale or rent.

"Market value" shall be determined by estimating the cost to replace the structure in new condition and adjusting that cost figure by the amount of depreciation which has accrued since the structure was constructed. The cost of replacement of the structure shall be based on a square foot cost factor determined by reference to a building cost estimating guide recognized by the building construction industry. The amount of depreciation shall be determined by taking into account the age and physical condition but shall not include economic or other forms of external obsolescence. Use of replacement costs or accrued depreciation factors different from those contained in recognized building cost estimating guides may be considered only if such factors are included in a report prepared by an independent professional appraiser and supported by a written explanation of the differences.

"Mean sea level" means, for purposes of the NFIP, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's FIRM are referenced.

"New construction," for floodplain management purposes, means structures for which the "start of construction" commenced on or after June 26, 2000, the effective date of the City of Oakley's floodplain management ordinance, and includes any subsequent improvements to such structures.

"Obstruction" includes but is not limited to any dam, wall, wharf, embankment, levee, dike, pile, abutment, protection, excavation, channelization, bridge, conduit, culvert, building, wire, fence, rock, gravel, refuse, fill, structure, vegetation, or other material that may alter, impede, retard, or change the direction and/or velocity of the flow of water because of (a) its location in, along, across, or projecting into any watercourse, (b) its propensity to snare or collect debris carried by the flow of water, or (c) its likelihood of being carried downstream.

"One hundred (100) year flood" means a flood that has a one percent annual probability of being equaled or exceeded. ~~Also called the~~ See "Base flood."

"Person" means an individual or his or her agent, firm, partnership, association, or corporation, or any agent of the aforementioned groups, or this State or its agencies or its political subdivisions.

"Public safety and nuisance," as related to the issuance of variances under this chapter, means that the granting of a variance must not result in anything that is injurious to safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake or river, bay, stream, canal, or basin.

"Reconstruction" means to perform major construction or modifications to an existing structure that makes the existing structure like or better than new. Reconstruction does not cover normal or routine maintenance unless otherwise specified in the definition of "historical structures" herein.

"Recreational vehicle" means a vehicle that is:

- a. Built on a single chassis;
- b. Four hundred (400) square feet or less when measured at the largest horizontal projection;
- c. Designed to be self-propelled or permanently towable by a light duty truck; and
- d. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Remedy a violation" means to bring a structure or other development into compliance with State or local floodplain management regulations, or if that is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this chapter or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

"Sand dunes" means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

"Special Flood Hazard Area (SFHA)" means an area having special flood or flood-related erosion hazards, and shown on FIRM as Zone A, AO, A1-30, A99, AH, VO, V1-30 or V.

"Start of construction" includes substantial improvement and means the date the building permit was issued, if the actual start of construction, repair, reconstruction, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either (a) 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 (b) the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; the installation of streets and/or walkways; excavation for a basement, foundations, footings, or piers or the erection of temporary forms; and installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building or manufactured home, including a gas or liquid storage tank, that is principally above ground.

"Substantial damage" means damage of any origin sustained by a structure sufficiently extensive that the cost of restoring the structure to its before-damaged condition would equal or exceed fifty percent (50%) of the market value of the structure before the damage occurred.

"Substantial improvement" means any reconstruction, rehabilitation, addition, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure before the "start of construction" of the improvement. The term includes structures that have incurred "substantial damage," regardless of the actual repair work performed.

The percentage figure shall be added to any successive building permits that may be issued or have been issued within a contiguous ten (10) year span. "Substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- a. Any project for improvement of a structure, not required because of flood damage, that is necessary to comply with existing State or local health, sanitary, or safety code specifications that are the minimum necessary to assure safe living conditions; or
- b. Any alteration of an "historic structure," if the alteration will not preclude the structure's continued designation as an "historic structure."

"Technical bulletin" means bulletins developed by the Federal Emergency Management Agency (FEMA), the California Department of Water Resources (CA DWR), or the Floodplain Administrator. Bulletins clarify specific requirements of Federal, State, or local laws pertaining to floodplain management.

"Urban level of flood protection" means the level of protection that is necessary to withstand flooding that has a 1-in-200 chance of occurring in any given year using criteria consistent with, or developed by, the California Department of Water Resources. "Urban level of flood protection" shall not mean shallow flooding or flooding from local drainage that meets the criteria of the national FEMA standard of flood protection.

"Variance" means a grant of relief from the requirements of this chapter that permits construction in a manner that would otherwise be prohibited by this chapter.

