

**1. Requested Motion:**

**Meeting Date: Apr. 4, 2011**

Set a public hearing date of April 18 at 6:30 pm for Ordinance 11-02 amending the Floodplain Regulations of the Town of Fort Myers Beach Land Development Code.

**Why the action is necessary:**

As a participant in the National Flood Insurance Program, the Town is subject to Community Assistance visits by the Florida Division of Emergency Management from time to time. During the last visit in summer of 2010, it was determined the existing Ordinance 08-09 did not include all required language from the Code of Federal Regulations.

**What the action accomplishes:**

The amendments incorporate language from the Code of Federal Regulations into the Town's LDC to address the issues identified during the Community Assistance Visit and meet compliance requirements of the National Flood Insurance Program.

**2. Agenda:**

- Consent
- Administrative
- Public Hearing

**3. Requirement/Purpose:**

- Resolution
- Ordinance
- Other

**4. Submitter of Information:**

- Council
- Town Staff – Comm. Dev.
- Town Attorney

**5. Background:**

The current Floodplain Regulations in Chapter 6 of the Town's Land Development Code do not include specific language from the Federal Code of Regulations. As a result, the Town is not considered to be in compliance with the National Flood Insurance Program. The amendment is needed to address this issue.

The LPA recommended approval of the Ordinance on March 8, 2011. On March 23, 2011 the Florida Division of Emergency Management provided additional comments regarding the Ordinance, as a result references to "coordinator" have been changed to "Floodplain Administrator" or "administrator."

It should also be noted that the minutes attached from the LPA Meeting March 8, 2011 are not yet approved.

**6. Alternative Action:**

**7. Management Recommendations:**

Regulations will not cause residents additional taxes or fees; however, non-compliance may cause Island-side Flood Insurance to increase.

**8. Recommended Approval:**

Town Manager	Town Attorney	Finance Director	Public Works Director	Community Development Director	Cultural Resources Director	Town Clerk
<i>for J. Stewart</i>				<i>for W. Fiegel</i>		

**9. Council Action:**

- Approved
- Denied
- Deferred
- Other

**ORDINANCE NO. 11-02**

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH AMENDING THE FLOODPLAIN REGULATIONS AND REFERENCES TO THE FEDERAL FLOOD INSURANCE STUDY (FIS) AND FLOOD INSURANCE RATE MAPS (FIRM) IN THE LAND DEVELOPMENT CODE (LDC); ADOPTING AMENDMENTS TO ARTICLE IV (FLOODPLAIN REGULATIONS) OF CHAPTER 6 OF THE LDC, TITLED "MAINTENANCE CODES, BUILDING CODES, AND COASTAL REGULATIONS," AND WHICH PROVIDES ARTICLE IV FLOODPLAIN REGULATIONS, DIVISION 1 GENERALLY; PROVIDING AUTHORITY; PROVIDING FOR CONFLICTS; SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Article VIII, Section 2 of the Constitution of the State of Florida and Chapters 166 and 163 of the Florida Statutes provides that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and exercise any power for municipal purposes except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

WHEREAS, the measures set forth in this Ordinance are necessary to provide for the protection of public health, safety and welfare of the citizens of the Town.

**IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:**

**SECTION 1. INCORPORATION OF RECITALS.** The above "whereas" clauses are incorporated herein as though fully set forth.

**SECTION 2. ADOPTION OF AMENDMENTS TO ARTICLE IV OF CHAPTER 6 OF THE LAND DEVELOPMENT CODE.** Chapter 6 of the Town of Fort Myers Beach land development code is titled "MAINTENANCE CODES, BUILDING CODES AND COASTAL REGULATIONS." Article IV of this chapter, titled "FLOODPLAIN REGULATIONS," is hereby amended as shown in Exhibit A, which is hereby incorporated by reference. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is neither underlined nor struck through. The amendment of Article IV of Chapter 6 amends the following division and sections:

**ARTICLE IV. FLOODPLAIN REGULATIONS**

**Division 1. Generally**

- Section 6-405. Definitions
- Section 6-408. Basis for Establishing Flood Regulations
- Section 6-410. Conflicting Provisions
- Section 6-444. Applications and Certifications
- Section 6-471. General Standards

Section 6-472. Specific Standards

**SECTION 3. CONFLICTS.** Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted Ordinance or Statute, the most restrictive shall apply.

**SECTION 4. SEVERABILITY.** If any one of the provisions of this ordinance should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held as invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and shall in no way affect the validity of all other provisions of this ordinance.

**SECTION 5. EFFECTIVE DATE.** This ordinance shall take effect on April \_\_, 2011.

The foregoing ordinance was enacted by the Town Council upon a motion by \_\_\_\_\_ and seconded by \_\_\_\_\_ and, upon being put to a vote, the result was as follows:

Larry Kiker, Mayor	_____	Bob Raymond, Vice Mayor	_____
Tom Babcock	_____	Jo List	_____
Alan Mandell	_____		

DULY PASSED AND ENACTED this \_\_\_\_\_ day of April, 2011.

