

## **ORDINANCE NO. 2019-2**

### **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWPORT BEACH, CALIFORNIA, AMENDING SECTION 15.05.090 OF CHAPTER 15.05, ADDING A SECTION TO CHAPTER 15.50 AND AMENDING CERTAIN SECTIONS OF CHAPTER 15.50 OF TITLE 15 OF THE NEWPORT BEACH MUNICIPAL CODE RELATED TO FLOODPLAIN MANAGEMENT**

**WHEREAS**, the City of Newport Beach ("City") participates in the National Flood Insurance Program ("NFIP"), which is administered by the Federal Emergency Management Agency ("FEMA"). Under the NFIP, Federally-guaranteed flood insurance is made available by FEMA for properties in the City if the City does its part in making sure that development in its mapped floodplain meets certain floodplain management criteria;

**WHEREAS**, when a flood study is completed by FEMA for the NFIP, the information and maps are assembled into a Flood Insurance Study ("FIS"). A FIS is a compilation and presentation of flood risk data for specific watercourses, lakes and coastal flood hazard areas within a community. The FIS report and associated maps, including the Flood Insurance Rate Map ("FIRM"), delineate Special Flood Hazard Areas ("SFHA") (*i.e.*, areas that fall within the 100-year flood boundary), designate flood risk zones, and establish base flood elevations used by NFIP for floodplain management, mitigation and insurance purposes. FIRMs are used by community officials for floodplain management, by lenders to determine the need for flood insurance, by insurance agents to rate policy applications, and by land surveyors, engineers, property owners and others to determine flood hazards in a given location;

**WHEREAS**, NFIP underwrites flood insurance coverage only in those communities that adopt and enforce floodplain regulations that meet or exceed NFIP criteria. Buildings built in accordance with these regulations have a lower risk of flooding and can be insured at lower rates. A community's floodplain regulations are designed to ensure that new buildings will be protected from the flood levels shown on the FIRM and that development will not make the flood hazard worse;

**WHEREAS**, the City is responsible for administering and enforcing the City's floodplain management regulations and has heretofore enacted and implements the floodplain regulations required for participation in the NFIP;

**WHEREAS**, as a result of an Open Coast Study for the entire California coast, FEMA has updated the FIRM for the City, as well as many other coastal communities, due to changes in geography, construction and mitigation activities, and meteorological events. FEMA requires that the City adopt the latest version of the FIRM and FIS and to adopt or show evidence of adoption of floodplain management regulations that meet the requirements of the NFIP regulations; and

**WHEREAS**, pursuant to the requirement of FEMA, the City Council desires to amend Chapter 15.50 of the Newport Beach Municipal Code to adopt the FIS and FIRM and to make corresponding revisions to certain sections of Chapter 15.50 and Section 15.05.090 of the Newport Beach Municipal Code.

**NOW THEREFORE**, the City Council of the City of Newport Beach ordains as follows:

**Section 1:** Section 15.05.090 of Chapter 15.05 of Title 15 of the Newport Beach Municipal Code is hereby amended to read as follows:

**15.05.090 Amendment to Table R301.2(1) Footnote g.**

Table R301.2(1) footnote g is amended to read as follows:

**Section Table R301.2(1) Footnote g.** (1) The date of City's adoption of its first National Flood Insurance Program (NFIP) map was March 15, 1974. The date of City's adoption of its first Flood Insurance Rate Map (FIRM) was August 28, 1978. (2) The effective date of the current Flood Insurance Study (FIS) and FIRM is March 21, 2019, copies of which are on file in the Office of the City's Community Development Department. (3) The panel numbers of the currently effective FIRM are as follows: 264, 267, 268, 269, 286, 288, 289, 377, 381, 382, 384, 401, 402, 403, and 404 (Community No. 060227; Map 06059).

**Section 2:** The table of contents for Chapter 15.50 of Title 15 of the Newport Beach Municipal Code is hereby amended to read as follows:

**Chapter 15.50**  
**FLOODPLAIN MANAGEMENT\***

**Sections:**

- 15.50.010 Statutory Authorization.
- 15.50.020 Findings of Fact.
- 15.50.030 Statement of Purpose.
- 15.50.040 Methods of Reducing Flood Losses.
- 15.50.050 Definitions.
- 15.50.060 Lands to Which this Chapter Applies.
- 15.50.070 Basis for Establishing the Areas of Special Flood Hazard.
- 15.50.080 Compliance.
- 15.50.090 Abrogation and Greater Restrictions.
- 15.50.100 Interpretation.
- 15.50.110 Warning and Disclaimer of Liability.
- 15.50.120 Severability.
- 15.50.130 Designation of the Floodplain Administrator.
- 15.50.135 Permit Review.
- 15.50.140 Review, Use of Other Base Flood Data.
- 15.50.145 Development of Substantial Improvement and Substantial Damage Procedures.
- 15.50.150 Documentation of Floodplain Development.
- 15.50.160 Notification of Other Agencies.
- 15.50.170 Map Determinations.
- 15.50.180 Appeals and Variance Procedure.
- 15.50.190 Conditions for Variances.
- 15.50.200 Standards of Construction.

