



**CITY OF NEWPORT BEACH  
BUILDING AND FIRE BOARD OF APPEALS STAFF REPORT**

February 11, 2014  
Agenda Item No. 1

**SUBJECT:** Additional Responsibilities for the Building and Fire Board of Appeals.

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**SUMMARY:**

Recent changes to the Newport Beach Municipal Code (NBMC) require the Board to hear appeals related to the City's Floodplain Management Ordinance. Additionally, changes to the building code require the Board to hear items that require ratification of the Chief Building Official's decision as it relates to accessibility hardships.

**RECOMMENDATION:**

NONE

**DISCUSSION:**

During the 2013 California Building Code adoption process, the City Council approved staff's recommendation to amend Section 15.50.180 of the NBMC that designates the Building and Fire Board of Appeals as the body to hear and decide appeals and variances to the City's Floodplain Management requirement per NBMC Chapter 15.50 (Exhibit 1).

The City's Floodplain Management ordinance requires buildings located in the Special Flood Hazard Areas (SFHA) to be elevated at or above the Base Flood Elevation (BFE). Currently, the BFE is at 9.0 NGVD88. Per NBMC Section 15.50.180 applicants may apply for an appeal to the determination made by the Floodplain Administrator. The Floodplain Administrator has the responsibility of enforcing the Floodplain Management provisions of the NBMC. An appeal may be filed when it is alleged there is an error in requirement, decision, or determination made by the Floodplain Administrator. Additionally, the Board shall review and decide requests for variances to the same requirement.

Another important change occurred in the 2013 California Building Code (CBC) with regard to ratifying accessibility hardships. California Building Code Section 11B-202.4 Exception 8 (Exhibit 2) requires: if the construction cost exceeds \$143,300 and the Chief Building Official determines that the cost of accessibility compliance is an unreasonable hardship, then the details of the findings shall be recorded and entered into the files and be subject to ratification by the Building and Fire Board of Appeals.

**PUBLIC NOTICE:**

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the Building & Fire Board of Appeals considers the item).

Submitted by:

  
Seimone Jurjis  
Chief Building Official

Attachments:

Exhibit 1 – NBMC Chapter 15.50 – Floodplain Management  
Exhibit 2 – 2013 California Building Code Section 11B.202.4

# **Exhibit No. 1**

NBMC Chapter 15.50 – Floodplain Management

## 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.
- 15.50.210 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.

### **15.50.010 Statutory Authorization.**

The Legislature of the State of California has in Government Code Sections 65302, 65560 and 65800 conferred upon local government units authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City Council of the City of Newport Beach does ordain as set out in this chapter. (Ord. 93-5 § 1 (part), 1993)

### **15.50.020 Findings of Fact.**

A. The flood hazard areas of the City of Newport Beach are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and

governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.

B. These flood losses are caused by uses that are inadequately elevated, floodproofed, or protected from flood damage. The cumulative effect of obstructions in areas of special flood hazards which increase flood heights and velocities also contribute to the flood loss. (Ord. 93-5 § 1 (part), 1993)

#### **15.50.030 Statement of Purpose.**

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

- A. To protect human life and health;
- B. To minimize expenditure of public money for costly flood control projects;
- C. To minimize the need for rescue and relief efforts associated with flooding which is generally undertaken at the expense of the general public;
- D. To minimize prolonged business interruptions;
- E. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazard;
- F. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future blight areas caused by flood damage;
- G. To ensure that potential buyers are notified that property is in an area of special flood hazard; and
- H. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions. (Ord. 93-5 § 1 (part), 1993)

#### **15.50.040 Methods of Reducing Flood Losses.**

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

- A. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or flood heights or velocities;
- B. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- C. Controlling the alteration of natural floodplain, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
- D. Control filling, grading, dredging, and other development which may increase flood damage; and
- E. Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas. (Ord. 93-5 § 1 (part), 1993)

**15.50.050 Definitions.**

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

"Addition" means any additional building square footage added to the lot.

"Addition cost" means the "addition" square footage multiplied by the cost per foot average as determined by the Building Official.

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

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

"Area of special flood-related erosion hazard" is 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 flood insurance rate map (FIRM).

"Area of special flood hazard." See "Special flood hazard area."

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

"Base flood" means a flood, which has a one percent chance of being equaled or exceeded in any given year (also called the "one hundred (100)-year flood"). Base flood is the term used through this chapter.