ATTEST:

TOWN OF FORT MYERS BEACH

\_\_\_\_\_  
Michelle D. Mayher, Town Clerk

BY: \_\_\_\_\_  
Larry Kiker, Mayor

Approved as to legal sufficiency by:

\_\_\_\_\_  
Marilyn Miller, Esquire  
Town Attorney

**FORT MYERS BEACH LAND DEVELOPMENT CODE**

**CHAPTER 6 MAINTENANCE CODES, BUILDING CODES, AND COASTAL REGULATIONS**

**ARTICLE IV. FLOODPLAIN REGULATIONS**

**DIVISION 1. GENERALLY**

**Sec. 6-401. Reserved.**

**Sec. 6-402. Findings of fact.**

(a) The Town of Fort Myers Beach is subject to periodic inundation which may result in the loss of life and property, as well as 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 the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated or floodproofed or otherwise unprotected from flood damages.

**Sec. 6-403. Purpose of article.**

It is the purpose of this article 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 to:

- (1) 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; and
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.

**Sec. 6-404. Objectives of article.**

The objectives of this article are to:

- (1) Protect human life and health;
- (2) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (3) Minimize prolonged business interruptions;
- (4) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in floodplains; and
- (5) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas.

**Sec. 6-405. Definitions.<sup>1</sup>**

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Unless specifically defined in this section, words or phrases used in this article shall be interpreted so as to give them the meanings they have in common usage and to give this article its most reasonable application.

**Accessory structure** means a building or structure which is customarily incidental and subordinate to a principal building or to the principal use of the premises, and located on the same premises.

**Addition** means any walled and roofed expansion that increases the floor space of an existing building in which the addition is connected by a common loadbearing wall other than a firewall. Any walled and roofed addition which is connected by a firewall or is separated by independent perimeter loadbearing walls is considered new construction.

**Appeal** means a request for a review of the ~~coordinator's~~ administrator interpretation of any provision of this article. A request for a variance from the precise terms of this article is not an appeal.

**Area of special flood hazard** means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The entire Town of Fort Myers Beach has been designated an area of special flood hazard by the Federal Emergency Management Agency (see § 6-408).

**Base flood** means the flood having a one percent chance of being equaled or exceeded in any given year, as determined by the maps described in § 6-408.

**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 materials, which are not part of the structural support of the building and which are designed and constructed to collapse under specific lateral loading forces without causing damage to the elevated portion of the buildings or the supporting foundation system on which they are used.

**Building** means any structure built for support, shelter, or enclosure for any occupancy or storage.

**Coastal high-hazard area** means the area subject to high-velocity wave action from storms or seismic sources. The coastal high-hazard area is identified as Zone V on the flood insurance rate map

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<sup>1</sup>Cross reference(s)--Definitions and rules of construction generally, § 1-2.

## Exhibit A

Sec. 6-405

**~~Coordinator~~** means the town's flood insurance coordinator, who has been designated by the town manager to implement, administer, and enforce these floodplain regulations.

**Cost of improvements** means the total of all costs for the repair, reconstruction, rehabilitation, additions, or other improvements to a structure. These costs include materials, labor, profit, and overhead, and include the costs of demolition and built-in appliances, but do not include the costs of plans, surveys, permits, or outdoor improvements such as landscaping. These costs may be substantiated by a contractor licensed in accordance with §§ 6-231-330 through submission of actual construction contracts, accompanied by the contractor's affidavit attesting to their accuracy and completeness. The ~~coordinator~~ **administrator** may also accept other reliable methods for substantiating costs, such as building valuation tables published by the International Code Council, provided the type of construction and extent of improvement is accurately reflected.

**Development** means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, dredging, filling, grading, paving, excavating, drilling operations, or storage of materials or equipment.

**Elevated building** means a building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), or shear walls.

**Existing**, when referring to a building or structure, means that construction had commenced on the building or structure, or portion thereof, prior to August 31, 1984.

**Existing manufactured home park or manufactured home subdivision** means a parcel or contiguous parcels of land divided into two or more manufactured home lots or sites for rent or sale for which the construction of facilities for servicing the lot or site on which the manufactured home is to be affixed, including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets, was completed prior to August 31, 1984.

**Expansion to an existing manufactured home park or manufactured home subdivision** means the preparation of additional sites by the construction of facilities for servicing the sites on which the manufactured homes are to be affixed, including the installation of utilities, either final site grading or pouring of concrete pads, or the construction of streets.

**Flood** and **flooding** mean a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

**Flood Elevation Study** see Flood Insurance Study

**Flood insurance rate map (FIRM)** means the official map of Fort Myers Beach on file with the ~~coordinator~~ administrator, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones for Fort Myers Beach, including base flood elevations and coastal high hazard areas (V zones).

**Flood Insurance Study** means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

**Floodplain Administrator** means the town's planning coordinator, building official, and zoning coordinator who have been designated by the town manager to implement, administer, and enforce these floodplain regulations.