"Violation" means the failure of a structure or other development to comply with this chapter. A structure or other development without an elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in violation until such time as that documentation is provided.

"Water surface elevation" means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, where specified, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

"Watercourse" means a lake, river, creek, stream, wash, arroyo, channel, or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

#### 6.12.112 Lands to Which This Chapter Applies.

This chapter shall apply to all ~~areas of special flood hazards~~ Special Flood Hazard Areas, and to other flood hazard zones when applicable, within the jurisdiction of the City of Oakley, as shown on the maps described in Section 6.12.114 and using best available data.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

#### 6.12.114 Basis for Establishing ~~the Areas of Special Flood Hazard~~ Special Flood Hazard Areas.

~~The areas of special flood hazard~~ SFHAs have been identified by FEMA or the FIA in a scientific and engineering report entitled "Flood Insurance Study for Contra Costa County, California and Unincorporated Areas," dated ~~July 16, 1987~~, September 30, 2015 with an accompanying FIRM and Flood Boundary and Floodway Map, ~~of the same date and all~~ subsequent amendments to and/or revisions of the, which study and maps are hereby adopted by reference and declared to be a part of this chapter. That ~~Flood Insurance Study~~ FIS and the accompanying maps are on file with the City of Oakley at 3633 Main Street, Oakley, CA 94561. The ~~Flood Insurance Study~~ FIS describes the minimum area of applicability of this chapter and may be supplemented by studies for other areas that allow implementation of this chapter, and that are recommended by the Floodplain Administrator. Within the ~~areas of special flood hazard~~ SFHA identified in the ~~Flood Insurance Study~~ FIS, accompanying maps, and supplemental studies, one foot of freeboard is required.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

#### 6.12.116 Compliance.

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violations of the requirements, including violations of conditions and safeguards established in connection with conditions, shall constitute an infraction punishable as provided in Government Code Section 25132. Nothing herein shall prevent the City Council of the City of Oakley from taking such lawful action as is necessary to prevent or remedy any violation.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.118 Abrogation and Greater Restrictions.

This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.120 Interpretation.

In the interpretation and application of this chapter, all provisions shall be:

- a. Considered as minimum requirements;
- b. Liberally construed in favor of the City; and
- c. Deemed neither to limit nor repeal any other powers granted under State statutes.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.122 Warning and Disclaimer of Liability.

The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the ~~areas of special flood hazards~~flood hazard zones or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the City, any officer or employee thereof, or the FIA for any flood damages that result from reliance on this chapter or any administrative decision made thereunder.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.124 Establishment of Floodplain Permit.

A floodplain permit shall be obtained from the City of Oakley before construction, issuance of a grading permit or building permit, and commencement of development on any property within any ~~area of special~~flood hazard zone established in Section 6.12.114. Application for a floodplain permit shall be made on forms furnished by the City's Floodplain Administrator and may include but not be limited to: plans in triplicate drawn to scale showing the nature, location, dimensions, and elevation of the area in question; and the location of existing or proposed structures, fill, storage of materials, drainage facilities, or other development defined in this chapter. Specifically, the following information is required:

- a. Proposed elevation, in relation to mean sea level, of the lowest floor, including basement, of all structures. In Zone AO or VO, elevation of highest adjacent grade and proposed elevation of lowest floor of all structures;
- b. Proposed elevation, in relation to mean sea level, to which any structure will be floodproofed;
- c. All appropriate certifications listed in Section 6.12.130;
- d. Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and
- e. Description of the extent to which grading is proposed within the SFHA flood hazard zone.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

#### 6.12.126 Development Permit Application.

Prior to a variance permit, land use permit, development plan permit, or tentative map application being deemed complete on any property within any area of special flood hazard zone established in Section 6.12.114, an applicant must provide verification from the Floodplain Administrator that the required flood zone, BFE, and minimum finished floor elevation has been determined, and the required level of protection has been determined.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

#### 6.12.128 Designation of the Floodplain Administrator.

The City Engineer of the City of Oakley shall be the Floodplain Administrator but may designate a person under his or her supervision, including the Floodplain Manager, to administer and implement this chapter by granting or denying floodplain permits in accordance with its provisions.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

#### 6.12.130 Duties and Responsibilities of the Floodplain Administrator.

The duties and responsibilities of the Floodplain Administrator shall include but not be limited to the following:

- a. Permit Review.

