



STAFF REPORT

Date: August 5, 2014
To: Mayor and Members of City Council
From: William R. Galstan, Special Counsel *William R. Galstan*
Cc: Bryan Montgomery, City Manager
Subject: Ordinance to Add Chapter 12 to Title 6 of the Oakley Municipal Code, Dealing with Floodplain Management

FOR CONSIDERATION AT THE CITY COUNCIL MEETING ON AUGUST 12, 2014

Summary and Recommendation

Repeal Urgency Ordinance No. 09-00 and adopt the proposed ordinance adding Chapter 12 to Title 6 of the Oakley Municipal Code, dealing with Floodplain Management.

Fiscal Impact

None.

Background Information

On June 26, 2000, the Oakley City Council adopted an urgency ordinance, Ordinance No. 09-00, dealing with floodplain management. A copy of the staff report and adopted ordinance are attached. The purpose of the ordinance was to promote public health safety and welfare and to minimize public and private losses due to flood conditions in specific areas. While adopted, the ordinance was never incorporated into a numerated section in the Oakley Municipal Code. The proposed ordinance will repeal Ordinance No. 09-00 and replace it with a numerated section in the Oakley Municipal Code. No substantial changes have been made to the existing ordinance.

Conclusion

Staff recommends that the City Council adopt the proposed ordinance.

Attachments

1. Staff report dated June 26, 2000 and Ordinance No. 09-00 adopted June 26, 2000.
2. Proposed Ordinance

**CITY OF OAKLEY**

Memorandum

June 26, 2000

TO: Mike Oliver, City Manager

FROM: Elizabeth H. Silver
City Attorney

SUBJECT: **URGENCY ORDINANCE REPEALING CHAPTER 82-28 OF THE CONTRA COSTA COUNTY CODE, ADOPTED BY REFERENCE BY ORDINANCE NOS. 17-99 AND 22-99, AND ADOPTING A NEW CHAPTER 82-28; RESOLUTION ADOPTING GUIDELINES FOR EFFECTUATION OF CITY'S FLOODPLAIN MANAGEMENT RESPONSIBILITIES**

Summary and Recommendation

The attached ordinance would repeal Chapter 82-28 of the Contra Costa County Code, previously adopted by reference by Ordinance Nos. 17-99 and 22-99. The ordinance adds new provisions to the Municipal Code governing floodplain management. Its provisions are substantially the same as those of the previously adopted County Code; the names of the officers and agencies responsible for floodplain management have been changed to reflect the City's jurisdiction over floodplain management in the City. The attached resolution establishes guidelines for carrying out the City's floodplain management responsibilities. The Federal Emergency Management Agency (FEMA) requires the enactment of both pieces of legislation as a condition of participation in the National Flood Insurance Program (NFIP). Staff, therefore, recommends the Council waive the reading and adopt the attached urgency ordinance and the resolution as written. A four-fifths vote is required to pass the urgency ordinance.

Fiscal Impact

No fiscal impact.

Background and Analysis

Prior to the City's incorporation, residents of Oakley were able to participate in the NFIP because the County had complied with the requirements of Title 44 of the Code of Federal Regulations, Part 60.3(d), by the enactment of a floodplain management ordinance, County Code Chapter 82-28. To retain flood insurance eligibility, the City must also adopt floodplain regulations that comply with that federal law. Although the City previously adopted the provisions of the County Code by reference in Ordinance Nos. 17-99 and 22-99, qualifying for NFIP participation requires greater specificity regarding various matters, including the officers and agencies that will be responsible for floodplain management in the City. Therefore, the City is best served by adopting a floodplain management ordinance adapted for the City and containing the required specifics.

Agenda Date: 6-24-00Agenda Item: 5.6

Subject: Urgency Ordinance Repealing Chapter 82-28 of the Contra Costa County Code, Adopted By Reference By Ordinance Nos. 17-99 and 22-99, and Adopting A New Chapter 82-28; Resolution Adopting Guidelines for Effectuation of City's Floodplain Management Responsibilities to Qualify for Federally Sponsored Flood Insurance

Date: June 26, 2000

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Also as part of the application process for participation in the NFIP, the City must adopt a resolution that provides guidelines for floodplain management in the City. A copy of the resolution is attached.