**Floodproofing** means any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and/or their contents. There are three major kinds of floodproofing in coastal areas:

- (1) Elevation of the lowest floor is the most common and economical method for floodproofing structures and is the only acceptable method under this code for floodproofing new or substantially improved residential structures.
- (2) For dry floodproofing, a commercial building is made watertight up to the base flood elevation and strengthened to resist all hydrostatic and hydrodynamic loads and to counter the effects of buoyancy. See § 6-472(4).
- (3) For wet floodproofing, damage to a building is avoided by allowing flood waters to temporarily fill the building to equalize loads and prevent buoyancy. See §§ 6-446(e) and 6-472(5)b.

**Floor** means the top surface of an enclosed space in a building, i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used for parking vehicles.

**Functionally dependent facility** means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of passengers. The term does not include longterm storage, manufacture, sales, or entertainment facilities.

**Highest adjacent grade** means the highest elevation of the ground surface, either prior to or after construction whichever is higher, 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 or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register of Historic Places; or
- (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; or

- (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 and also listed on a local inventory of historic places, either individually or as a contributing structure in a historic district, pursuant to ch. 22 of this code.

**Lowest floor** means the lowest floor of the lowest enclosed space, including any floors below grade. An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, 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 non-elevation design requirements of this article.

**Mangrove stand** means an assemblage of mangrove trees, which are mostly low trees noted for a copious development of interlacing adventitious roots above the ground, which contains one or more of the following species: black mangrove (*Avicennia nitida*), red mangrove (*Rhizophora mangle*), white mangrove (*Languncularis racemosa*), and buttonwood (*Conocarpus erecta*).

**Manufactured home** means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. This definition includes mobile homes and most park trailers (those larger than 400 square feet and/or not towable by a light duty truck), as defined in F.S. § 320.01(2), but does not include other types of recreational vehicles, as defined in F.S. § 320.01(1). However, a manufactured building as defined in F.S. ch. 553, pt. IV is not considered a manufactured home.

**Manufactured Home Park or Subdivision** means a parcel (or contiguous parcels) often divided into two or more manufactured home lots for rent or sale.

**Market value of the structure**, depending on the context, means either:

- (1) the value of the structure prior to the start of the improvement, or
- (2) in the case of damage, the value of the structure prior to the damage occurring.

Value will be as determined (for the structure only) by the Lee County Property Appraiser, by a private appraisal acceptable to the ~~coordinator~~ administrator, or by an independent appraisal commissioned by the ~~coordinator~~ administrator. This value shall not include the value of the land on which the structure is located, nor the value of other structures or site improvements on the site, nor the value of the structure after the proposed improvements are completed. Any proposed value submitted via private appraisal that exceeds the Property Appraiser's valuation by more than 35 percent shall be subject to peer review by a qualified local appraiser or a new independent appraisal, to be commissioned by the ~~coordinator~~ administrator, with the full cost of the review or new appraisal paid by the applicant to the town prior to initiation of the process. In lieu of submitting a private appraisal, an applicant may obtain an independent appraisal through the ~~coordinator~~ administrator, with the full cost paid to the town prior to initiation of the process.

**Mean sea level** means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this

article, the term is synonymous with North American Vertical Datum of 1988 (NAVD 88), to which base flood elevations shown on the flood insurance rate map are referenced.

**North American Vertical Datum of 1988 (NAVD 88)** is a vertical control datum used as a reference for establishing varying elevations within the floodplain. For purposes of this chapter, NAVD 88 replaced NGVD 29 on August 28, 2008. To convert a known elevation in Lee County that had been measured relative to NGVD 29, subtract 1.18 feet to determine its elevation relative to NAVD 88 (NGVD - 1.18 feet = NAVD 88).

**National Geodetic Vertical Datum (NGVD)**, as corrected in 1929, is a vertical control that was previously used as a reference for establishing varying elevations within the floodplain. The use of NGVD 29 on FEMA maps and in these floodplain regulations was discontinued as of August 28, 2008. To convert a known elevation in Lee County that had been measured relative to NGVD 29, subtract 1.18 feet to determine its elevation relative to NAVD 88 (NGVD - 1.18 feet = NAVD 88).

**New construction** means structures for which the start of construction commenced on or after May 1, 1990, 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 August 31, 1984.

**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 steep slope to a relatively mild slope.

**Reconstruction** means an improvement to an existing building that substantially replaces all or a portion of an existing building with a new building, or physically moves an existing building to a different location.

**Recreational vehicle** means, for floodplain management purposes, a vehicle which is:

- (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.

**Registered architect** means an architect registered or licensed by the state of Florida to practice architecture, or who is authorized to practice architecture in Florida under a reciprocal registration or licensing agreement with another state.

**Registered professional engineer** means an engineer registered or licensed by the state of Florida to practice engineering, or who is authorized to practice engineering in Florida under a reciprocal registration or licensing agreement with another state.

