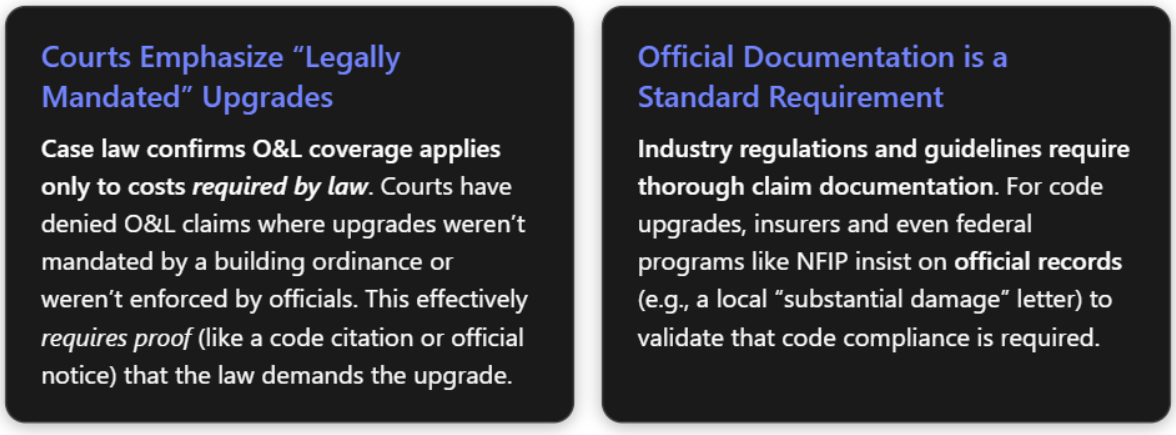
Legal and Regulatory Support for Documentation of Ordinance & Law (O&L) Items in Award Estimates

When adding **Ordinance & Law (O&L)** items to an insurance claim's award estimate (covering code-required upgrades), it's not just a company policy that requires supporting documentation – **legal precedents and regulatory guidelines also underscore the need for proper documentation**. Below, we explore relevant **case law** and **regulatory guidance** that support the requirement to include official documents (like a letter from a city or municipality) and adhere to guidelines when claiming O&L costs.



Case Law Precedents on Ordinance or Law Coverage

Legal precedents have consistently highlighted that **O&L coverage is only triggered when a law or ordinance *actually compels* the additional work or cost**. In other words, if the extra repairs or upgrades aren't *legally required*, they aren't covered. This principle inherently supports the need to *prove the legal requirement*, usually via documentation from the relevant authorities. Key cases include:

- **Consolidated Rail Corp. v. Aspen Specialty Ins. Co. (D.N.J. 2019)** – The court clarified that *"government-mandated requirements only"* fall within O&L coverage. Merely having standards or recommendations (like industry guidelines or unofficial advice from officials) **does not count** unless those standards are adopted by a governing body as law. In practice, this means an insured must show that a building code or ordinance (adopted by the city/county/state) requires the upgrade. An official code section or ordinance excerpt would serve as documentation of this requirement.
- **St. Luke's Episcopal Health System Corp. v. Factory Mut. Ins. Co. (S.D. Tex. 2007)** – This case highlighted the importance of **actual enforcement**. The court held that an "enforcement" occurs when local authorities **withhold permits or take action** due to non-compliance. In St. Luke's, the city **did not take any action** (no

permits were withheld, no code enforcement was initiated), so O&L coverage did **not** apply. The takeaway is that having an ordinance on the books isn't enough – you may need to show that the ordinance is being actively enforced in your case. Insurers often interpret this to mean **they need evidence**, such as a letter from a building official stating "we will not approve construction unless XYZ code upgrades are done," to honor O&L coverage.