"Basement" means any area of the building having its floor subgrade, i.e., 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 which is not part of the structural support of the building and which is designed to break away under abnormally high tides or wave action without causing damage to the structural integrity of the building on which they are used or any buildings to which they might be carried by flood waters. A breakaway wall shall have a safe design loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot. Use of breakaway walls must be certified by a registered engineer or architect and shall meet the following conditions:

1. Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and
2. 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." See "Structure."

"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 a flood insurance rate map (FIRM) as Zone VE, or V.

"Current value of the structure" means the existing structure square footage multiplied by the cost per foot average as determined by the Building Official.

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

"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 are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

"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, the construction of streets, and either final site grading or the pouring of concrete pads).

"Flood, flooding, or flood water" means:

1. A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and/or mudslides; and
2. The condition resulting from flood-related erosion.

"Flood boundary and floodway map (FBFM)" means the official map on which the Federal Emergency Management Agency or Federal Insurance and Mitigation Administration has delineated both the areas of special flood hazards and the floodway.

"Flood hazard boundary map" means the official map on which the Federal Emergency Management Agency or Federal Insurance and Mitigation Administration has delineated the areas of flood hazards.

"Flood insurance rate map (FIRM)" means the official map on which the Federal Emergency Management Agency or Federal Insurance and Mitigation Administration 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 provided by the Federal Insurance and Mitigation Administration that includes flood profiles, the flood insurance rate map, the flood boundary and floodway map, and the water surface elevation of the base flood.

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"Floodplain or flood-prone area" means any land area susceptible to being inundated by water from any source. See "Flooding."

"Floodplain Administrator" is the individual appointed to administer and enforce the floodplain management regulations.

"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 works, floodplain management regulations, and open space plans.

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

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

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

"Fraud and victimization" as related to Section 15.50.190, Variances, of this chapter, means that the variance granted must not cause fraud on or victimization of the public. In examining this requirement, the City of Newport Beach will consider the fact that every newly constructed building adds to government responsibilities and remains a part of the community for fifty (50) to one hundred (100) years. Buildings that are permitted to be constructed below the base flood elevation are subject during all those years to increased risk of damage from floods, while future owners of the property and the community as a whole are subject to all the costs, inconvenience, danger, and suffering that those increased flood damages bring. In addition, future owners may purchase the property, unaware that it is subject to potential flood damage, and can be incurred only at very high flood insurance rates.

"Functionally dependent use" means a use which 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, and 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 related to Section 15.50.190, Variances, of this chapter, means the exceptional hardship that would result from a failure to grant the requested variance. The City of Newport Beach 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 one's 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 slightly different use than originally intended.

"Highest adjacent grade" means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

"Historic structure" means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
4. 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 (see "basement") is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter. (Note: This definition allows garages serving one or two dwelling units to be built at grade. Below grade garages serving one or two dwelling units are not allowed as they are considered to be basements.)

"Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

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

"Mudslide" (i.e., mudflow) describes a condition where there is a river, flow or inundation of liquid mud down a hillside, usually as a result of a dual condition of loss of brush cover and the subsequent accumulation of water on the ground, preceded by a period of unusually heavy or sustained rain.

"Mudslide (i.e., mudflow) prone area" means an area with land surfaces and slopes of unconsolidated material where the history, geology, and climate indicate a potential for mudflow.

"New construction," for floodplain management purposes, means structures for which the start of construction commenced on or after the effective date of floodplain management regulations adopted by this community, and includes any subsequent improvements to such structures.

"New 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 are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulations adopted by this community.

"North American Vertical Datum of 1988 (NAVD)" means, for the purpose of National Flood Insurance Program, the vertical datum to which base flood elevations shown on a community's flood insurance rate map are referenced.

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

"One-hundred-year flood" or "100-year flood." See "Base flood."

"Primary frontal dune" means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively mild slope.

"Principal structure" means a structure used for the principal use of the property as distinguished from an accessory use.

"Public safety and nuisance" as related to Section 15.50.190, Variances, of this chapter means that the granting of a variance must not result in anything which 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.

"Recreational vehicle" means a vehicle which is:

1. Built on a single chassis;
2. Four hundred (400) square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light-duty truck; and
4. 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 in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Remodel" means any reconstruction, rehabilitation or renovation of an existing structure whereby no additional floor area is added to an existing structure.

"Remodel cost" means the cost of the remodel as determined by the Building Official.

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

"Sheet flow area." See "Area of shallow flooding."