**Registered land surveyor** means a land surveyor registered or licensed by the state of Florida to practice land surveying, or who is authorized to practice surveying in Florida under a reciprocal registration or licensing agreement with another state. This term includes professional surveyors and mappers registered by the state of Florida.

**Rehabilitation** means an improvement to an existing building that does not expand its external dimensions.

**Repair** means the replacement or renewal of nonstructural elements of an existing building.

**Reinforced pier** means a system designed and sealed by a state-registered architect or engineer which is an integral part of a foundation and anchoring system for the permanent installation of a manufactured home or recreational vehicle, as applicable, so as to prevent flotation, collapse or lateral movement of the manufactured home or recreational vehicle due to flood forces. At a minimum, a reinforced pier would have a footing adequate to support the weight of the manufactured home or recreational vehicle under saturated soil conditions such as occur during a flood. In areas subject to high-velocity floodwaters and debris impact, cast-in-place reinforced concrete piers may be appropriate. Nothing in this division shall prevent a design which uses pilings, compacted fill or any other method, as long as the minimum flood and wind standards are met.

**Repetitive loss** means flood-related damages sustained by a structure on two or more separate occasions during any ten-year period, for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damages occurred. For the purposes of computing this 25 percent cost only, the cost of nonstructural interior finishings may be deducted from the cost of repairs, including, but not limited to, the cost of finish flooring and floor coverings, base molding, nonstructural substrates, drywall, plaster, paneling, wall covering, tapestries, window treatments, decorative masonry, paint, interior doors, tile, cabinets, moldings and millwork, decorative metal work, vanities, electrical receptacles, electrical switches, electrical fixtures, intercoms, communications and sound systems, security systems, HVAC grills and decorative trim, freestanding metal fireplaces, appliances, water closets, tubs and shower enclosures, lavatories, and water heaters.

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

**Start of construction**, for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Public Law 97-348), includes substantial improvement, 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 180 days of the permit date. The actual start means the first

placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, installation of piles, 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 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 structures, 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, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

**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. Actual repair work need not have been performed on flood-related damage.

**Substantial improvement** means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cumulative cost of which equals or exceeds, over any five-year period, 50 percent of the market value of the structure either before the start of construction of the improvement or, if the structure has been damaged and is being restored, before the damage occurred. The term "substantial improvement" includes structures that have incurred "substantial damage" or "repetitive loss," regardless of the actual repair work performed. The term "substantial improvement" does not, however, include either:

- (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 ensure safe living conditions; or
- (2) costs of alterations or improvements whose express purpose is the mitigation of future storm damage, provided they do not exceed 50 percent of the market value of the structure over any one-year period; examples of such mitigation include the installation of storm shutters or shatterproof glass, strengthening of roof attachments, floors, or walls, and minor floodproofing.
  - a. Storm mitigation improvements may be made during the same year as other improvements, but the total cost of improvements of both types that are made over any one-year period may not exceed 50% of the market value of the structure.
  - b. The annual allowance for storm mitigation improvements is not applicable to any costs associated with a lateral or vertical addition to an existing structure or to the complete replacement of an existing structure; or
- (3) any alteration of a "historic structure" provided that the alteration would not preclude the structure's continued designation as a "historic structure."

**Variance** means a grant of relief to a person from the requirements of this article which permits construction in a manner otherwise prohibited by this article where specific enforcement would result in unnecessary hardship.

**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 is presumed to be in violation until such documentation is provided.

**Sec. 6-406. Penalty for violation of article.**

The director and the ~~coordinator~~ administrator are authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this article.

**Sec. 6-407. Applicability of article.**

This article shall apply to the entire Town of Fort Myers Beach. No structure or land shall be located, extended, converted, or structurally altered without full compliance with the terms of this article.

**Sec. 6-408. Basis for establishing flood regulations.**

The entire Town of Fort Myers Beach has been designated an area of special flood hazard by the Federal Emergency Management Agency (FEMA). There are no designated or undesignated Floodways within the Town limits. The Flood Insurance Rate Study providing a narrative report of the communities flood hazards as adopted on August 28, 2008, and all revisions thereto, are adopted by reference and declared to be part of this article. FEMA maps illustrating the minimum federal floodplain regulations as adopted on August 28, 2008, and all revisions thereto, are adopted by reference and declared to be a part of this article. These flood insurance rate maps show base flood elevations and coastal high-hazard areas (V zones) for the entire town and are available for inspection at town hall and at the Lee County Department of Community Development Building, 1500 Monroe Street, Fort Myers, or can be viewed at [www.fema.gov](http://www.fema.gov), or can be purchased by calling 1-800-358-9616. The individual map panels are numbered as follows:

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<i>General area shown</i>	<i>Panel number</i>	<i>Latest</i>
Bowditch	120673 0553F	8/28/08
Bowditch – Lovers Ln.	120673 0554F	8/28/08
Lovers Ln. – Gulfview	120673 0558F	8/28/08
Gulfview – Mound Rd.	120673 0566F	8/28/08
Mound Rd. – Buccaneer	120673 0567F	8/28/08

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**Sec. 6-409. Reserved.**

**Sec. 6-410. Conflicting provisions.**

Where this article and any other part of this code conflict or overlap, whichever imposes the more stringent restriction shall prevail. This article is not intended to repeal, abrogate, or impair any existing easements, covenants or deed restrictions, or coastal construction codes. However, where this article and any other ordinance, regulations or coastal construction code conflict, whichever imposes the more stringent restriction shall prevail.