- **Regents of Mercersburg College v. Republic Franklin Ins. Co., 458 F.3d 159 (3d Cir. 2006)** – In contrast to St. Luke's, some courts have found that an **"enforceable legal requirement" is sufficient to trigger coverage even without a specific enforcement action**. In Mercersburg College, an upgrade mandated by law (the Americans with Disabilities Act in that case) was covered under O&L because the law itself required certain changes when rebuilding, even if no inspector had yet ordered it. The court stated that O&L provisions apply if "the renovation or modification was **necessary under the law**" – i.e., the code or law *mandates* the changes. This still implies that one must prove the legal necessity; usually, this is done by referencing the applicable code section or statute. The **common thread**: whether through actual enforcement or an enforceable mandate, **courts expect a clear link to a law/ordinance**, which in practice is established by documentation of the law's requirements.
- **New York Cases (St. George Tower v. INS. Co. of Greater NY (2016) & Sanderson v. First Liberty (N.D.N.Y. 2019))** – These cases followed a proximate-cause approach and denied O&L coverage for code issues that were **pre-existing and not directly caused by the insured loss**. Essentially, if a code violation existed beforehand and only came to light due to the loss (but wasn't triggered by the loss repairs), the upgrades weren't covered. This underscores that O&L is meant for required changes **directly tied to the loss event**. For adjusters/appraisers, it means you should only add O&L items that you can connect to the loss and prove the code compels those changes as part of repair.
- **Policy Language & Payment Condition** – It's worth noting that standard insurance **policy language** itself (which has legal force and is often shaped by regulatory approval) supports requiring proof. Most property policies state the insurer **"has no obligation to pay for increased cost of construction** (code upgrades) **until the property is actually repaired or replaced and in compliance with law"**. This clause does two things: (1) it delays payment until the work is done (ensuring the upgrade is not just hypothetical), and (2) it inherently requires the upgrade be *in*

compliance with law. Thus, the insured/claimant will need to demonstrate that any such work was done to meet code – typically by pulling permits and having inspections. In a practical sense, to include O&L in an award **you must be prepared to show the code requirement**, otherwise the insurer can refuse payment citing policy terms. If an appraiser included an O&L item **without** proof of a code mandate, the insurer might later challenge or refuse that portion, referencing both policy language and the supporting case law above.

In summary, the legal landscape makes it clear that O&L coverage isn't automatic. The insured bears the burden to show that extra costs stem from an actual law or ordinance necessity. Courts have repeatedly reinforced that principle. Therefore, including O&L items in an award **without evidence** (e.g., just because the homeowner or contractor says "we should upgrade this") would not hold up under scrutiny – either in court or in an appraisal dispute. **Case law supports the practice of obtaining official documentation** (like code citations or municipal letters) as evidence that the claim for O&L costs is valid.

Regulatory and Industry Guidelines

Beyond case law, **insurance regulations and industry standards** also support and, in some instances, explicitly require proper documentation for O&L items:

- **Insurance Department Guidelines:** State insurance regulators expect that **claims are properly investigated and documented**. While not all states have a specific rule about "O&L documentation," general claim handling regulations apply. For example, the NAIC's Model Unfair Claims Settlement Practices Act (adopted in many states) requires insurers to **conduct reasonable investigations before paying or denying a claim** and to have evidence for claim decisions. Applying this to O&L coverage: an insurer (or appraiser, acting in the claims process) should not include O&L costs without evidence that they are required (that would be an overpayment), nor deny them if they are clearly required by code (that would be an underpayment). To be compliant, the adjuster or appraiser must gather the needed proof – often a copy of the building code or a letter from the building department – to show that certain repairs are legally mandated. This practice aligns with regulators' emphasis on well-documented, evidence-backed claim settlements.
- **Company Best Practices:** Many insurance companies have internal guidelines (sometimes shaped by past litigation and industry practice) that mandate documentation for O&L. As noted earlier, appraisal or claims **report templates often explicitly instruct** staff to attach the local enforced code document when

including O&L costs. These internal requirements often stem from lessons learned in litigation or market conduct exams – essentially the industry recognizing "if you don't have the paperwork from the municipality, the O&L claim won't stand up." So, while a company memo is not law, it is a direct reflection of what is needed to satisfy the legal standard of proof for O&L. This means your workflow should always include obtaining that code evidence.