When both pieces of legislation have been enacted, the City must submit two certified copies of each with an application to the FEMA regional office.

Because FEMA has indicated that the City must have the ordinance in place no later than July 1, 2000 to be able to continue to participate in the NFIP, protection of the health, safety, and general welfare requires that the ordinance go into effect immediately. The ordinance is, therefore, prepared as an urgency ordinance. A four-fifths vote is required for passage.

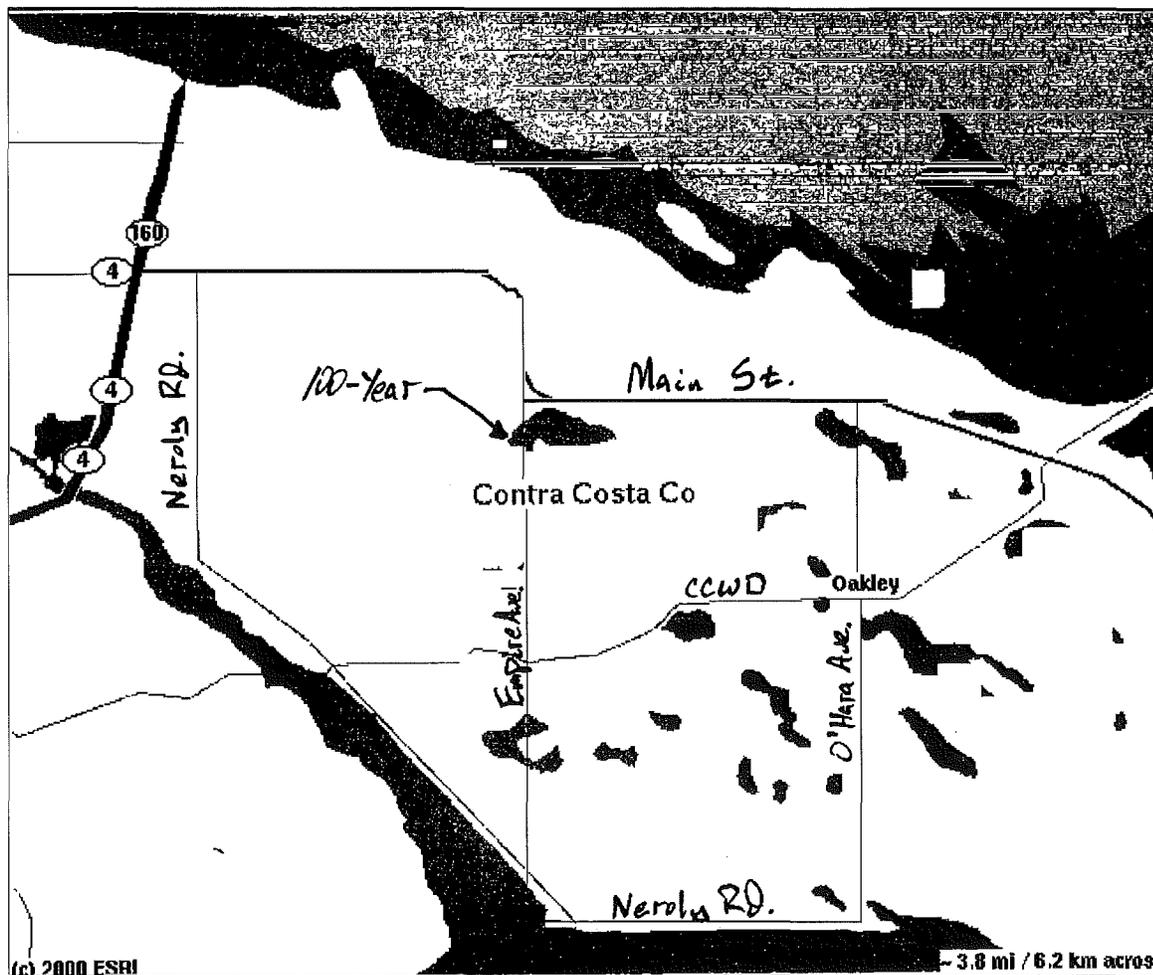
Conclusion

Staff recommends that the Council waive the reading and adopt the urgency ordinance as written. Staff further recommends that the Council adopt the attached resolution. Finally, staff recommends that the Council direct staff to submit to the FEMA regional office two certified copies of each piece of legislation along with the NFIP application.