**Sec. 6-411. Reserved.**

**Sec. 6-412. Warning and disclaimer of liability.**

The degree of flood protection required by this article 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 article shall not create liability on the part of the town council, or by any officer or employee thereof, for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

**Secs. 6-413--6-440. Reserved.**

**DIVISION 2. ADMINISTRATION****Sec. 6-441. Designation of administrator.**

The town manager of the Town of Fort Myers Beach hereby appoints the Planning Coordinator, Building Official and Zoning Coordinator shall designate a flood insurance coordinator (~~“coordinator”~~) to administer and implement the provisions of this article and is herein referred to as the Floodplain Administrator ~~on behalf of the Town of Fort Myers Beach.~~

**Sec. 6-442. Reserved.****Sec. 6-443. Permit required.**

All land-disturbing activities and improvements to land that are defined in this article as “development” must comply with all provisions of this article and must obtain permits in accordance with the procedures in this division.

**Sec. 6-444. Applications and certifications.**

(a) The provisions of this article will be enforced concurrently with review of proposed building permits and development orders. No separate application is required. However, the following information is required on the plans submitted for review:

- (1) Elevation, in relation to mean sea level, of the proposed lowest floor of all structures;
- (2) Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed;
- (3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure meets the floodproofing criteria in § 6-472, when dry or wet floodproofing is proposed; and
- (4) An operation and maintenance plan when dry floodproofing is proposed:
  - a. At a minimum this plan must identify who is responsible for maintenance and installation of the flood barriers that will protect wall and door openings and where the flood barriers will be stored when not in use.
  - b. This plan must also provide a realistic estimate of the manpower, time, and equipment required for installation.
  - c. This plan must also include a binding requirement for present and future owners to conduct a test installation before May 31 of each year of all flood barriers, with 10 days’ advance written notice provided to the town manager to allow the manager or ~~coordinator~~ administrator to witness this test.
  - d. The plan must also include a binding requirement that upon completion of each annual test, a written report will be submitted by the owners to the ~~coordinator~~ administrator within 30 days to document the results of the test and set forth any corrective measures that may be necessary, including proposed revisions to the operation and maintenance plan as to responsibility for maintenance, installation, and storage of flood barriers.

## Exhibit A

Sec. 6-444

(b) When the water surface elevation data, floodway, or coastal high hazard area are not identified on the FIRM, the administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from Federal, State, or other sources as criteria for requiring that new construction, substantial improvements or other development in Zone A meet the standards set forth.

(c) Prior to issuance of approvals, applicants must supply evidence that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

(d) A permit holder must submit to the ~~coordinator~~ administrator a floor elevation and/or floodproofing certification after the lowest floor is completed, or, in instances where the structure is subject to the regulations applicable to coastal high-hazard areas, after placement of the horizontal structural members of the lowest floor:

- (1) Within 21 calendar days of establishment of the lowest floor elevation, or floodproofing by whatever construction means, or upon placement of the horizontal structural members of the lowest floor, whichever is applicable, it shall be the duty of the permit holder to submit to the ~~coordinator~~ administrator a certification of the elevation of the lowest floor, floodproofed elevation, or the elevation of the lowest portion of the horizontal structural members of the lowest floor, whichever is applicable, as built, in relation to mean sea level. Such certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by a registered land surveyor or professional engineer.
- (2) When floodproofing is utilized for a particular building, the certification shall be prepared by or under the direct supervision of a registered professional engineer or architect and certified by a registered professional engineer or architect.
- (3) Any work done within the 21-day calendar period and prior to submission of the certification shall be at the permit holder's risk.

(e) The ~~coordinator~~ administrator shall review and maintain a record of the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make the corrections required by this section shall be cause to issue a stop work order for the project.

(f) In the event any alteration or relocation of a water course is proposed, the administrator will assure that flood carrying capacity is maintained and will notify adjacent communities, the State Coordinating Office and copies will be provided to the Federal Insurance Administrator.

### Sec. 6-445. Appeals.

Any affected person may file an appeal alleging that there has been an error in any requirement, decision or determination made by the ~~coordinator~~ administrator in the enforcement or administration of this article. Such appeals shall be processed and decided in the same manner as for appeals under ch. 34 of this code.

