

ORDINANCE NO. 3271

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, AMENDING CERTAIN SECTIONS OF CHAPTER 13 OF THE ONTARIO MUNICIPAL CODE RELATING TO THE FLOOD DAMAGE PREVENTION PROGRAM.

WHEREAS the City of Ontario by Ordinance Nos. 2109 (1980), 2409 (1988) and 2991 (2014) established the Flood Damage Prevention Program ("Program"), which is codified in Chapter 8-13 of the Ontario Municipal Code; and

WHEREAS the Federal Emergency Management Agency ("FEMA") manages the National Flood Insurance Program and publishes maps with flood insurance related information; and

WHEREAS FEMA undertook a review of the City's current Flood Damage Prevention Program and has notified the City that it is not in compliance with current requirements; and

WHEREAS FEMA has recommended revisions to the City's Program; and

WHEREAS FEMA requires the City to incorporate updated regulations into the Program; and

WHEREAS the City wishes to amend certain sections of Chapter 13 of the Municipal Code to comply with the direction provided by FEMA.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ONTARIO DOES ORDAIN AS FOLLOWS:

SECTION 1. The recitals above are true and correct and are hereby incorporated herein by this reference.

SECTION 2. Amendment. Section 8-13.201 ("Definitions") is hereby revised to read as follows:

"(g) "Base flood elevation" means the elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM).

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

(i) "Breakaway walls" means 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 any damage to the structural integrity of the building on which they

are used or any buildings to which they might be carried by flood waters. A breakaway wall shall have a safe design loading resistance of not less than ten (10) and no more than twenty (20) pounds per square foot. Use of breakaway walls must be certified by a registered engineer or architect and shall meet the following conditions:

(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.

(j) "Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

(k) "Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from (1) the overflow of flood waters, (2) the unusual and rapid accumulation of runoff of surface waters from any source, and/or (3) the collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in this definition.

(l) "Flood Boundary and Floodway Map" means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of flood hazard and the floodway.

(m) "Flood Insurance Rate Map (FIRM)" means the official map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

(n) "Flood Insurance Study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the FIRM, the Flood Boundary and Floodway Map, and the water surface elevation of the base flood.

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

(p) "Floodplain management" means the operation of an overall program of corrective and preventive measures for reducing flood damage including but not limited to emergency preparedness plans, flood control works and floodplain management regulations.

(q) "Floodplain management regulations" means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance and erosion control ordinance) and other applications of police power. The term describes such state and local regulations in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

(r) "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.

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

(t) "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, but does not include long-term storage or related manufacturing facilities.

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

(v) "Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

(w) "Manufactured home" means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers and other similar vehicles placed on a site for greater than one hundred eighty (180) consecutive days. "Manufactured home" does not include a "recreational vehicle."

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

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

(z) “New construction” means, for floodplain management purposes, structures for which the “start of construction” commenced on after the effective date of a floodplain management regulation adopted by this community.

(aa) “One hundred year flood” or “100-year flood” means a flood which has a one percent (1%) annual probability of being equaled or exceeded. It is identical to the “base flood,” which will be the term used throughout this chapter.

(bb) “Person” means an individual or his agent, firm, partnership, association or corporation, or agent of the aforementioned groups, or this state or its agencies or political subdivisions.

(cc) “Recreational vehicle” means a vehicle which is all of the following:

- (1) Built on a single chassis;
- (2) Four hundred 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.

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

(ee) “Riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, and the like.

(ff) “Special flood hazard area (SFHA)” means an area having special flood or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, A99, or AH.

(gg) “Start of construction” includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or

walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

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

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

(jj) (1) "Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the market value of the structure either:

- (i) Before the improvement or repair is started; or
- (ii) If the structure has been damaged and is being restored, before the damage occurred.

(2) For the purposes of this definition, "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

- (i) Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or
- (ii) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

(kk) "Variation" means a grant of relief from the requirements of this chapter, which permits construction in a manner which would otherwise be prohibited by this chapter.