- 1) Review all floodplain permits to determine that the permit requirements of this Chapter have been satisfied;

- 2) Review written statements required to be submitted by each applicant that all other required State and Federal permits have been obtained;
- 3) Review floodplain permits for compliance with FEMA requirements for elevation of structures above the floodplain plus freeboard;
- 4) Review floodplain permit for compliance with FEMA requirements so that the proposed development does not adversely affect the carrying capacity of the areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this chapter, "adversely affect" means that the cumulative effect of the proposed development, when combined with all other existing and expected development, will increase the water surface elevation of the base flood more than one foot at any point.
- 5) Review all development permits to determine that all Conditional Letters of Map Revision (CLOMR) and Conditional Letters of Map Revision Based on Fill (CLOMR-F) for projects within a SFHA are approved prior to issuance of a grading permit. An approved CLOMR allows for construction activities and land preparation as specified in the "start of construction" definition.
- 6) Review all development permits to determine that all LOMR and LOMR-F for all flood control projects within a SFHA are approved prior to the issuance of building permits or "start of construction." At the discretion of the Floodplain Administrator, building permits may be issued based upon a CLOMR. As-builts for the approved grading plan shall be submitted to the Floodplain Administrator for review and approval upon completion of grading.

b) Use, Review , and Development of Other Base Flood Elevation Data.

When base flood elevation data has not been provided in accordance with Section 6.12.114, the Floodplain Administrator shall require, obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source to administer Sections 6.12.134 through 6.12.146.

a.—Permit Review.

- 1) Review all floodplain permits to determine that the permit requirements of this chapter have been satisfied, including determination of substantial improvement and substantial damage of existing structures.
- 2) Review written statements required to be submitted by each applicant that all other required State and Federal permits have been obtained;
- 3) Review floodplain permits for compliance with FEMA requirements for elevation of structures above the floodplain plus freeboard; and

4) Review floodplain permits for compliance with FEMA requirements so that the proposed development does not adversely affect the carrying capacity of the areas where base flood elevations have been determined but a floodway has not been designated. For purposes of this chapter, "adversely affect" means that the cumulative effect of the proposed development, when combined with all other existing and expected development, will increase the water surface elevation of the base flood more than one foot at any point.

5) Review all development permits to determine that all Conditional Letters of Map Revision (CLOMR) and Conditional Letters of Map Revision Based on Fill (CLOMR-F) for projects within a SFHA are approved prior to issuance of a grading permit. An approved CLOMR allows for construction activities and land preparation as specified in the "start of construction" definition.

6) Review all development permits to determine that all Letters of Map Revision (LOMR) and Letters of Map Revision Based on Fill (LOMR-F) for all projects within a SFHA have been properly filed. As built's shall be submitted to the Floodplain Administrator for review and approval.

b.—Use, Review, and Development of Other Base Flood Elevation Data. When base flood elevation data has not been provided in accordance with Section 6.12.114, the Floodplain Administrator shall require, obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State, or other source to administer Sections 6.12.134 through 6.12.146. Developments consisting of more than ten (10) new insurable structures will be required to determine the base flood elevation by developing a detailed hydrology and hydraulic study, including but not limited to a back water analysis. Developments of ten (10) or fewer insurable structures will be required to determine the base flood elevation using standards acceptable to the Floodplain Administrator.

Comment [AN1]: Moved language to 6.12.138 Standards for Subdivisions

c.—Notification of Other Agencies of Watercourse Alteration or Relocation. When a watercourse is to be altered or relocated, the Floodplain Administrator shall notify the Contra Costa County Flood Control and Water Conservation District, adjacent communities, and the California Department of Water Resources prior to such alteration or relocation of the watercourse. The Floodplain Administrator shall send copies of such notice to the FIA and require that the flood-carrying capacity of the altered or relocated portion of said watercourse is maintained.

d.—Maintenance of Records. The Floodplain Administrator shall be provided with and shall maintain the following records:

1) The certification required in Section 6.12.134(c)(1) (floor elevations);

- ~~2) The certification required in Section 6.12.134(c)(2) (elevations in areas of shallow flooding);~~
- ~~3) The certification required in Section 6.12.134(c)(3) (elevation or floodproofing of nonresidential structures);~~
- ~~4) The certification required in Section 6.12.134(c)(4)(a) or (b) (wet floodproofing standard);~~
- ~~5) The certification of elevation required in Section 6.12.138(b) (subdivision standards);~~
- ~~6) The certification required in Section 6.12.144 (floodway encroachments); and~~
- ~~7) The information required in Section 6.12.146(f) (coastal construction standards).~~