**Sec. 6-446. Variances.**

(a) Variances from base flood elevation requirements may only be granted upon a clear showing by the applicant that an exceptional hardship would result from compliance with the requirements. If a variance is granted, the ~~coordinator~~ administrator shall notify the applicant, in writing, that:

- (1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage; and
  - (2) Such construction below the base flood level increases risks to life and property.
- Such notification shall be maintained with a record of all variance actions.

(b) Variances shall only be granted upon a determination, based upon competent substantial evidence presented by the applicant, that:

- (1) It will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing regulations or ordinances; and
- (2) The lot or parcel in question is so small or has such unusual characteristics that the prescribed standards cannot be met without some relief so as to allow a reasonable use of the property.

(c) Variances shall only be issued upon a determination that the variance being granted is the minimum necessary, considering the flood hazard, to afford relief.

(d) Variances may be issued for repair or rehabilitation of historic structures upon a 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.

(e) Variances may be issued to allow non-residential buildings other than those already identified in § 6-472(5) to contain wet-floodproofed space below the base flood elevation, provided:

- (1) the building is not in the coastal high-hazard areas; and
  - (2) such action is determined to be in the public interest.
- Any such buildings must meet the technical standards for wet floodproofing found in § 6-472(5)b.

(f) A variance is a deviation from the exact terms and conditions of this article. Requests for variances shall be processed and decided in the same manner as for variances under ch. 34 of this code following public hearings before the local planning agency and town council.

(g) In passing upon variance applications, the town council shall consider all technical evaluations, all relevant factors including local and federal policies on flood protection, all standards specified in this article, 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;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, in the case of a functionally dependent facility;
- (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan;
- (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 floodwaters, 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, electrical and water systems, and streets and bridges.

(h) Upon consideration of the factors listed in subsection (g) of this section and purposes of this article, the town council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.

**Secs. 6-447--6-470. Reserved.**

### **DIVISION 3. STANDARDS**

#### **Sec. 6-471. General standards.**

The following general standards must be followed within the Town of Fort Myers Beach:

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure;
- (2) Manufactured homes shall be elevated and securely anchored to an adequately anchored foundation system to ~~prevent resist~~ flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This ~~standard requirement~~ shall be in addition to and consistent with applicable state requirements for resisting wind forces;
- (3) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- (4) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (5) Electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities shall be designed and located so as to prevent water from entering or accumulating within the components during conditions of flooding. Utility equipment shall be exempt from this requirement as long as the utility company which owns the equipment accepts the sole responsibility for any flood damage to the equipment by filing written acceptance of such responsibility with the local building director prior to claiming the exemption;

- (6) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters; and
- (8) Any alteration, repair, reconstruction, or improvement to a structure which is in compliance with the provisions of this article shall meet the requirements of new construction as contained in this article.

**Sec. 6-472. Specific standards.**

The following specific standards must be followed within the Town of Fort Myers Beach in addition to the general standards listed in Sec. 6-471:

- (1) **Conventional residential construction.** New construction or substantial improvement of any residential structure shall have the lowest floor elevated to or above the base flood elevation. Space below the base flood elevation in A zones is regulated in accordance with standards of subsection (5) of this section. (See subsection (7) for additional restrictions in V zones.)
  - a. When an improvement to an existing residential structure involves reconstruction or includes an addition, and the improvement's cost exceeds the 50 percent threshold in this article's definition of "substantial improvement," then the reconstruction or addition shall be elevated the same as new construction, with its lowest floor elevated to or above the base flood elevation.
  - b. If a private appraisal is utilized to determine the 50 percent threshold, it must have been performed within 1 year of the date of submittal.
  - c. When such an improvement does not exceed the 50 percent threshold, any additional enclosed floor space must be elevated to or above the structure's existing lowest floor.
- (2) **Manufactured homes.** New or expanded parks or subdivisions for manufactured homes are not allowed in the Town of Fort Myers Beach. Where zoning allows existing manufactured homes to be replaced or substantially improved:
  - a. on individual subdivision lots, replacement or substantially improved manufactured homes must be elevated so that the lowest floor of the manufactured home is at or above the base flood elevation and in compliance with the anchoring requirements of § 6-471(2), or
  - b. on an existing site in a mobile home park, the manufactured home chassis must be supported by reinforced piers, or other foundation elements of at least equivalent strength, that are no less than 36 inches in height above highest adjacent grade, and the manufactured home shall comply with the anchoring requirements of § 6-471(2). However, this 36-inch alternative may not be used if a manufactured home on that specific site has incurred "substantial damage" from flooding, as defined in this article; if "substantial damage" has occurred, the manufactured home or a replacement manufactured

## Exhibit A

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home on that site must be elevated so that the lowest floor is at or above the base flood elevation and in compliance with the anchoring requirements of § 6-471(2).

(3) **Recreational vehicles.** New parks or subdivisions for recreational vehicles are not allowed in the Town of Fort Myers Beach. Where zoning allows recreational vehicles to be placed or substantially improved on a site located in an existing recreational vehicle park, they must be either:

- a. placed on the site for fewer than 180 consecutive days and 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
- b. elevated so that the lowest floor of the recreational vehicle is at or above the base flood elevation and in compliance with the anchoring requirements of § 6-471(2).