Attachments: (1) Urgency Ordinance Repealing Chapter 82-28 of the Contra Costa County Code, Adopted by Reference by Ordinance Nos. 17-99 and 22-99, and Adopting a New Chapter 82-28
(2) Resolution Adopting Guidelines for Effectuation of the City's Floodplain Management Responsibilities



Flood Hazard Map

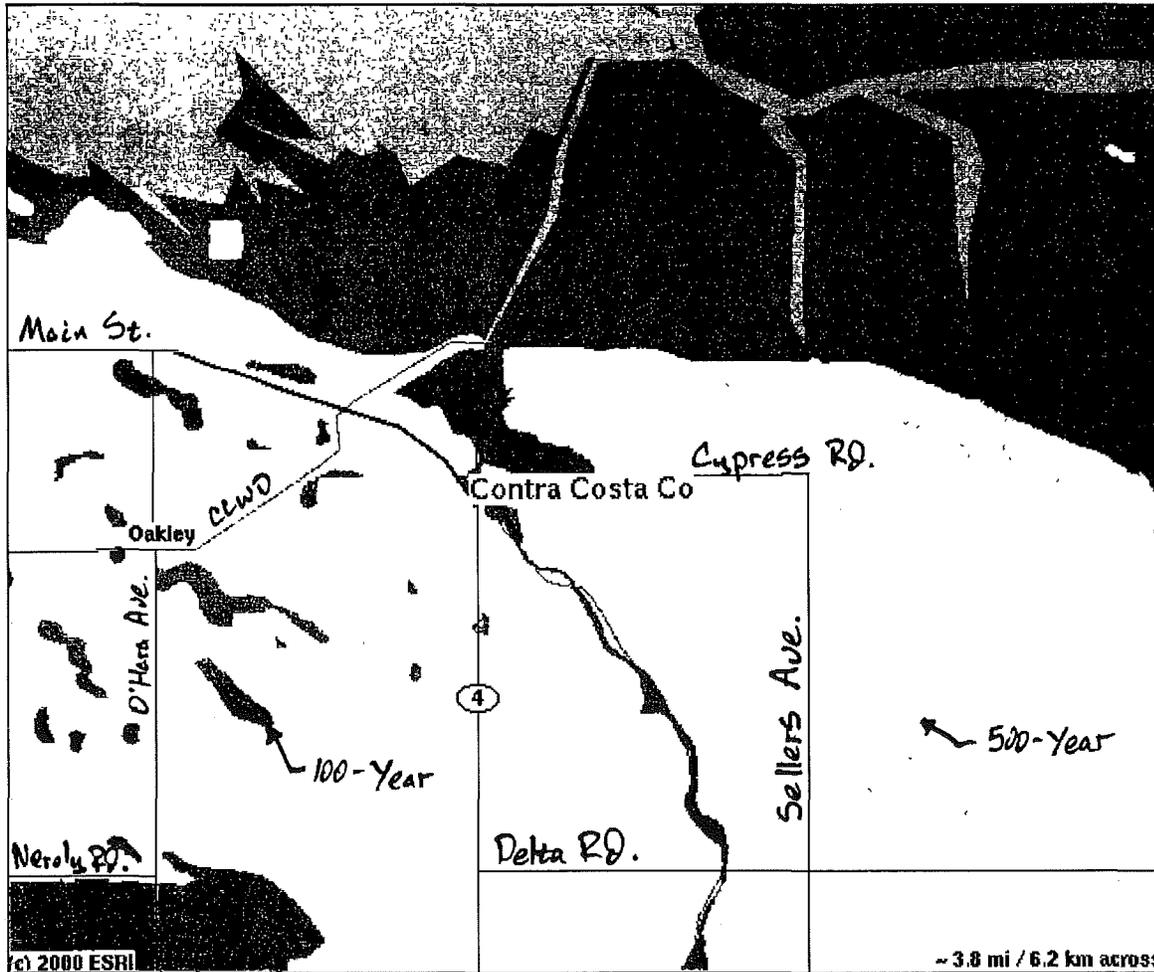


Map Centerpoint: -121.72909, 37.99285
Map Produced: Mon Jun 19 14:57:27 2000

**ESRI/FEMA Project Impact
Hazard Information and Awareness Site
<http://www.esri.com/hazards>**



Flood Hazard Map



Map Centerpoint: -121.69030, 37.99017
Map Produced: Mon Jun 19 15:00:37 2000

ESRI/FEMA Project Impact
Hazard Information and Awareness Site
<http://www.esri.com/hazards>