"Special flood hazard area (SHFA)" means an area having special flood, mudslide (i.e., mudflow) or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, AE, A99, AH, VE or V.

"Start of construction" includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within one hundred eighty (180) days of the permit. The actual start means either the first placement or permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main structure. 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 that is principally above ground; this includes a gas or liquid storage tank or a manufactured home.

"Substantial damage" means any damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition (see "Remodel cost") would equal or exceed fifty (50) percent of the current value of the structure before the damage occurred.

"Substantial improvement" means any new construction, "remodel" or "addition," where the remodel cost plus the addition cost is at least fifty (50) percent of the current value of the structure. This term includes structures, which have incurred substantial damage, regardless of the actual repair work performed. However, the term does not include:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary or safety code specifications which have been identified by the local Code Enforcement Official and which are the minimum necessary to assure safe living conditions; or

2. Any alteration of a historic structure; provided, that the alteration will not preclude the structure's continued designation as a historic structure.

"V zone." See "Coastal high hazard area."

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

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

"Water surface elevation" means the height, in relation to the North American Vertical Datum (NAVD) of 1988, (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. (Ord. 2011-5 § 8 (part), 2011: Ord. 2005-5 § 4 (part), 2005: Ord. 2002-20 § 8 (part), 2002: Ord. 93-5 § 1 (part), 1993)

#### **15.50.060 Lands to Which this Chapter Applies.**

This chapter shall apply to all areas of special flood hazards within the jurisdiction of the City of Newport Beach. (Ord. 93-5 § 1 (part), 1993)

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

The areas of special flood hazard identified by the Federal Insurance Administration of the Federal Emergency Management Agency in the "Flood Insurance Study Orange County and Incorporate Areas," dated December 3, 2009, with an accompanying flood insurance rate map and flood boundary and floodway maps dated December 3, 2009, and all subsequent revisions, are adopted by reference and declared to be a part of this chapter. This flood insurance study is on file at 3300 Newport Boulevard, Newport Beach, California (92659-1768). This flood insurance study 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. (Ord. 2011-5 § 8 (part), 2011: Ord. 2005-5 § 4 (part), 2005: Ord. 95-36 § 1, 1995: Ord. 93-5 § 1 (part), 1993)

#### **15.50.080 Compliance.**

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this chapter and other applicable regulations. Violations of the provisions of this chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Nothing herein shall prevent the City Council from taking such lawful action as is necessary to prevent or remedy any violation. (Ord. 93-5 § 1 (part), 1993)

**15.50.090 Abrogation and Greater Restrictions.**

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This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another ordinance, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail. (Ord. 93-5 § 1 (part), 1993)

**15.50.100 Interpretation.**

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

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under State statutes. (Ord. 93-5 § 1 (part), 1993)

**15.50.110 Warning and Disclaimer of Liability.**

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The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the City of Newport Beach, any officer or employee thereof, or the Federal Insurance Administration, Federal Agency Management Agency for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder. (Ord. 93-5 § 1 (part), 1993)

**15.50.120 Severability.**

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This chapter and the various parts thereof are hereby declared to be severable. Should any section of this chapter be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the chapter as a whole, or any portion thereof other than the section so declared to be unconstitutional or invalid. (Ord. 93-5 § 1 (part), 1993)

**15.50.130 Designation of the Floodplain Administrator.**

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The City Manager or his designated representative is hereby appointed to administer, implement and enforce this chapter by granting or denying development permit applications in accordance with its provisions. The Floodplain Administrator shall also:

- A. Take action to remedy violations of this chapter;
- B. Complete and submit a biennial report to FEMA; and
- C. Assure the community's General Plan is consistent with floodplain management objectives. (Ord. 2011-5 § 8 (part), 2011; Ord. 2002-20 § 8 (part), 2002; Ord. 93-5 § 1 (part), 1993)



**15.50.135 Permit Review.**

The Floodplain Administrator or his designated representative shall review all development permits to determine:

- A. Permit requirements of this chapter have been satisfied, including determination of substantial improvement and substantial damage of existing structures;
- B. All other required State and Federal permits have been obtained;
- C. The site is reasonably safe from flooding;
- D. 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. This means that the cumulative effect of the proposed development when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point; and
- E. All Letters of Map Revision (LOMRs) for flood control projects are approved prior to the issuance of building permits. Building permits must not be issued based on Conditional Letters of Map Revision (CLOMRs). Approved CLOMRs allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition. (Ord. 2011-5 § 8 (part), 2011)

