## Requiring Nonconversion Agreement for Enclosures Under Elevated Buildings – local technical code amendments (Part 2 building and Part 2.5 residential) and floodplain management ordinance text changes

Submit draft ordinances amending the flood provisions of the building code (in <track changes>) for review well in advance of first reading to [DWR\_NFIP@water.ca.gov](mailto:DWR_NFIP@water.ca.gov) or [FEMA-NFIP-R9@fema.dhs.gov](mailto:FEMA-NFIP-R9@fema.dhs.gov). Please put community name in subject line.

**Before you start:** Review the General Instructions for Amending the California Building Standards Code (CCR Title 24) to Adopt Higher Standards for Buildings and Development Located in Flood Hazard Areas.

**NFIP Community Rating System Credits.** Adoption and enforcement of this higher standard may qualify for CRS points (credits). Communities should review the [*CRS Coordinators Manual*](https://www.fema.gov/media-library/assets/documents/8768)and consult with their CRS Resource Specialists. FEMA/ISO determines which provisions qualify for points.

**Description****[[1]](#footnote-1):** The NFIP regulations and CCR Title 24 allow areas under elevated buildings to be enclosed with walls. Any enclosed area must be limited to use for parking of vehicles, storage, and building access. The NFIP regulations do not require any form of owner agreement regarding subsequent modification or conversion of enclosures. Walls of enclosed areas must meet specific requirements depending on the flood zone:

* In flood zones that start with “A”, walls are required to have flood openings.
* In Zone V/VE and Coastal A Zones (CAZ), walls are required to break away under certain flood loads and must also have flood openings.

NFIP flood insurance coverage (structure and contents) is more expensive if buildings have enclosed areas and coverage of enclosures is limited. In Zone V/VE, buildings with enclosures larger than 300 square feet in area are charged more than buildings with smaller enclosures.

**Inspection of Enclosures**. Some communities use nonconversion agreements that specify the community has the right to periodically inspect inside of enclosures.

Some communities require property owners to sign nonconversion agreements to acknowledge the restrictions on use of enclosures below elevated buildings and to agree not to modify or convert the enclosures. The objective is to reduce the likelihood that owners, including future owners, might convert enclosures to uses other than permitted uses of parking of vehicles, storage, and building access. Usually, nonconversion agreements are required to be recorded on or with property deeds and other property records to inform future owners of the use limitations. California Department of Water Resources offers a sample nonconversion agreement that can be modified to suit each community’s needs (a sample is also available in CRS Resources). As with all legal documents, communities should have nonconversion agreement forms reviewed for legal sufficiency.

**How Part 2 (building) addresses enclosures, by reference to ASCE 24:** Part 2 (building), by reference to ASCE 24, includes the basic, NFIP-consistent requirements for enclosed areas and walls below elevated buildings. Requirements for enclosures under buildings in flood zones that start with “A” are in ASCE 24 Section 2.6 and requirements for Zone V/VE and CAZ are in ASCE 24 Section 4.6.

**How Part 2.5 (residential) addresses enclosures:** Part 2.5 (residential) includes the basic, NFIP-consistent requirements for enclosed areas and walls below elevated dwellings. Requirements for all flood zones are in R322.1, requirements for flood zones that start with “A” are in R322.2, and requirements for Zone V/VE are in R322.3. When a FIRM shows a Limit of Moderate Wave Action (LiMWA) or a community otherwise designates a CAZ, the residential code treats CAZ like Zone V/VE, with an exception permitting backfilled stem wall foundations, provided the foundations are designed for wave loads, debris impact, erosion and local scour

**INSTRUCTIONS**

**Step 1.** Review the options shown below and determine whether the requirement for owners to submit signed Nonconversion Agreement should be done as amendments to both Part 2 and Part 2.5 or just Part 2.5 (dwellings), or is inclusion in local floodplain management regulations sufficient. Nonconversion agreements do not alter how buildings and enclosures are designed, which means some communities may determine it appropriate to include in local regulations, rather than the building code.

**Step 2.** If your intent is to apply the requirement ONLY to dwellings, then where you see **{select one: buildings / dwelling}**, pick “dwellings” and then use only the Part 2.5 amendment.

The texts shown below are drafted to apply to all enclosures. Variations might include requiring the agreement only for enclosures that are more than a specific height, or not requiring it for crawlspace foundations. Contact DWR technical support for guidance.

**Step 3. Amend Part 2 (all buildings except 1- and 2-family dwellings and townhouses less than three stories).** If the decision is to amend the codes, and if the requirements will apply to all buildings (not just dwellings), then add a section to the ordinance that adopts local amendments to Part 2. To make the changes discernable, maintain strikethrough and underlining.

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| *CCR Title 24, Part 2, Section 105.3 is hereby amended as follows:*  **105.3 Application for permit.** To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished by the department of building safety for that purpose. Such application shall:  1. Identify and describe the work to be covered by the permit for which application is made.  2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.  3. Indicate the use and occupancy for which the proposed work is intended.  4. Be accompanied by construction documents and other information as required in Section 107.  5. State the valuation of the proposed work.  6. Be signed by the applicant, or the applicant’s authorized agent.  7. Give such other data and information as required by the building official.  8. Include a nonconversion agreement signed by the applicant if the building in a flood hazard area has enclosed areas below the lowest floor. |

**Step 4. Amend Part 2.5 (all buildings except 1- and 2-family dwellings and townhouses less than three stories).** If the decision is to amend the codes, then add a section to the ordinance that adopts local amendments to Part 2.5. To make the changes discernable, maintain strikethrough and underlining.

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| *CCR Title 24, Part 2.5, Section R105.3 is hereby amended as follows:*  **R105.3 Application for permit.** To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished by the department of building safety for that purpose. Such application shall:  1. Identify and describe the work to be covered by the permit for which application is made.  2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.  3. Indicate the use and occupancy for which the proposed work is intended.  4. Be accompanied by construction documents and other information as required in Section R106.1.  5. State the valuation of the proposed work.  6. Be signed by the applicant or the applicant’s authorized agent.  7. Give such other data and information as required by the building official.  8. Include a nonconversion agreement signed by the applicant if the building in a flood hazard area has enclosed areas below the lowest floor. |

**Step 3. Amend local floodplain management regulations.** In the floodplain management regulations, add a definition and add to the list of what is required to be submitted with applications:

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| *Add a new definition as follows:*  **Nonconversion Agreement (Declaration of Land Restriction).** A form provided by the Floodplain Administrator to be signed by the owner and recorded on the property deed in Official Records of the Clerk of Courts, for the owner to agree not to convert or modify in any manner that is inconsistent with the terms of the building permit and these regulations, enclosures below elevated **{select one: buildings / dwellings}**.  *Add an item to the list of what is required to be submitted with applications as follows:*  For projects proposing to enclose areas under elevated buildings, include a signed Nonconversion Agreement (Declaration of Land Restriction); the agreement shall be recorded on the property deed prior to issuance of the Certificate of Occupancy. |

1. Reference: [*Reducing Flood Losses Through the International Codes: Coordinating Building Codes and Floodplain Management Regulations*](http://www.fema.gov/media-library/assets/documents/96634)(5th Edition, 2019), International Code Council and FEMA. [↑](#footnote-ref-1)