(4) **Nonresidential construction.** New construction or substantial improvement of any commercial or other nonresidential structure shall either:

- a. have the lowest floor elevated to or above the base flood elevation, or,
- b. together with attendant utility and sanitary facilities, be dry-floodproofed so that below the base flood level the structure is watertight, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
  1. Dry-floodproofing up to the base flood elevation is the preferred alternative for providing sidewalk-level commercial space in the Future Land Use Map's Pedestrian Commercial category, except in V zones where dry-floodproofing is not permitted (see § 6-472(7)).
  2. A registered professional engineer or architect shall develop and/or review the structural design, specifications, and plans and shall certify that they meet the dry-floodproofing standards of this subsection and the accepted standards of practice for meeting the applicable provisions of 44 CFR 60.3(c)(3)ii. Such certification shall be provided to the ~~coordinator~~ administrator, who will maintain a public record at town hall of all such certifications.
  3. An operation and maintenance plan must be submitted in accordance with § 6-444(a)(4). Failure to conduct the annual test installation or submit the annual report required by this plan shall subject the owner to the code enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) after 30 days' prior written notice sent via certified mail, return receipt requested.
- d. No person may undertake a series of improvements, additions, and/or demolitions that connects two or more existing structures in a manner that evades the requirement to either elevate or dry-

floodproof new construction or substantial improvements to nonresidential structures.

(5) **Space below elevated buildings (A zones).** New construction or substantial improvements of elevated buildings, both residential and non-residential, may contain enclosed or unenclosed space below the base flood elevation provided it is usable solely for parking, building access, or storage (additional restrictions for coastal high-hazard areas are provided in subsection (7) below).

- a. Enclosed space below the base flood elevation can include up to 100 percent of the space below an elevated building but cannot extend beyond the perimeter of the elevated structure.
- b. Partially or fully enclosed space below the base flood elevation, including garages, must be wet-floodproofed, designed to preclude finished living space below the base flood elevation, and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls below the base flood elevation.
- c. The following requirements apply to all new construction and substantial improvements below elevated buildings in A zones:
  1. Designs for complying with these requirements must meet the following minimum criteria or be certified by a registered professional engineer or architect as providing equivalent automatic equalization of hydrostatic flood forces:
    - a- A minimum of two openings shall be provided for any enclosed space having a total net area of not less than one square inch for every square foot of enclosed space subject to flooding;
    - b- The bottom of all openings shall be no higher than one foot above highest adjacent grade; and
    - c- Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

Technical guidance in meeting these requirements may be found in FEMA's *Technical Bulletin 1-93*.

2. Electrical, plumbing, and other utility connections below the base flood elevation must be designed and constructed so that floodwaters cannot infiltrate or accumulate within the component or group of components. Technical guidance in meeting these requirements may be found in *Protecting Building Utilities From Flood Damage*, FEMA Publication 348.
3. Access to the enclosed space below elevated buildings shall be the minimum necessary to allow for:
  - a- Parking of vehicles (garage or other overhead doors), and
  - b- External entries including access for storage (no more than one standard exterior door with no more than a single door opening of up to 36 inches in each of the four exterior walls, or windowless double exterior doors with no more than 72 inches of opening in each exterior wall), and
  - c- Internal entry doors to the living space (access to stairway or elevator from parking and/or storage space).

## Exhibit A

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4. The interior portion of any enclosed space below elevated buildings may not be temperature-controlled and must be constructed and finished only with wall, floor, and ceiling materials that comply with all provisions of § 6-472(5). Interior partitions are limited to separating parking spaces from building access or storage spaces.
  5. All structural and non-structural components must be constructed of materials that are durable, resistant to flood forces, and resistant to deterioration caused by repeated inundation by flood water. Technical guidance in meeting this requirement may be found in FEMA's *Technical Bulletin 2-93*. Technical guidance in meeting this requirement for elevators may be found in FEMA's *Technical Bulletin 4-93*.
  6. These provisions apply to space below the base flood elevation to be used for parking, building access, or storage. Other uses proposed for wet-floodproofed space may be approved by variance as provided in § 6-446(e). Examples could include functionally dependent facilities, historic buildings, and utility structures.
  7. Any application for a garage or other fully enclosed space formed by exterior walls below the base flood elevation must be accompanied by a signed and notarized acknowledgment of the limitations on allowable uses of the enclosed space that applied when building permits were obtained, using a form provided by the ~~coordinator~~ administrator. This agreement shall be recorded in the official record books in the office of the clerk of the circuit court to provide additional notice of these limitations to future purchasers.
- (6) **Accessory structures.** Accessory structures may be exempted from meeting the elevation requirements only if:
- a. The structure is securely anchored to resist flotation or lateral movement and offers the minimum resistance to the flow of floodwaters; and
  - b. The total cost of the structure does not exceed 10% of the market value of the principal building, or the following amounts, whichever is greater:
    1. \$16,000 for a single-family dwelling unit or other single unit.
    2. \$32,000 for a two-family dwelling unit.
    3. \$50,000 for a multiple-family building, hotel/motel, or commercial establishment.These dollar amounts may be increased each year beginning January 1, 2008 by the percentage increase of the Consumer Price Index-All Urban Consumers (CUP-U), All Items, U.S. City Average (maintained by the Bureau of Labor Statistics); and
  - c. The structure is used exclusively for nonhabitable recreational, security, or storage purposes and not used as offices, kitchens, or living space; and
  - d. All electrical, air conditioning, or heating equipment is elevated above the base flood elevation or floodproofed in accordance with § 6-472(5)c.2); and
  - e. Openings to equalize hydrostatic pressure during a flood are provided in conformance with § 6-472(5)b.1; and
  - f. All structural and non-structural components below base flood elevation are constructed of materials that are durable, resistant to flood forces, and resistant to