- 15.50.205 Recreational Vehicles.
- 15.50.210 Standards for Utilities.
- 15.50.220 Standards for Subdivisions.
- 15.50.230 Coastal High Hazard Areas.
- 15.50.240 Mudslide Prone Areas.
- 15.50.250 Flood-Related Erosion-Prone Areas.

\* Prior ordinance history: Ords. 1779, 88-8 and 91-38.

**Section 3:** Section 15.50.050 of Chapter 15.50 of Title 15 of the Newport Beach Municipal Code is hereby amended to add the definition of "Adversely affect," which shall read as follows:

"Adversely affect" means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will increase the water surface elevation of the base flood more than one foot at any point.

**Section 4:** The definitions of "Area of shallow flooding," "Area of special flood-related erosion hazard," "Area of special mudslide (i.e., mudflow) hazard," "Coastal high hazard area," "Existing manufactured home park or subdivision," "Flood hazard boundary map," "Flood insurance rate map FIRM," "Flood insurance study," "Floodway" and "Regulatory floodway" contained in Section 15.50.050 of Chapter 15.50 of Title 15 of the Newport Beach Municipal Code are hereby amended to read as follows:

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

"Area of special flood-related erosion hazard" means the land within a community, which is most likely to be subject to severe flood-related erosion losses. The area may be designated as Zone E on the FIRM.

"Area of special mudslide (i.e., mudflow) hazard" means the area subject to severe mudslides (i.e., mudflows). The area is designated as Zone M on the FIRM.

“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 an area subject to high velocity waters, including coastal and tidal inundation or tsunamis. The area is designated on the FIRM as Zone VE, or V.

“Existing manufactured home park or subdivision” means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes were affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) and completed before August 28, 1978, which was the effective date of the floodplain management regulations adopted by the City.

“Flood hazard boundary map” or “FHBM” means the official map on which the Federal Emergency Management Agency has delineated the areas of flood hazards.

“Flood insurance rate map” or “FIRM” means the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

“Flood insurance study” or “FIS” means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the flood insurance rate map, the flood boundary and floodway map, and the water surface elevation of the base flood.

“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, as delineated on the FIRM. Also referred to as a “regulatory floodway.”

“Regulatory 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, as delineated on the FIRM.

**Section 5:** Section 15.50.070 of Chapter 15.50 of Title 15 of the Newport Beach Municipal Code is hereby amended to read as follows:

#### **15.50.070 Basis for Establishing the Areas of Special Flood**

The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in the "Flood Insurance Study (FIS) for Orange County, California and Incorporated Area" dated December 3, 2009, with accompanying Flood Insurance Rate Maps (FIRMs), dated December 3, 2009, and all subsequent amendments and/or revisions, are hereby adopted by reference and declared to be a part of this chapter. This FIS, and all subsequent amendments and/or revisions, and attendant mapping is the minimum area of applicability of this chapter and may be supplemented by studies for other areas which allow implementation of this chapter and which are recommended to the City Council by the Floodplain Administrator. The FIS and the FIRMs are on file at the Office of the Community Development Department at 100 Civic Center Drive, Newport Beach, California 92660.

**Section 6:** Section 15.50.140 of Chapter 15.50 of Title 15 of the Newport Beach Municipal Code is hereby amended to read as follows:

#### **15.50.140 Review, Use of Other Base Flood Data.**

When base flood elevation data has not been provided in accordance with Section 15.50.070, the Floodplain Administrator, or his or her designated representative, shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, in order to administer Sections 15.50.200 through 15.50.250.

**Section 7:** Section 15.50.180 of Chapter 15.50 of Title 15 of the Newport Beach Municipal Code is hereby amended to read as follows:

#### **15.50.180 Appeals and Variance Procedure.**

A. The Planning Commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator or his designated representative, in the enforcement or administration of this chapter.

B. The Planning Commission shall review and decide requests for variances. In ruling on such applications, the Planning Commission shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter, and:

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 individual owner and future owners of the property;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity to the facility of a waterfront location, where applicable;
6. The availability of alternative locations, for the proposed use, which 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 of that area;
9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The expected heights, velocity duration, rate of rise and sediment transport of the flood waters and the effects of wave action, if applicable, 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, electric, water systems, and streets and bridges.