**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, Basis for Establishing the Areas of Special Flood Hazard, the Floodplain Administrator or his designated representative shall obtain, review and reasonably utilize any base flood elevation data available from a Federal, State or other source, in order to administer Sections 15.50.200 through 15.50.250. (Ord. 2011-5 § 8 (part), 2011; Ord. 2002-20 § 8 (part), 2002; Ord. 93-5 § 1 (part), 1993)

**15.50.145 Development of Substantial Improvement and Substantial Damage Procedures.**

The Floodplain Administrator or his designated representative shall:

- A. Answer to questions about substantially damaged buildings, develop detailed procedures for identifying and administering requirements for substantial improvement and substantial damage to include defining "current value of the structure."
- B. Assure procedures are coordinated with other departments/divisions and implemented by community staff. (Ord. 2011-5 § 8 (part), 2011)

**15.50.150 Documentation of Floodplain Development.**

The Floodplain Administrator shall obtain and maintain for public inspection and make available as needed:

- A. The certification required in Section 15.50.200(C)(1)(e);

- B. The certification required in Section 15.50.200(C)(2)(c) (elevation or floodproofing of nonresidential structures);
- C. The certified elevation required in Section 15.50.220(B) (subdivision standards). (Ord. 2002-20 § 8 (part), 2002; Ord. 93-5 § 1 (part), 1993)

#### **15.50.160 Notification of Other Agencies.**

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- A. Alteration or Relocation of a Watercourse. The Floodplain Administrator or his designated representative shall:
1. Notify adjacent communities and the California Department of Water Resources prior to alteration or relocation;
  2. Submit evidence of such notification to the Federal Emergency Management Agency;
  3. Assure that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained.
- B. Base Flood Elevation Changes Due to Physical Alterations. The Floodplain Administrator or his designated representative shall:
1. Within six months of information becoming available or project completion, whichever comes first, submit or assure that the permit applicant submits technical or scientific data to FEMA for a Letter of Map Revision (LOMR).
  2. Verify all LOMRs for flood control projects are approved prior to the issuance of building permits. Building permits must not be issued based on Conditional Letters of Map Revision (CLOMRs). Approved CLOMRs allow construction of the proposed flood control project and land preparation as specified in the "start of construction" definition. Such submissions are necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and floodplain management requirements are based on current data.
- C. Changes in Corporate Boundaries. The Floodplain Administrator or his designated representative shall notify FEMA in writing whenever the corporate boundaries have been modified by annexation or other means and include a copy of a map of the community clearly delineating the new corporate limits. (Ord. 2011-5 § 8 (part), 2011)

#### **15.50.170 Map Determinations.**

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The Floodplain Administrator shall make interpretations where needed, as to the exact location of the boundaries of the area of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Section 15.50.180. (Ord. 2002-20 § 8 (part), 2002; Ord. 93-5 § 1 (part), 1993)



**15.50.180 Appeals and Variance Procedure.**

A. The Building and Fire Board of Appeals 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 Building and Fire Board of Appeals shall review and decide requests for variances. In ruling on such applications, the Building and Fire Board of Appeals 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 subsection (B) of this section 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 of subsection (B) of this section 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 Building and Fire Board of Appeals may appeal such decision to the City Council as provided in Title 20.

F. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Insurance and Mitigation Administration in the biennial report. (Ord. 2013-24 § 14, 2013; Ord. 2002-20 § 8 (part), 2002; Ord. 93-5 § 1 (part), 1993)

#### **15.50.190 Conditions for Variances.**

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

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 not result in increased flood heights, additional threats to public safety, extraordinary public expense, 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 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 that the structure will be permitted to be built with a lowest floor elevation below the regulatory flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced flood lowest floor elevation. A copy of the notice shall be recorded by the Floodplain Board in the office of the Orange County Recorder and shall be recorded in a manner so that it appears in chain of title of the affected parcel of land. (Ord. 2011-5 § 8 (part), 2011; Ord. 2002-20 § 8 (part), 2002; Ord. 93-5 § 1 (part), 1993)

#### **15.50.200 Standards of Construction.**

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In all areas of special flood hazards, all substantial improvements, including all existing construction, 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. With zones AH or AO, 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 Insurance and Mitigation Administration, or 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.

4. Recreational Vehicles. All recreational vehicles shall:

- a. Be on the site for fewer than one hundred eighty (180) consecutive days;
- 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; or
- c. Meet the permit requirements of subsection (C) of this section.