FEDERAL EMERGENCY MANAGEMENT AGENCY
**APPLICATION FOR PARTICIPATION IN THE NATIONAL FLOOD
 INSURANCE PROGRAM**

*See the reverse for
 Paperwork Burden
 Disclosure Notice*

*O.M.B. NO. 3067-0020
 Expires September 30, 1998*

You are not required to respond to this collection of information unless a valid OMB control number is displayed in the upper right corner of this form.

1. APPLICATION (City, town, etc.)

City Of Oakley

DATE

June 26, 2000

COUNTY, STATE

Contra Costa County, California

2. COMMUNITY OFFICIAL - CHIEF EXECUTIVE OFFICER (CEO)

City Manager

TELEPHONE NO. (include area code)

(925) 625-9116

ADDRESS (Street or box no., city, state, zip code)

Post Office Box 6, Oakley, CA 94561

3. PROGRAM COORDINATOR (Official, if different from above, with overall responsibility for implementing program)

City Engineer

TELEPHONE NO. (include area code)

(925) 625-9116

ADDRESS (Street or box no., city, state, zip code)

Post Office Box 6, Oakley, CA 94561

4. FIRST FLOOR ELEVATION INFORMATION WILL BE RECORDED BY:

City Engineer

TELEPHONE NO. (include area code)

(925) 625-9116

ADDRESS (Street or box no., city, state, zip code)

Post Office Box 6, Oakley, CA 94561

5. LOCATION OF COMMUNITY REPOSITORY FOR PUBLIC INSPECTION OF FIA MAPS

City of Oakley, City Hall

ADDRESS

3633 Main Street, Oakley, CA 94561

6. ESTIMATES FOR ONLY THOSE AREAS SUBJECT TO FLOOD AND/OR MUDSLIDE AS KNOWN AT THE TIME OF APPLICATION

AREA	POPULATION	NO. OF 1-4 FAMILY STRUCTURES	NO. OF SMALL BUSINESS STRUCTURES	NO. OF ALL OTHER STRUCTURES
1819 Acres	1380	365	25	40

7. ESTIMATES OF TOTALS IN ENTIRE COMMUNITY

	POPULATION	NO. OF 1-4 FAMILY STRUCTURES	NO. OF SMALL BUSINESS STRUCTURES	NO. OF ALL OTHER STRUCTURES
	25,400	6719	93	60

7

ORDINANCE NO. 09-00

AN URGENCY ORDINANCE OF THE CITY OF OAKLEY REPEALING CHAPTER 82-28 OF THE CONTRA COSTA COUNTY CODE, ADOPTED BY REFERENCE BY ORDINANCE NOS. 17-99 AND 22-99, AND ADOPTING A NEW CHAPTER 82-28

THE CITY COUNCIL OF THE CITY OF OAKLEY DOES ORDAIN AS FOLLOWS:

Section 1. Summary. This ordinance repeals Ordinance No. 96-11 and 90-118 Chapter 82-28 of the Contra Costa County Ordinance Code, adopted by reference by Ordinance Nos. 17-99 and 22-99, replaces it with the revised Floodplain Management Ordinance of the City of Oakley Municipal Code.

Section 2. The following sections are added to the Municipal Code to replace the repealed Chapter 82-28.

Section 3. Statutory Authorization. This ordinance 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 4001-4128; see especially 42 U.S.C. Section 4022; Government Code Sections 25120-25132; 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.

Section 4. Findings of Fact.

- (a) The 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 hazards, 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.