C. 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, providing all items in Chapter 15.50 have been fully considered. As lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.

D. Upon consideration of the factors set forth in Section 15.50.190 and the purposes of this chapter, the Planning Commission may attach conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

E. Those aggrieved by the decision of the Planning Commission may appeal such decision to the City Council as provided in Title 20. A member of the City Council may call for review any decision of the Planning Commission under this chapter as provided in Title 20.

F. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency in the biennial report.

**Section 8:** Section 15.50.200 of Chapter 15.50 of Title 15 of the Newport Beach Municipal Code is hereby amended to read as follows:

**15.50.200 Standards of Construction.**

In all areas of special flood hazards, all new construction, all substantial improvements of structures, including but not limited to, a structure used for a residential or non-residential use, or any manufactured home, shall meet the following standards:

A. Anchoring. Adequate anchoring to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

B. Construction Materials and Methods.

1. With materials and utility equipment resistant to flood damage;
2. Using methods and practices that minimize flood damage;
3. 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; and
4. For AH or AO Zones, so that there are adequate drainage paths around structures on slopes to guide flood waters around and away from proposed structures.

C. Elevation and Floodproofing.

1. Residential construction shall have the lowest floor, including basement:
  - a. In an AO Zone, elevated above the highest adjacent grade to a height equal to or exceeding the depth number specified in feet on the FIRM, or elevated at least two feet above the highest grade if no depth number is specified.
  - b. In an A Zone, elevated to or above the base flood elevation, as determined by the City of Newport Beach.



c. In all other zones, elevated to or above the base flood elevation per Section 15.50.070.

d. Fully enclosed areas below the lowest floor (excluding basements) that are usable solely for parking of vehicles, building access or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must exceed the following minimum criteria:

i. Be certified by a registered professional engineer or architect to comply with a local floodproofing standard approved by the Federal Emergency Management Agency; or

ii. Have a minimum of two openings having a total net area of not less than one square inch for every 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; provided, that they permit the automatic entry and exit of floodwater.

e. Upon completion of the structure, the elevation of the lowest floor including basement shall be certified by a registered professional engineer or surveyor, and verified by the community building inspector to be properly elevated. Such certification or verification shall be provided to the Floodplain Administrator.

2. **Nonresidential Construction.** Nonresidential construction shall either be elevated to conform with subsections (C)(1)(a), (b) and (c) of this section or together with attendant utility and sanitary facilities:

a. Be floodproofed below the elevation recommended under subsections (C)(1)(a), (b) and (c) of this section so that 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 section are satisfied. Such certification shall be submitted to the Floodplain Administrator.

3. **Manufactured Homes.** Manufactured homes that are placed or substantially improved shall be elevated to or above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

D. **Required Submittals.** Before construction begins within any area of special flood hazards established in Section 15.50.070, application for a building permit shall be made pursuant to the Newport Beach Administrative Code, adopted in Section 15.02.010. In addition to submittals required by the Newport Beach Administrative Code, drawings shall show the nature, location, dimensions, and elevations of each structure; existing and proposed grades, and drainage facilities. Specifically, the following information is required:

1. Proposed elevation, as determined by a licensed land surveyor or registered civil engineer, of the lowest floor (including basement) of all structures;
2. Proposed elevation, in relation to NAVD, to which any structure will be floodproofed;
3. All appropriate certifications listed in Section 15.50.150;
4. Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development; and
5. Plans for any walls to be used to enclose space below the base flood levels.

E. **Floodways.** Encroachments, including fill, new construction, substantial improvements, and other development within floodways are prohibited, unless it has been demonstrated to the satisfaction of the Floodplain Administrator through hydrologic and hydraulic analysis performed and certified by a registered civil engineer in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels during the occurrence of the base flood discharge.

**Section 9:** Section 15.50.205 of Chapter 15.50 of Title 15 of the Newport Beach Municipal Code is hereby added to read as follows:

**15.50.205 Recreational Vehicles**

In all areas of special flood hazards, all recreational vehicles shall:

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

- B. Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions).

**Section 10:** Section 15.50.220 of Chapter 15.50 of Title 15 of the Newport Beach Municipal Code is hereby amended to read as follows:

**15.50.220 Standards for Development and Subdivisions.**

A. All preliminary development and subdivision proposals shall identify the flood hazard area and elevation of the base flood.

B. All final development and subdivision plans will provide the elevation of proposed structure(s) and pad(s). If the site is filled above the base flood, the final pad elevation shall be certified by a registered professional engineer or surveyor and provided to the Floodplain Administrator.