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;
5. Plans for any walls to be used to enclose space below the base flood levels.

E. Floodways. Encroachments into floodways are prohibited, including fill, new construction substantial improvements, and other development, unless certification by a registered civil engineer is provided demonstrating that the proposed encroachment shall not result in any increase in flood

levels during the occurrence of the base flood discharge. (Ord. 2011-5 § 8 (part), 2011: Ord. 2005-5 § 4 (part), 2005: Ord. 2002-20 § 8 (part), 2002: Ord. 95-36 § 2, 1995: Ord. 93-5 § 1 (part), 1993)

#### **15.50.210 Standards for Utilities.**

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- A. All new and replacement electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
- B. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
- C. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding. (Ord. 2002-20 § 8 (part), 2002: Ord. 93-5 § 1 (part), 1993)

#### **15.50.220 Standards for Subdivisions.**

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- A. All preliminary subdivision proposals shall identify the flood hazard area and elevation of the base flood;
- B. All final 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 subdivision proposals shall be consistent with the need to minimize flood damage;
- D. All 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 subdivisions shall provide adequate drainage to reduce exposure to flood hazards;
- F. A development permit shall be obtained before construction or development begins on a subdivision 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 designated representative and shall include but not be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of each structure within the subdivision; 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 of this chapter;
  - 4. Description of the extent to which any watercourse will be altered or relocated as a result of the proposed development;
  - 5. Plans for any walls to be used to enclose space below the base flood level; and

6. 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. For purposes of this chapter, "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;
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;
6. Take action to remedy violations of this chapter. (Ord. 2005-5 § 4 (part), 2005: Ord. 2002-20 § 8 (part), 2002: Ord. 93-5 § 1 (part), 1993)

#### **15.50.230 Coastal High Hazard Areas.**

Within coastal high hazard areas as established under Section 15.50.070 the following standards shall apply.

- A. All substantial improvements, including all existing construction, and manufactured homes, 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 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. Substantial improvements, including all existing construction, 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 and storage;

- D. Fill shall not be used for structural support of buildings;
- E. Manmade 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 structural member of the lowest floor (excluding pilings or columns) of all new and substantially improved structures, and whether such structures contain a basement. (Ord. 2011-5 § 8 (part), 2011: Ord. 2002-20 § 8 (part), 2002: Ord. 93-5 § 1 (part), 1993)

#### **15.50.240 Mudslide Prone Areas.**

A. The Floodplain Administrator shall review permits for proposed construction and development to determine if it is proposed within a mudslide area.

B. Permits shall be reviewed to determine that the proposed site and improvement will be reasonably safe from mudslide hazards. Factors to be considered in making this determination include but are not limited to the:

- 1. Type and quality of soils,
- 2. Evidence of ground water or surface water problems,
- 3. Depth and quality of any fill,
- 4. Overall slope of the site, and
- 5. Weight that any proposed development will impose on the slope.

C. Within areas which may have mudslide hazards, the Floodplain Administrator shall require that:

- 1. A site investigation and further review be made by persons qualified in geology and soils engineering;
- 2. The proposed grading, excavation, new construction, and substantial improvement be adequately designed and protected against mudslide damages;
- 3. The proposed grading, excavations, new construction, and substantial improvement not aggravate the existing hazard by creating either on-site or off-site disturbances; and
- 4. Drainage, planting, watering, and maintenance not endanger slope stability. (Ord. 2002-20 § 8 (part), 2002: Ord. 93-5 § 1 (part), 1993)



**15.50.250 Flood-Related Erosion-Prone Areas.**

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- A. The Floodplain Administrator shall require permits for proposed construction and other development within all flood-related erosion-prone areas as known to the community;
- B. Permit applications shall be reviewed to determine whether the proposed site alterations and improvements will be reasonably safe from flood-related erosion and will not cause flood-related erosion hazards or otherwise aggravate the existing hazard;
- C. If a proposed improvement is found to be in the path of flood-related erosion or would increase the erosion hazard, such improvement shall be relocated or adequate protective measures shall be taken to avoid aggravating the existing erosion hazard;
- D. Within zone VE on the flood insurance rate map, a setback is required for all new development from the ocean, lake, bay, riverfront or other body of water to create a safety buffer consisting of a natural vegetative or contour strip. This buffer shall be designated according to the flood-related erosion hazard and erosion rate, in relation to the anticipated "Useful life" of structures, and depending upon the geologic, hydrologic, topographic, and climatic characteristics of the land. The buffer may be used for suitable open space purposes, such as for agricultural, forestry, outdoor recreation and wildlife habitat areas, and for other activities using temporary and portable structures only. (Ord. 2005-5 § 4 (part), 2005: Ord. 2002-20 § 8 (part), 2002: Ord. 93-5 § 1 (part), 1993)