~~e. Determination of Boundaries. The Floodplain Administrator may make interpretations, when needed, about the exact location of the boundaries of the areas of special flood hazard zone. (For example, when there appears to be conflict between mapped boundaries and actual field conditions.) Any person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Sections 6.12.148 through 6.12.152.~~

~~f. Remedy Violations. The Floodplain Administrator may take appropriate action to remedy violations of this chapter as specified in Section 6.12.116, with the assistance of the City Manager or his or her designee.~~

~~(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)~~

### 6.12.132 Appeals.

The Zoning Administrator of the City of Oakley shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this chapter.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.134 Standards of Construction.

In all ~~areas of special flood hazards~~SFHAs, the following standards are required:

- a. Anchoring.
  - 1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
  - 2) All manufactured homes shall meet the anchoring standards of Section 6.12.140.

b. Construction Materials and Methods.

- 1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- 2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- 3) All new construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- 4) In Zone AH, AO or VO, all new construction and substantial improvements shall be constructed with drainage paths adequate to guide floodwaters around and away from proposed structures.

c. Elevation and Floodproofing.

- 1) New construction and substantial improvement of any structure shall have the lowest floor, including basement, elevated to or above the base flood elevation plus the required foot of freeboard. Nonresidential structures may meet the standards in subsection (c)(3) of this section. Upon the completion of the substructure, but prior to completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered professional engineer or surveyor or verified by the building inspector to be properly elevated. Such certification or verification shall be provided to the Floodplain Administrator.
- 2) New construction and substantial improvement of any structure in Zone AH, AO, or VO shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM plus the required foot of freeboard, or at least two feet, if no depth number is specified. Nonresidential structures may meet the standards in subsection (c)(3) of this section. Upon the completion of the substructure but prior to completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered professional engineer or surveyor or verified by the building inspector to be properly elevated. Such certification or verification shall be provided to the Floodplain Administrator.
- 3) If the difference in elevation between the lowest floor and the ground below the lowest floor is 6.6 feet or greater, the applicant will provide the Floodplain Administrator with a deed restriction. The deed restriction will be recorded and will run with the property (not the applicant). The restriction will limit the area below the lowest floor to be used only for building

access, storage, and parking of vehicles and will not allow this area to be developed into habitable space.

4) Nonresidential construction shall either be elevated in conformance with subsection (c)(1) or (2) of this section, or together with attendant utility and sanitary facilities:

- a) Be floodproofed so that, below the base flood level plus freeboard, the structure is watertight with walls substantially impermeable to the passage of water;
- b) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; and
- c) Be certified by a registered professional engineer or architect that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator; or
- d) The Floodplain Administrator may allow the nonresidential structure to be made "flood resistant." Flood resistant structures shall comply with subsection (c)(5) of this section.

5) All new construction and substantial improvements with fully enclosed areas below the lowest floor, excluding basements, that are usable solely for parking of vehicles, building access, or storage, and that are subject to flooding shall be designed to equalize hydrostatic flood forces on exterior walls automatically by allowing for the entry and exit of floodwaters. Designs for meeting that requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:

- a) Have a minimum of two openings with a total net area of not less than one square inch for every one square foot of enclosed area subject to flooding. 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, if they permit the automatic entry and exit of floodwaters.
- d. Manufactured homes shall also meet the standards in Section 6.12.140.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### **6.12.136 Standards for Utilities.**

- a. All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the system into flood waters.
- b. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding. All septic tanks shall be adequately anchored to resist flotation, collapse, or lateral movement.

- c. On-site water supply systems shall be located to avoid impairment to them or contamination of them during flooding.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.138 Standards for Subdivisions.

a. All applications for tentative map approval are incomplete unless the tentative maps identify the flood hazard ~~zone~~and, the elevation of the base flood, and the flood elevation necessary to assess the urban level of flood protection. Developments consisting of more than ten (10) new insurable structures or more than 5 acres will be required to determine the above elevations by developing a detailed hydrology and hydraulic study, including but not limited to a back water analysis. Developments of ten (10) or fewer insurable structures or fewer than 5 acres will be required to determine the above elevations by using standards acceptable to the Floodplain Administrator. (See Section 6.12.130(b).)