Section 5. Statement of Purpose. It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by 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;
- (f) To help maintain a stable tax base by providing for the use and development of areas of special flood hazard 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 areas in the City of Oakley;
- (h) To clearly establish that those who occupy the areas of special flood hazard 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.

Section 6. Methods of Reducing Flood Losses. In order to accomplish its purpose, this ordinance 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.

Section 7. Definitions.

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

“Appeal” means a request for a review of the Floodplain Administrator’s interpretation of any provision of this ordinance 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.

“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.

"Base flood" means a flood having a 1% chance of being equaled or exceeded in any given year (also called the "100-year flood").

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

"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 is not part of the structural support of the building, and that is 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 and no more than twenty 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 VI-V30, VE or V.

"Development" means any man-made 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 this ordinance.

“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 9 of this ordinance on which the FEMA or FIA has delineated both the areas of flood hazard and the floodway.

“Flood Insurance Rate Map (FIRM)” means the official map described in Section 9 of this ordinance on which the FEMA or FIA has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

“Flood Insurance Study” means the official report described in Section 9 of this ordinance provided by the FIA that includes flood profiles, the FIRM, the Flood Boundary and Floodway Map, and in some areas, the base flood elevation.

“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 ordinance, shall mean the City Engineer.

“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 non-residential structures that eliminate flood damage to real estate or improved real property, water and sanitary facilities, and non-residential 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.”

“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 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.

“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.

“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 27-29 of this ordinance, 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 to one-hundred 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 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 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.

“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 non-elevation design requirements of this ordinance. This definition allows attached garages to be built at grade (with adequate venting). Below grade garages 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 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 year flood” or “100-year flood” means a flood that has a one percent annual probability of being equaled or exceeded. Also called the "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 ordinance, 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) 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 the ordinance 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 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 50 percent 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 50 percent 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 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 that 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.

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

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

“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.

Section 8. Lands to Which This Ordinance Applies. This ordinance shall apply to all areas of special flood hazards within the jurisdiction of the City of Oakley, as shown on the maps described in Section 9 of this ordinance.

Section 9. Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard have been identified by FEMA or the FIA in a scientific and engineering report entitled "Flood Insurance Study for Contra Costa County, Unincorporated Areas," dated July 16, 1987, with an accompanying FIRM and Flood Boundary and Floodway Map of same date and all subsequent amendments and/or revisions, which study and maps are hereby adopted by reference and declared to be a part of this ordinance. That Flood Insurance Study and the accompanying maps are on file with the City of Oakley at 3633 Main Street, Oakley, CA 94561. The Flood Insurance Study describes the minimum area of applicability of this ordinance and may be supplemented by studies for other areas that allow implementation of this ordinance, and that are recommended by the Floodplain Administrator. Within the areas of special flood hazard identified in the Flood Insurance Study, accompanying maps and supplemental studies, one foot of freeboard is required.

Section 10. Compliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. 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.

Section 11. Abrogation and Greater Restrictions. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Section 12. Interpretation. In the interpretation and application of this ordinance, 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.

Section 13. Warning and Disclaimer of Liability. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City, any officer or employee thereof, or the FIA for any flood damages that result from reliance on this ordinance or any administrative decision made thereunder.

Section 14. Severability. This ordinance and the various parts thereof are hereby declared to be severable. Should any section of this ordinance be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole or any portion thereof other than the section so declared to be unconstitutional or invalid.

Section 15. 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 hazards established in Section 9 of this ordinance. 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 ordinance. 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 18 of this ordinance;

- (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.

Section 16. 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 Hazards established in Section 9 of this ordinance, an applicant must provide verification from the Floodplain Administrator that the required Flood Zone, BFE, and minimum finished floor elevation has been determined.

Section 17. 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 ordinance by granting or denying Floodplain Permits in accordance with its provisions.

Section 18. 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 ordinance 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; 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 ordinance, "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.
- (b) Use of Other Base Flood Elevation Data. When base flood elevation data has not been provided in accordance with Section 9 of this ordinance, 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 20-26 of this ordinance.

Developments consisting of more than 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 10 or fewer insurable structures will be required to determine the base flood elevation using standards acceptable to the Floodplain Administrator.