**The Newport Beach Municipal Code is current through Ordinance 2013-29, passed January 14, 2014.**

Disclaimer: The City Clerk's Office has the official version of the Newport Beach Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

## **Exhibit No. 2**

2013 California Building Code Section 11B

## DIVISION 2: SCOPING REQUIREMENTS

### 11B-201 Application

**11B-201.1 Scope.** All areas of newly designed and newly constructed buildings and facilities and altered portions of existing buildings and facilities shall comply with these requirements.

**11B-201.2 Application based on building or facility use.** Where a site, building, facility, room, or space contains more than one use, each portion shall comply with the applicable requirements for that use.

**11B-201.3 Temporary and permanent structures.** These requirements shall apply to temporary and permanent buildings and facilities.

**11B-201.4 Construction support facilities.** *These requirements shall apply to temporary or permanent construction support facilities for uses and activities not directly associated with the actual processes of construction, including but not limited to offices, meeting rooms, plan rooms, other administrative or support functions. When provided, toilet and bathing facilities serving construction support facilities shall comply with Section 11B-213. When toilet and bathing facilities serving construction support facilities are provided by portable units, at least one of each type shall be accessible and connected to the construction support facilities it serves by an accessible route.*

**Exception:** *During construction an accessible route shall not be required between site arrival points or the boundary of the area of construction and the entrance to the construction support facilities if the only means of access between them is a vehicular way not providing pedestrian access.*

### 11B-202 Existing buildings and facilities

**11B-202.1 General.** Additions and alterations to existing buildings or facilities shall comply with Section 11B-202.

**11B-202.2 Additions.** Each addition to an existing building or facility shall comply with the requirements for new construction and shall comply with Section 11B-202.4.

**11B-202.3 Alterations.** Where existing elements or spaces are altered, each altered element or space shall comply with the applicable requirements of Division 2, including Section 11B-202.4.

#### Exceptions:

1. *Reserved.*
2. **Technically infeasible.** In alterations, where the enforcing authority determines compliance with applicable requirements is technically infeasible, the alteration shall provide equivalent facilitation or comply with the requirements to the maximum extent feasible. *The details of the finding that full compliance with the requirements is technically infeasible shall be recorded and entered into the files of the enforcing agency.*

3. Residential dwelling units not required to be accessible in compliance with *this code* shall not be required to comply with Section 11B-202.3.

**11B-202.3.1 Prohibited reduction in access.** An alteration that decreases or has the effect of decreasing the accessibility of a building or facility below the requirements for new construction at the time of the alteration is prohibited.

**11B-202.3.2 Extent of application.** An alteration of an existing element, space, or area of a building or facility shall not impose a requirement for accessibility greater than required for new construction.

**11B-202.3.3 Alteration of single elements.** *If alterations of single elements, when considered together, amount to an alteration of a room or space in a building or facility, the entire room or space shall be made accessible.*

**11B-202.4 Path of travel requirements in alterations, additions and structural repairs.** *When alterations or additions are made to existing buildings or facilities, an accessible path of travel to the specific area of alteration or addition shall be provided. The primary accessible path of travel shall include:*

1. A primary entrance to the building or facility,
2. Toilet and bathing facilities serving the area,
3. Drinking fountains serving the area,
4. Public telephones serving the area, and
5. Signs.

#### Exceptions:

1. Residential dwelling units shall comply with Section 11B-233.3.4.2.
2. *If the following elements of a path of travel have been constructed or altered in compliance with the accessibility requirements of the immediately preceding edition of the California Building Code, it shall not be required to retrofit such elements to reflect the incremental changes in this code solely because of an alteration to an area served by those elements of the path of travel:*
  1. A primary entrance to the building or facility,
  2. Toilet and bathing facilities serving the area,
  3. Drinking fountains serving the area,
  4. Public telephones serving the area, and
  5. Signs.
3. *Additions or alterations to meet accessibility requirements consisting of one or more of the following items shall be limited to the actual scope of work of the project and shall not be required to comply with Section 11B-202.4:*
  1. Altering one building entrance.
  2. Altering one existing toilet facility.