b. All final subdivision improvement plans shall provide the elevation of ~~proposed structure(s), pads, and streets,~~ and the lowest floors of all proposed structure(s). If the site is in a SFHA and is filled above the base flood, as-built information for the lowest floor, pad, and lowest adjacent grade the final pad elevations shall be certified by a registered professional engineer or surveyor and provided as part of an application for a letter of map revision based on fill (LOMR-F) to the Floodplain Administrator~~and provided to the Floodplain Administrator.~~

- c. All subdivision proposals shall be consistent with the need to minimize flood damage.
- d. All subdivision proposals shall have public utilities and facilities such as road, sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- e. All subdivisions shall provide adequate drainage to reduce exposure to flood hazards.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.140 Standards for Manufactured Homes.

a. All manufactured homes to be placed or substantially improved within an special flood hazard-SFHA (Zones A1-30, and AH), as shown on the study and maps described in Section 6.12.114, shall:

- 1) Be elevated and anchored to a foundation such that the lowest floor of the manufactured home is at or above the base flood elevation, plus the required foot of freeboard.

2) Be securely anchored to an adequately designed foundation system to resist flotation, collapse, or lateral movement in accordance with California Health and Safety Code Sections 18613.4 or 18551.

b. Subsection (a) of this section shall apply to:

1) Manufactured homes to be placed or substantially improved in an expansion to an existing manufactured home park or subdivision;

2) Manufactured homes to be placed or substantially improved outside of a manufactured home park or subdivision; and

3) Manufactured homes to be placed in a manufactured home park or subdivision established on or after the effective date of the ordinance codified in this chapter.

c. Subsection (a)(1) of this section shall not apply to manufactured homes to be placed or substantially improved in an existing manufactured home park or subdivision, except:

1) Where the repair, reconstruction, or improvement of the streets, utilities, and pads equals or exceeds fifty percent (50%) of the streets, utilities, and pads before the repair, reconstruction, or improvement is commenced; or

2) The manufactured home has incurred "substantial damage" as a result of a flood.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

#### 6.12.142 Standards for Recreational Vehicles.

All recreational vehicles placed on sites within an ~~special flood hazard~~ SFHA (Zones A1-30, AH, and AE) on the FIRM shall:

a. Be on the site for fewer than one hundred eighty (180) consecutive days; or

b. Be fully licensed, insured, and ready for highway use. A recreational vehicle is ready for highway use if it is on its wheels or integral jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

c. Meet the permit requirements of Section 6.12.124 and the elevation and anchoring requirements for manufactured homes in Section 6.12.140.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.144 Floodways.

Within ~~special flood hazard areas~~ SFHAs established in Section 6.12.114 are areas designated as floodways. A floodway is an extremely hazardous area because of the velocity of floodwaters that carry debris and potential projectiles and because of the potential for erosion. Floodways may or may not be specifically designated on the FIRM Maps; their existence will be as determined by the Floodplain Administrator. Encroachments, including fill, new construction, substantial improvements, and other development, are not allowed in a floodway unless certification by a registered professional engineer is provided demonstrating that the encroachment(s) shall not result in any increase in flood levels during the occurrence of the base flood discharge. Allowed new construction and improvements shall comply with all applicable flood hazard reduction provisions of Sections 6.12.148 through 6.12.152. Until a regulatory floodway is adopted, no new construction, substantial development, or other development (including fill) shall be permitted within Zones A1-30 and 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 one foot at any point within the City of Oakley."

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.146 Coastal High Hazard Areas.

Within coastal high hazard areas established in Section 6.12.114, the following standards shall apply:

- a. All new construction and substantial improvements shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the lowest horizontal portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood elevation plus the required foot of freeboard. The pile or column foundation, and the structure attached and hereto, shall be anchored to resist flotation, collapse, or lateral movement from the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood plus freeboard. Wind loading values used shall be those required by applicable State or local building standards.
- b. All new construction shall be located on the landward side of the reach of mean high tide.
- c. All new construction and substantial improvements shall have the space below the lowest floor free of obstructions or constructed with breakaway walls. Such temporarily enclosed space shall not be used for human habitation.
- d. Fill shall not be used for structural support of buildings.

e. Manmade alteration of sand dunes that would increase potential flood damage is prohibited.

f. The Floodplain Administrator shall obtain and maintain the following records:

1) Certification by a registered engineer or architect that a proposed structure complies with subsection (a) of this section.