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

(mm) "Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. 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."

SECTION 3. Amendment. Addition of subsection (5) to subsection (a) of Section 8-13.403 is hereby added to read as follows:

“(5) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps when the analyses indicate changes in base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within 6 months of such data becoming available.”

SECTION 4. Amendment. Subsection (f) of Section 8-13.403 is hereby added to read as follows:

“(f) Substantial improvement and substantial damage determinations. For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Building Official, in coordination with the Floodplain Administrator, shall:

(1) Require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work to the satisfaction of the Building Official; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.

(2) Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, when applicable, to the market value of the building or structure.

(3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage.

(4) Notify the applicant when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the building code is required and notify the applicant when it is determined that work does not constitute substantial improvement or repair of substantial damage.”

SECTION 5. Amendment. Subsection (c) of Section 8-13.501 (“Standards of construction.”) is hereby amended to read as follows:

“(1) New construction and substantial improvements of any structure shall have the lowest habitable floor, including basement, elevated to at least one (1) foot above the base flood elevation. Nonresidential structures may meet the standards in §8-13.501(c)(3). Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered professional engineer or surveyor, or verified by the community building inspector to be properly elevated. Such certification or verification shall be provided to the Building Official.

(2) New construction and substantial improvement of any structure in Zone AH or AO shall have the lowest floor, including basement, elevated above the highest adjacent grade at least one (1) foot higher than the depth number specified in feet on the FIRM, or at least two (2) feet if no depth number is specified. Nonresidential structures may meet the standards in § 8-13.501(c)(3). Upon the completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a registered professional engineer or surveyor, or verified by the community building inspector to be properly elevated. Such certification or verification shall be provided to the Building Official.

(3) Nonresidential construction shall either be elevated in conformance with §8-13.501(c)(1) or (2) or, together with attendant utility and sanitary facilities:

- (i) Be floodproofed so that the structure is watertight with walls substantially impermeable to the passage of water to a minimum of one (1) foot above the base flood elevation,”

SECTION 6. Amendment. Subsection (d) of Section 8-13.601 (“Appeal board.”) is hereby deleted.

SECTION 7. Amendment. Subsection (a) of Section 8-13.504 (“Standards for manufactured homes.”) is hereby amended to read as follows:

“(a) Be elevated so that the lowest floor is a minimum of one (1) foot above the base flood elevation; and”

SECTION 8. Amendment. Subsection (a) of Section 8-13.602 (“Conditions for variance.”) is hereby amended to read as follows:

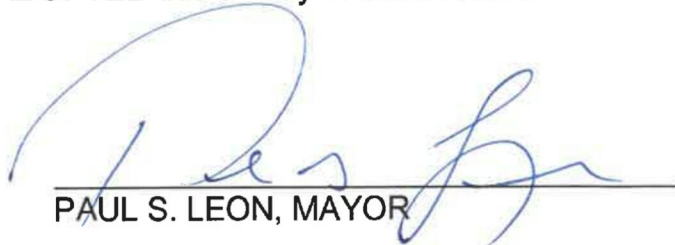
“(a) A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic structure upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the structure’s continued designation as a historic structure, and the variance is the minimum necessary to preserve the historic character and design of the structure. When the proposed work precludes the structure’s continued designation as a historic structure, a variance shall not be granted and the structure and any repair, improvement, and rehabilitation shall be subject to the requirements of the building code in conjunction with the provisions of this Ordinance.

SECTION 9. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid, unconstitutional or otherwise struck-down by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, paragraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more portions of this ordinance might be declared invalid.

SECTION 10. This Ordinance shall be become effective thirty (30) days from its adoption.

SECTION 11. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 5<sup>th</sup> day of March 2024.



PAUL S. LEON, MAYOR

ATTEST:



SHEILA MAUTZ, CITY CLERK

APPROVED AS TO FORM:



BEST BEST & KRIEGER LLP  
CITY ATTORNEY