- (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 20(c)(1) of this ordinance (floor elevations);
 - (2) The certification required in Section 20(c)(2) of this ordinance (elevations in areas of shallow flooding);
 - (3) The certification required in Section 20(c)(3)(C) of this ordinance (elevation or floodproofing of nonresidential structures);
 - (4) The certification required in Section 20(c)(4)(A) or 20(c)(4)(B) of this ordinance (wet floodproofing standard);
 - (5) The certification of elevation required in Section 22(b) of this ordinance (subdivision standards);
 - (6) The certification required in Section 25(a) of this ordinance (floodway encroachments); and
 - (7) The information required in Section 26(f) ordinance (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 hazards. (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 27-29 of this ordinance.

- (f) **Remedy Violations.** The Floodplain Administrator may take appropriate action to remedy violations of this ordinance as specified in Section 10, with the assistance of the City Manager or his or her designee.

Section 19. 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 ordinance.

Section 20. Standards of Construction. In all areas of special flood hazards, 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 23 of this ordinance.
- (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 Zones 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 Section 20(c)(3) of this ordinance. 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 Section 20(c)(3) of this ordinance. 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 Section 20(c)(1) or (2) of this ordinance, 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 Section 20(c)(5) of this ordinance.
- (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 23 of this ordinance.

Section 21. 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.

Section 22. Standards for Subdivisions.

- (a) All applications for tentative map approval are incomplete unless the Tentative Maps identify the flood hazard area and the elevation of the base flood. (See Section 18(b) of this ordinance.)
- (b) All final subdivision improvement plans shall provide the elevation of proposed structure(s), pads, and streets. If the site is filled above the base flood, the final pad elevations shall be certified by a registered professional engineer or surveyor 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.

Section 23. Standards for Manufactured Homes.

- (a) All manufactured homes to be placed or substantially improved within Special Flood Hazard Areas (Zones A1-30, and AH), as shown on the study and maps described in Section 9 of this ordinance, 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) Section 23(a) of this ordinance 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 this ordinance.

- (c) Section 23(a)(1) of this ordinance 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 50 percent 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.

Section 24. Standards for Recreational Vehicles. All recreational vehicles placed on sites within a Special Flood Hazard Area (Zones A1-30, AH, and AE) on the FIRM shall:

- (a) Be on the site for fewer than 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 15 of this ordinance and the elevation and anchoring requirements for manufactured homes in Section 23.

Section 25. Floodways. Within special flood hazard areas established in Section 9 of this ordinance 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 27-29 of this ordinance.

Section 26. Coastal High Hazard Areas. Within coastal high hazard areas established in Section 9 of this ordinance, 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) Man-made 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 Section 26(a) of this ordinance.
 - (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.

Section 27. Nature of Variances. The variance criteria set forth in this ordinance 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 ordinance 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 ordinance 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.

Section 28. 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 ordinance.
- (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 ordinance.
- (c) In passing upon such applications, the Zoning Administrator shall consider all technical evaluations, all relevant factors, the standards specified in this ordinance, 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 Section 28(c) of this ordinance 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 Section 28(c) and the purposes of this ordinance, the Zoning Administrator may attach such conditions to the granting of variances as deemed necessary to further the purposes of this ordinance.
 - (f) Appeals from Zoning Administrator decisions may be made to the Planning Commission and City Council in the time and manner provided in Article 26-2.24 of the Municipal Code, 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.

Section 29. 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.

- (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 Section 29(a)-(d) of this ordinance 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.

Section 30. Effective Immediately.

The City of Oakley incorporated on July 1, 1999 and has kept in place many existing laws of Contra Costa County, including Chapter 82-28, which contains regulations for floodplain management in the City. Residents of the City were, prior to incorporation and for the first year of the City's existence, eligible to participate in the National Floodplain Insurance Program. To continue to be so eligible, the City must adopt an ordinance that conforms to regulations promulgated by the Federal Emergency Management Agency by July 1, 2000. The City has been informed that it must make the changes effectuated by this ordinance to achieve such compliance. Preservation of

the public peace, health, and safety therefore requires immediate action by the City Council to amend the City's floodplain ordinance. Such action constitutes an urgency and shall take effect immediately pursuant to Government Code §36937(b). The City Clerk of the City of Oakley shall cause this ordinance to be posted in at least three (3) public places in the City of Oakley in accordance with Government Code §36933 of the State of California