2) The elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings or columns) of all new and substantially improved structures and whether such structures contain a basement.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

#### **6.12.148 Nature of Variances.**

The variance criteria set forth in this chapter are based on the general principle of zoning law that variances pertain to a piece of property and are not personal in nature. A variance may be granted for a parcel of property with physical characteristics so unusual that complying with the requirements of this chapter would create an exceptional hardship to the applicant or the surrounding property owners. The characteristics must be unique to the property and not be shared by adjacent parcels. The unique characteristic must pertain to the land itself, not to the structure, its inhabitants, or the property owners.

It is the duty of the City to help protect its citizens from flooding. This need is so compelling and the implications of the cost of insuring a structure built below flood level are so serious that variances from the flood elevation or from other requirements in the flood ordinance are quite rare. The long-term goal of preventing and reducing flood loss and damage can only be met if variances are strictly limited. Therefore, the variance guidelines provided in this chapter are more detailed and contain multiple provisions that must be met before a variance can be properly granted. The criteria are designed to screen out those situations in which alternatives other than a variance are more appropriate.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

#### **6.12.150 Appeal Process.**

a. The Zoning Administrator of the City of Oakley shall hear and decide appeals and requests for variances from the requirements of this chapter.

b. The Zoning Administrator shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this chapter.

c. In passing upon such applications, the Zoning Administrator shall consider all technical evaluations, all relevant factors, the standards specified in this chapter, and all other relevant factors including but not limited to the following:

- 1) The danger that materials may be swept onto other lands to the injury of others;
- 2) The danger to life and property due to flooding or erosion damage;
- 3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the owner and future owners of the property and on the community;
- 4) The importance of the services provided by the proposed facility to the community, if applicable;
- 5) The necessity to the facility of a waterfront location, if applicable;
- 6) The availability of alternative locations for the proposed use that are not subject to flooding or erosion damage;
- 7) The compatibility of the proposed use with existing and anticipated development;
- 8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- 9) The safety of access to the property in time of flood for ordinary and emergency vehicles;
- 10) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site; and
- 11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

d. Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, if the factors in subsection (c) of this section have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance will increase.

e. Upon consideration of the factors of subsection (c) of this section and the purposes of this chapter, the Zoning Administrator may attach such conditions to the granting of variances as deemed necessary to further the purposes of this chapter.

f. Appeals from Zoning Administrator decisions may be made to the Planning Commission and City Council in the time and manner provided in Chapter 1.8, as amended by Ordinance No. 06-00, and upon payment of the fees prescribed therein.

g. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances granted to the FIA upon request.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

### 6.12.152 Conditions for Variances.

a. Variances may be issued for the reconstruction, rehabilitation, or restoration of "historic structures" upon a determination that the proposed restoration or rehabilitation will not preclude the structure's continued designation as an historic structure, and that the minimum necessary variance is to preserve the historic character and design of the structure without regard to the procedures set forth in the remainder of this section.

b. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

c. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief. "Minimum necessary" means to afford relief with a minimum of deviation from the requirements of this chapter.

d. Variances shall only be issued upon:

1) A showing of good and sufficient cause;

2) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and

3) A determination that the granting of a variance will neither result in increased flood heights, additional threats to public safety, or extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

e. Variances may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use; provided, that the provisions of subsections (a) through (d) of this section are satisfied, and that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

f. Any applicant to whom a variance is granted shall be given written notice over the signature of the Floodplain Administrator that:

1) The issuance of a variance to construct a structure below the base flood level will result in significantly increased premium rates for flood insurance. Insurance premiums as high as \$25 for \$100 of insurance coverage are possible; and

2) Such construction below the base flood level increases risks to life and property. It is required that a copy of the notice shall be recorded by the Floodplain Administrator in the Office of the County Recorder and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

(Sec. 2, Ordinance No. 11-14, adopted September 10, 2014)

~~(NEW) Construction or Development in Flood Hazard Zone~~

~~(This would likely be a new section within this Floodplain Management chapter.)~~

~~The City Council must make one of the findings in [new Floodplain Management Findings section below] prior to approval any of the following for construction or development within a flood hazard zone:~~

~~1. A development agreement;~~

~~2. A discretionary permit or other discretionary entitlement that would result in the construction of a new building or construction that would result in an increase in allowed occupancy for an existing building; or~~

~~3. A tentative map, or a parcel map for which a tentative map is not required, for a subdivision.~~