3. Altering existing elevators.
4. Altering existing steps.
5. Altering existing handrails.
4. Alterations solely for the purpose of barrier removal undertaken pursuant to the requirements of the Americans with Disabilities Act (Public Law 101-336, 28 C.F.R., Section 36.304) or the accessibility requirements of this code as those requirements or regulations now exist or are hereafter amended consisting of one or more of the following items shall be limited to the actual scope of work of the project and shall not be required to comply with Section 11B-202.4:
  1. Installing ramps.
  2. Making curb cuts in sidewalks and entrance.
  3. Repositioning shelves.
  4. Rearranging tables, chairs, vending machines, display racks, and other furniture.
  5. Repositioning telephones.
  6. Adding raised markings on elevator control buttons.
  7. Installing flashing alarm lights.
  8. Widening doors.
  9. Installing offset hinges to widen doorways.
  10. Eliminating a turnstile or providing an alternative accessible route.
  11. Installing accessible door hardware.
  12. Installing grab bars in toilet stalls.
  13. Rearranging toilet partitions to increase maneuvering space.
  14. Insulating lavatory pipes under sinks to prevent burns.
  15. Installing a raised toilet seat.
  16. Installing a full-length bathroom mirror.
  17. Repositioning the paper towel dispenser in a bathroom.
  18. Creating designated accessible parking spaces.
  19. Removing high-pile, low-density carpeting.
5. Alterations of existing parking lots by resurfacing and/or restriping shall be limited to the actual scope of work of the project and shall not be required to comply with Section 11B-202.4.
6. The addition or replacement of signs and/or identification devices shall be limited to the actual scope of work of the project and shall not be required to comply with Section 11B-202.4.
7. Projects consisting only of heating, ventilation, air conditioning, reroofing, electrical work not involving placement of switches and receptacles, cosmetic work that does not affect items regulated by this

code, such as painting, equipment not considered to be a part of the architecture of the building or area, such as computer terminals and office equipment shall not be required to comply with Section 11B-202.4 unless they affect the usability of the building or facility.

- ⑧ When the adjusted construction cost is less than or equal to the current valuation threshold, as defined in Chapter 2, Section 202, the cost of compliance with Section 11B-202.4 shall be limited to 20 percent of the adjusted construction cost of alterations, structural repairs or additions. When the cost of full compliance with Section 11B-202.4 would exceed 20 percent, compliance shall be provided to the greatest extent possible without exceeding 20 percent.

When the adjusted construction cost exceeds the current valuation threshold, as defined in Chapter 2, Section 202, and the enforcing agency determines the cost of compliance with Section 11B-202.4 is an unreasonable hardship, as defined in Chapter 2, Section 202, full compliance with Section 11B-202.4 shall not be required. Compliance shall be provided by equivalent facilitation or to the greatest extent possible without creating an unreasonable hardship; but in no case shall the cost of compliance be less than 20 percent of the adjusted construction cost of alterations, structural repairs or additions. The details of the finding of unreasonable hardship shall be recorded and entered into the files of the enforcing agency and shall be subject to Chapter 1, Section 1.9.1.5, Special Conditions for Persons with Disabilities Requiring Appeals Action Ratification.

For the purposes of this exception, the adjusted construction cost of alterations, structural repairs or additions shall not include the cost of alterations to path of travel elements required to comply with Section 11B-202.4.

In choosing which accessible elements to provide, priority should be given to those elements that will provide the greatest access in the following order:

1. An accessible entrance;
2. An accessible route to the altered area;
3. At least one accessible restroom for each sex;
4. Accessible telephones;
5. Accessible drinking fountains; and
6. When possible, additional accessible elements such as parking, storage and alarms.

If an area has been altered without providing an accessible path of travel to that area, and subsequent alterations of that area or a different area on the same path of travel are undertaken within three years of the original alteration, the total cost of alterations to the areas on that path of travel during the preceding three-year period shall be considered in determining whether the cost of making that path of travel accessible is disproportionate.