ADOPTED THIS 26th day of June, 2000 by the following vote:

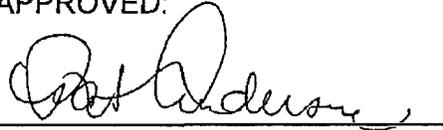
AYES: Anderson, Huffaker, Nix, Rios, Vanek

NOES: None

ABSTENTIONS: None

ABSENT: None

APPROVED:



MAYOR

ATTEST:


CITY CLERK

ORDINANCE NO. _____

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

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

Section 1. Ordinance No. 09-00 is hereby repealed.

Section 2. Chapter 12 is hereby added to Title 6 of the Oakley Municipal Code, to read as follows:

CHAPTER 12 FLOODPLAIN MANAGEMENT

6.12.102 Statutory Authorization.

This ordinance 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 4001-4128; see especially 42 U.S.C. Section 4022; Government Code Sections 25120-25132; 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.

6.12.104 Findings of Fact.

- (a) The 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 hazards, 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.

6.12.106 Statement of Purpose.

It is the purpose of this ordinance to promote the public health, safety and general welfare, and to minimize public and private losses due to flood conditions in specific areas by 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;
- (f) To help maintain a stable tax base by providing for the use and development of areas of special flood hazard 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 areas in the City of Oakley;
- (h) To clearly establish that those who occupy the areas of special flood hazard 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.

6.12.108 Methods of Reducing Flood Losses.

In order to accomplish its purpose, this ordinance 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.

6.12.110 Definitions.

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

“Appeal” means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance 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.

“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.

“Base flood” means a flood having a 1% chance of being equaled or exceeded in any given year (also called the “100-year flood”).

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

“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 is not part of the structural support of the building, and that is 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 and no more than twenty 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 VI-V30, VE or V.

“Development” means any man-made 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 this ordinance.

“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 9 of this ordinance on which the FEMA or FIA has delineated both the areas of flood hazard and the floodway.

“Flood Insurance Rate Map (FIRM)” means the official map described in Section 9 of this ordinance on which the FEMA or FIA has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

“Flood Insurance Study” means the official report described in Section 9 of this ordinance provided by the FIA that includes flood profiles, the FIRM, the Flood Boundary and Floodway Map, and in some areas, the base flood elevation.

“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 ordinance, shall mean the City Engineer.

“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 non-residential structures that eliminate flood damage to real estate or improved real property, water and sanitary facilities, and non-residential 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.”

“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 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.

“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.

“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 27-29 of this ordinance, 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 to one-hundred 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 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 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.

“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 non-elevation design requirements of this ordinance. This definition allows attached garages to be built at grade (with adequate venting). Below grade garages 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 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 year flood” or **“100-year flood”** means a flood that has a one percent annual probability of being equaled or exceeded. Also called the "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 ordinance, 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) 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 the ordinance 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 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 50 percent 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 50 percent 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 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 that 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.

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

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

“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.

6.12.112 Lands to Which This Ordinance Applies.

This ordinance shall apply to all areas of special flood hazards within the jurisdiction of the City of Oakley, as shown on the maps described in Section 6.12.114 of this Chapter.

6.12.114 Basis for Establishing the Areas of Special Flood Hazard.

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

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 ordinance 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.

6.12.118 Abrogation and Greater Restrictions.

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

6.12.120 Interpretation.

In the interpretation and application of this ordinance, 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.

6.12.122 Warning and Disclaimer of Liability.

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

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 hazards established in Section 9 of this ordinance. 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 ordinance. 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 18 of this ordinance;
- (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.

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 Hazards established in Section 9 of this ordinance, an applicant must provide verification from the Floodplain Administrator that the required Flood Zone, BFE, and minimum finished floor elevation has been determined.

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 ordinance by granting or denying Floodplain Permits in accordance with its provisions.

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 ordinance 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; 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 ordinance, "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.