## ~~(NEW) Floodplain Management Findings~~

~~(This would likely be a separate chapter from Floodplain Management, possibly added to Chapter 3—Development Agreements. If adding this language, consider adding “flood hazard zone,” “urban and urbanizing areas,” and “urban level of flood protection” to Definitions section.)~~

### ~~Purpose and Intent~~

~~The purpose of this chapter is to comply with provisions of state law that require the city [or another entity at the discretion of the city] to make specific findings prior to approving certain land use entitlements and other permits for property, development projects, or subdivisions (henceforth collectively called “projects”) located within a flood hazard zone.~~

### ~~Development Agreements~~

~~The City Council shall not approve the execution of a development agreement for projects that are located within a flood hazard zone unless the City Council finds, based on substantial evidence in the record, one of the following:~~

- ~~a. The flood management facilities provide the urban level of flood protection for projects in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection for projects in nonurbanized areas;~~
- ~~b. The city has imposed conditions on the project that will protect the property to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas;~~
- ~~c. The local flood management agency has made adequate progress (as defined in California Government Code section 65007) on the construction of a flood protection system that will result in flood protection equal to or greater than the urban level of flood protection in urban or urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas for projects located within a flood hazard zone, intended to be protected by the system;~~
- ~~d. The project in an undetermined risk area has met the urban level of flood protection;~~
- ~~e. The property is located in an area of potential flooding of 3 feet or less from sources other than local drainage (i.e., localized conditions that may occur anywhere in a community, such as localized rainfall, water from stormwater and drainage problems, and water from temporary water and wastewater distribution system failure) or potential flooding from local drainage that meets the criteria of the national Federal Emergency Management Agency standard of flood protection; or~~

f. The property is located within a watershed with a contributing area of 10 or fewer square miles.

### Permits and Entitlements

The decision maker, as designated in the Planning and Development Code, shall not approve a discretionary permit or other discretionary entitlement that would result in the construction of a new building or construction that would result in an increase in allowed occupancy for an existing building, or a ministerial permit that would result in the construction of a new residence, for a project that is located within a flood hazard zone unless the decision maker finds, based on substantial evidence in the record, one of the following:

a. The flood management facilities provide the urban level of flood protection for projects in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection for projects in nonurbanized areas;

b. The city has imposed conditions on the project that will protect the property to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas;

c. The local flood management agency has made adequate progress (as defined in California Government Code section 65007) on the construction of a flood protection system that will result in flood protection equal to or greater than the urban level of flood protection in urban or urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas for projects located within a flood hazard zone, intended to be protected by the system;

d. The project in an undetermined risk area has met the urban level of flood protection;

e. The property is located in an area of potential flooding of 3 feet or less from sources other than local drainage (i.e., localized conditions that may occur anywhere in a community, such as localized rainfall, water from stormwater and drainage problems, and water from temporary water and wastewater distribution system failure) or potential flooding from local drainage that meets the criteria of the national Federal Emergency Management Agency standard of flood protection; or

f. The property is located within a watershed with a contributing area of 10 or fewer square miles.

### Maps

The decision maker, as designated in the Planning and Development Code, shall not approve a tentative map, or a parcel map for which a tentative map is not required, for a subdivision that is located within a flood hazard zone unless the decision maker finds, based on substantial evidence in the record, one of the following:

a. The flood management facilities provide the urban level of flood protection for projects in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection for projects in nonurbanized areas;

b. The city has imposed conditions on the project that will protect the property to the urban level of flood protection in urban and urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas;

c. The local flood management agency has made adequate progress (as defined in California Government Code section 65007) on the construction of a flood protection system that will result in flood protection equal to or greater than the urban level of flood protection in urban or urbanizing areas or the national Federal Emergency Management Agency standard of flood protection in nonurbanized areas for projects located within a flood hazard zone, intended to be protected by the system;

d. The project in an undetermined risk area has met the urban level of flood protection;

e. The property is located in an area of potential flooding of 3 feet or less from sources other than local drainage (i.e., localized conditions that may occur anywhere in a community, such as localized rainfall, water from stormwater and drainage problems, and water from temporary water and wastewater distribution system failure) or potential flooding from local drainage that meets the criteria of the national Federal Emergency Management Agency standard of flood protection; or

f. The property is located within a watershed with a contributing area of 10 or fewer square miles.

### **Decision of the City Council (9.3.018)**

ADD to this section:

e. The City Council shall not approve the agreement unless it makes one of the findings in section XX (new section Floodplain Management Findings above).