C. All development and subdivision proposals shall be consistent with the need to minimize flood damage.

D. All development and subdivision proposals shall have public utilities and facilities such as sewer, gas, electric and water systems located and constructed to minimize flood damage.

E. All development and subdivisions shall provide adequate drainage to reduce exposure to flood hazards.

F. A development permit shall be obtained before any construction begins on a development or a subdivision, including manufactured homes, within any area of special flood hazards established in Section 15.50.070. Application for a development permit shall be made on forms furnished by the City Manager or his or her designated representative and shall include but not be limited to: plans in duplicate, drawn to scale showing: the location, dimensions, and elevations of each existing or proposed structure within the development or subdivision; existing and proposed grades, and drainage facilities. Specifically, the following information is required.

1. Proposed locations of water supply, sanitary sewer, and other utilities;
2. Location of the regulatory floodway when applicable;
3. Base flood elevation information as specified in Section 15.50.070;

4. Proposed elevation, in relation to NAVD, as determined by a licensed land surveyor or registered civil engineer, of the lowest floor (including basement) of all structures;
5. Proposed elevation, in relation to NAVD, of the lowest (including basement) of all structures;
6. Proposed elevation, in relation to NAVD, to which any nonresidential structure will be flood-proofed, as required under Subsection 15.50.200(C)(2) and detailed in FEMA Technical Bulletin TB 3-93, which Bulletin is incorporated herein by this reference as though fully set forth;
7. Certification from a registered civil engineer or architect that the nonresidential flood-proofed building meets the floodproofing criteria in Subsection 15.50.200(C)(2)(c);
8. All appropriate certifications listed in Section 15.50.150 of this chapter;
9. Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development;
10. Plans for any walls to be used to enclose space below the base flood level; and
11. Provide certification that all necessary permits have been obtained from federal, state, and local governmental agencies from which prior approval is required.

NOTE: It is the developer's responsibility to obtain these approvals.

**G. The Floodplain Administrator shall:**

1. Review all development permits to determine that the permit requirements of this chapter have been satisfied;
2. Review the developer's certification that all other required state and federal permits have been obtained;
3. Review all development permits to determine that the proposed development does not adversely affect the carrying capacity of areas where base flood elevations have been determined but a floodway has not been designated;

4. Review all development permits in the coastal high hazard area of the area of special flood hazard to determine if the proposed development alters sand dunes so as to increase potential flood damage;
5. Review all development permits to determine whether proposed building sites will be reasonably safe from flooding; and
6. Take action to remedy violations of this chapter.

**Section 11:** Section 15.50.230 of Chapter 15.50 of Title 15 of the Newport Beach Municipal Code is hereby amended to read as follows:

**15.50.230 Coastal High Hazard Areas.**

Within coastal high hazard areas, Zones V, V1-30, and VE, as delineated in the FIS and FIRM, the following standards shall apply:

- A. All new residential and non-residential construction, including substantial improvement/damage, and manufactured homes, shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the bottom of the lowest horizontal structural members of the lowest floor (excluding the pilings and columns) is elevated to or above the base flood level. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to 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. Wind loading values used shall be those required by the California Building Code.
- B. All new construction and other development shall be located on the landward side of the reach of mean high tide.
- C. All new construction and substantial improvement shall have the space below the lowest floor free of obstructions or constructed with breakaway walls as defined in Section 15.50.050 of this chapter. Such enclosed space shall not be used for human habitation and will be usable solely for parking of vehicles, building access or storage.
- D. Fill shall not be used for structural support of buildings.
- E. Man-made alteration of sand dunes which 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 land surveyor that a proposed structure complies with subsection (A) of this section;
2. The elevation (in relation to mean sea level) of the bottom of the lowest horizontal 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 12:** The recitals provided in this ordinance are true and correct and are incorporated into the substantive portion of this ordinance.

**Section 13:** If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

**Section 14:** The City Council finds and determines that the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

**Section 15:** Except as expressly modified in this ordinance, all other titles, chapters, sections, subsections, terms, sentences, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

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**Section 16:** The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 12th day of February, 2019, and adopted on the 26th day of February, 2019, by the following vote, to-wit:

AYES: \_\_\_\_\_

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NAYS: \_\_\_\_\_

RECUSED: \_\_\_\_\_

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DIANE B. DIXON, MAYOR

**ATTEST:**

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LEILANI I. BROWN, CITY CLERK

**APPROVED AS TO FORM:**  
CITY ATTORNEY'S OFFICE

  
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AARON C. HARP, CITY ATTORNEY