- **Policyholder Notices and Statutory Provisions:** Some jurisdictions have taken steps to ensure policyholders are aware of O&L coverage and its conditions:
    - For instance, **Florida law (Fla. Stat. § 627.7011)** requires insurers to **offer Ordinance or Law coverage** (usually 25% or 50% of dwelling coverage) in homeowners policies and to notify policyholders about it. While this speaks to offering coverage, not claim documentation, it shows that O&L is recognized in statutes. Florida policies will contain language limiting O&L to the damaged portion and to the selected percentage – implicitly, any claim for O&L must be tied to the covered damage and within those limits, again reinforcing that not every upgrade is covered, only what code compels for that loss.
    - In many states, **standard policy forms filed with regulators include O&L clauses that mirror the ISO standard** about "enforced ordinance or law" and payment only after completion. These clauses have regulatory approval, giving them quasi-regulatory weight. The effect is that across the industry, all adjusters know an **official code enforcement or requirement must be demonstrated** to trigger payment.
- **National Flood Insurance Program (NFIP) – Increased Cost of Compliance (ICC):** A useful analog in federal insurance law is the NFIP's **ICC coverage** (which pays for code-required improvements in floodplain management after a flood loss). The NFIP **explicitly requires an official determination** of substantial damage from the local floodplain authority to trigger ICC payments. In fact, FEMA guidance states the community's **"substantial damage declaration letter"** must be on file for an ICC claim to be processed. If the letter is missing or incomplete, the procedure is to contact the local official to get the required information. Additionally, NFIP claims manuals emphasize **including local building department records as supporting documentation** in the claims file. While NFIP is separate from standard property insurance, it illustrates a clear regulatory mandate for documentation: no official proof that the law requires the changes, no payout. This mirrors the private

insurance practice – it's essentially a codified example of requiring that municipal documentation.

- **Licensing and Ethics Rules for Adjusters/Appraisers:** Licensed adjusters (and by extension appraisers in an insurance appraisal process) are often bound by codes of ethics and state rules. For example, many states require adjusters to itemize claims accurately and not to include false or unverifiable amounts. Including an O&L item without backing evidence could be seen as inflating a claim or, conversely, failing to support the insured's claim if it's legitimate. Adhering to the requirement of a code document aligns with the **ethical duty to be truthful and accurate** in claim submissions.
- **Avoiding Disputes and Ensuring Enforceability of the Award:** From a practical perspective, having the city/municipal documentation *on record* is supported by the appraisal community because it makes the appraisal award defensible. If one party to an appraisal (say the insurer) challenges the inclusion of O&L items, the **signed appraisal award is much more likely to hold up in court or during compliance review if it's backed by clear evidence of code requirements**. Appraisal awards can be overturned by courts in rare cases (for instance, if the award includes amounts not covered by the policy). If an award included O&L without legal basis, a court could vacate that portion for exceeding the policy. Thus, to ensure the award is solid, appraisers follow guidelines to document O&L thoroughly. This practice is implicitly supported by the **courts' willingness to enforce appraisal awards that stick to policy coverage**. A well-documented O&L item demonstrates the award is within policy terms (since the policy only pays O&L when required by law).

Conclusion

Bottom Line: There is ample **case law and regulatory rationale** supporting the need for official documentation when adding Ordinance or Law items to an award estimate. Courts have repeatedly made clear that O&L coverage is only for costs required by actual laws or ordinances – which means you must **prove those laws apply**, typically by providing the text of the law or an official's directive. Regulatory standards in insurance claim handling emphasize proper investigation and documentation, reinforcing that stance. Even federal insurance programs demand **municipal letters or code citations** before paying for code-related costs. In practice, the requirement to get a document from the city or municipality is both a **legal necessity (to fall within coverage)** and a **best practice endorsed by industry guidelines**. By adhering to it, you ensure the O&L portion of the claim is **credible, payable, and defendable** under both the insurance contract and the law.

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