- (b) Use of Other Base Flood Elevation Data. When base flood elevation data has not been provided in accordance with Section 9 of this ordinance, 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 20-26 of this ordinance. Developments consisting of more than 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 10 or fewer insurable structures will be required to determine the base flood elevation using standards acceptable to the Floodplain Administrator.
- (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 20(c)(1) of this ordinance (floor elevations);
 - (2) The certification required in Section 20(c)(2) of this ordinance (elevations in areas of shallow flooding);
 - (3) The certification required in Section 20(c)(3)(C) of this ordinance (elevation or floodproofing of nonresidential structures);
 - (4) The certification required in Section 20(c)(4)(A) or 20(c)(4)(B) of this ordinance (wet floodproofing standard);
 - (5) The certification of elevation required in Section 22(b) of this ordinance (subdivision standards);
 - (6) The certification required in Section 25(a) of this ordinance (floodway encroachments); and
 - (7) The information required in Section 26(f) ordinance (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 hazards. (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 27-29 of this ordinance.
- (f) **Remedy Violations.** The Floodplain Administrator may take appropriate action to remedy violations of this ordinance as specified in Section 10, with the assistance of the City Manager or his or her designee.

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 ordinance.

6.12.134 Standards of Construction.

In all areas of special flood hazards, 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 23 of this ordinance.
- (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 Zones 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 Section 20(c)(3) of this ordinance. 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 Section 20(c)(3) of this ordinance. 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 Section 20(c)(1) or (2) of this ordinance, 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 Section 20(c)(5) of this ordinance.
- (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 23 of this ordinance.

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.

6.12.138 Standards for Subdivisions.

- (a) All applications for tentative map approval are incomplete unless the Tentative Maps identify the flood hazard area and the elevation of the base flood. (See Section 18(b) of this ordinance.)

- (b) All final subdivision improvement plans shall provide the elevation of proposed structure(s), pads, and streets. If the site is filled above the base flood, the final pad elevations shall be certified by a registered professional engineer or surveyor 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.

6.12.140 Standards for Manufactured Homes.

- (a) All manufactured homes to be placed or substantially improved within Special Flood Hazard Areas (Zones A1-30, and AH), as shown on the study and maps described in Section 9 of this ordinance, 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) Section 23(a) of this ordinance 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 this ordinance.
- (c) Section 23(a)(1) of this ordinance 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 50 percent 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.

6.12.142 Standards for Recreational Vehicles.

All recreational vehicles placed on sites within a Special Flood Hazard Area (Zones A1-30, AH, and AE) on the FIRM shall:

- (a) Be on the site for fewer than 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 15 of this ordinance and the elevation and anchoring requirements for manufactured homes in Section 23.

6.12.144 Floodways.

Within special flood hazard areas established in Section 9 of this ordinance 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 27-29 of this ordinance.

6.12.146 Coastal High Hazard Areas.

Within coastal high hazard areas established in Section 9 of this ordinance, 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) Man-made 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 Section 26(a) of this ordinance.
 - (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.

6.12.148 Nature of Variances.

The variance criteria set forth in this ordinance 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 ordinance 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 ordinance 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.

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 ordinance.
- (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 ordinance.
- (c) In passing upon such applications, the Zoning Administrator shall consider all technical evaluations, all relevant factors, the standards specified in this ordinance, 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 Section 28(c) of this ordinance 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 Section 28(c) and the purposes of this ordinance, the Zoning Administrator may attach such conditions to the granting of variances as deemed necessary to further the purposes of this ordinance.
- (f) Appeals from Zoning Administrator decisions may be made to the Planning Commission and City Council in the time and manner provided in Article 26-2.24 of the Municipal Code, 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.

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.
- (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 Section 29(a)-(d) of this ordinance 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.

Section 3. California Environmental Quality Act (CEQA) Finding.

This ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), Review for Exemption, because it can be seen with certainty that the project will not have a significant effect on the environment; therefore the project is not subject to CEQA.

Section 4. Severability.

In the event any section or portion of this ordinance shall be determined to be invalid or unconstitutional, such section or portions shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

Section 5. Effective Date and Publication.

This ordinance shall take effect and be in force 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 proposed ordinance, posting a certified copy of the proposed ordinance in the City Clerk's Office 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 _____, 2014 by the following vote:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

APPROVED:

Randy Pope, Mayor

ATTEST:

Libby Vreonis, City Clerk

Date