9. *Certain types of privately funded, multistory buildings and facilities were formerly exempt from accessibility requirements above and below the first floor under this code, but as of April 1, 1994 are no longer exempt due to more restrictive provisions in the federal Americans with Disabilities Act. In alteration projects involving buildings and facilities previously approved and built without elevators, areas above and below the ground floor are subject to the 20-percent disproportionately provisions described in Exception 8, above, even if the value of the project exceeds the valuation threshold in Exception 8. The types of buildings and facilities are:*

1. *Office buildings and passenger vehicle service stations of three stories or more and 3,000 or more square feet (279 m<sup>2</sup>) per floor.*
2. *Offices of physicians and surgeons.*
3. *Shopping centers.*
4. *Other buildings and facilities three stories or more and 3,000 or more square feet (279 m<sup>2</sup>) per floor if a reasonable portion of services sought and used by the public is available on the accessible level.*

*For the general privately funded multistory building exception applicable to new construction and alterations, see Section 11B-206.2.3, Exception 1.*

*The elevator exception set forth in this section does not obviate or limit in any way the obligation to comply with the other accessibility requirements in this code. For example, floors above or below the accessible ground floor must meet the requirements of this section except for elevator service. If toilet or bathing facilities are provided on a level not served by an elevator, then toilet or bathing facilities must be provided on the accessible ground floor.*

**11B-202.5 Alterations to qualified historic buildings and facilities.** Alterations to a qualified historic building or facility shall comply with the *State Historical Building Code, Part 8, Title 24, of the California Code of Regulations.*

**Exception: Reserved.**

### **11B-203 General exceptions**

**11B-203.1 General.** Sites, buildings, facilities, and elements are exempt from these requirements to the extent specified by 11B-203.

**11B-203.2 Construction sites.** Structures and sites directly associated with the actual processes of construction, including but not limited to, scaffolding, bridging, materials hoists, materials storage and construction trailers shall not be required to comply with these requirements or to be on an accessible route. Portable toilet units provided for use exclusively by construction personnel on a construction site shall not be required to comply with Section 11B-213 or to be on an accessible route.

**11B-203.3 Raised areas.** Areas raised primarily for purposes of security, life safety, or fire safety, including but not limited to, observation or lookout galleries, prison guard towers, fire

towers or life guard stands shall not be required to comply with these requirements or to be on an accessible route.

**11B-203.4 Limited access spaces.** Spaces not customarily occupied and accessed only by ladders, catwalks, crawl spaces or very narrow passageways shall not be required to comply with these requirements or to be on an accessible route.

**11B-203.5 Machinery spaces.** Spaces frequented only by service personnel for maintenance, repair or occasional monitoring of equipment shall not be required to comply with these requirements or to be on an accessible route. Machinery spaces include, but are not limited to, elevator pits or elevator penthouses; mechanical, electrical or communications equipment rooms; piping or equipment catwalks; water or sewage treatment pump rooms and stations; electric substations and transformer vaults; and highway and tunnel utility facilities.

**11B-203.6 Single occupant structures.** Single occupant structures accessed only by passageways below grade or elevated above standard curb height, including but not limited to, toll booths that are accessed only by underground tunnels, shall not be required to comply with these requirements or to be on an accessible route.

**11B-203.7 Detention and correctional facilities.** In detention and correctional facilities, common use areas that are used only by inmates or detainees and security personnel and that do not serve holding cells or housing cells required to comply with Section 11B-232, shall not be required to comply with these requirements or to be on an accessible route.

**11B-203.8 Residential facilities.** In public housing residential facilities, common use areas that do not serve residential dwelling units required to provide mobility features complying with Sections 11B-809.2 through 11B-809.4 and adaptable features complying with Chapter 11A, Division IV shall not be required to comply with these requirements or to be on an accessible route.

**11B-203.9 Employee work areas.** Spaces and elements within employee work areas shall only be required to comply with Sections 11B-206.2.8, 11B-207.1, and 11B-215.3 and shall be designed and constructed so that individuals with disabilities can approach, enter, and exit the employee work area.

**11B-203.10 Raised refereeing, judging and scoring areas.** Raised structures used solely for refereeing, judging or scoring a sport shall not be required to comply with these requirements or to be on an accessible route. *An accessible route complying with Division 4 shall be provided to the ground- or floor-level entry points, where provided, of stairs, ladders, or other means of reaching the raised elements or areas.*

**11B-203.11 Water slides.** Water slides shall not be required to comply with these requirements or to be on an accessible route. *An accessible route complying with Division 4 shall be provided to the ground- or floor-level entry points, where provided, of stairs, ladders or other means of reaching the raised elements or areas.*

**11B-203.12 Animal containment areas.** Animal containment areas that are not for public use shall not be required to comply with these requirements or to be on an accessible