deterioration caused by repeated inundation by flood water. Technical guidance in meeting this requirement may be found in FEMA's *Technical Bulletin 2-93*.

g. For accessory structures located in coastal high-hazard zones (V zones), the following additional requirements also apply:

1. Only breakaway walls may be used below the base flood elevation.
2. The structure must be constructed with a piling or column foundation system that is adequately embedded to resist scour and lateral deflection.
3. Floor slabs may not be structurally attached to pilings or columns and must be located at existing grade.
4. The lowest horizontal structural member of roof systems, including plates and beams connecting the pilings or columns, must be placed at or above the base flood elevation.

(7) **Coastal high-hazard areas (V zones).** Certain areas of the town are designated as coastal high-hazard areas (V zones) because they have special flood hazards associated with wave wash. In V zones, the following additional provisions shall apply to all construction including both residential and commercial buildings:

- a. All new construction shall be located landward of the reach of the mean high tide line and landward of the 1978 coastal construction control line except as provided in § 6-366.
- b. All new construction and substantial improvements shall be elevated so that the lowest supporting horizontal member, excluding pilings or columns, is located at or above the base flood elevation level, with all space below the lowest supporting member open so as not to impede the flow of water. Breakaway walls may be permitted and must be designed to wash away in the event of abnormal wave action in accordance with the remainder of this subsection.
- c. Improvements that do not exceed the 50 percent threshold for being classified as a substantial improvement must have any additional enclosed floor space elevated to or above the structure's existing lowest floor.
- d. All new construction and substantial improvements shall be securely anchored on pilings or columns.
- e. All pilings and columns and the attached structures shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components. The anchoring and support system shall be designed with wind and water loading values as required by the Florida Building Code and the base flood event respectively.
- f. Compliance with the provisions contained in subsections (7)b, d, and e of this section shall be certified by a registered professional engineer or architect.
- g. The use of fill as structural support is prohibited.
- h. Man-made alterations to sand dunes and mangrove stands that would increase potential flood damage are prohibited.
- i. Nonsupporting breakaway walls, latticework or decorative screening shall be allowed below the base flood elevation provided it is not part of the structural support of the building and is designed so as to break away, under abnormally

## Exhibit A

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high tides or wave action, without damage to the structural integrity of the building on which it is to be used, and provided the following design specifications are met:

1. Design safe loading resistance of each wall shall be not less than ten and not more than 20 pounds per square foot; or
  2. If more than 20 pounds per square foot, a registered professional engineer or architect shall certify that the design wall collapse would result from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Water loading values shall be those associated with the base flood. Wind loading values shall be those required by the Florida Building Code.
- j. If breakaway walls are utilized, such enclosed space must not be used for human habitation and must be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Space enclosed by latticework and breakaway walls in a V zone is subject to the same limitations as to size, usage, and formal acknowledgments that apply below base flood elevation in an A zone, as provided in subsection (5) above.
- k. Prior to construction, plans for any structure that will have breakaway walls must be submitted to the ~~coordinator~~ administrator for approval.
- l. Any alteration, repair, reconstruction, or improvement to a structure shall not enclose the space below the lowest floor except with breakaway walls, and except as provided for in the remainder of this subsection.
- m. The placement of manufactured homes is prohibited. A replacement recreational vehicle may be placed in an existing recreational vehicle park, provided the mobility standards of § 6-472(3)a. are met.
- n. Electrical, plumbing, and other utility connections are prohibited below the base flood elevation except where components must be extended below the base flood elevation for service connections or code compliance (such components must be designed and constructed so that floodwaters cannot infiltrate or accumulate within the components). Technical guidance in meeting these requirements may be found in *Protecting Building Utilities From Flood Damage*, FEMA Publication 348.

**Sec. 6-473. Reserved.**

**Sec. 6-474. Standards for subdivision proposals.**

- (a) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (b) All subdivision proposals shall have public utilities and facilities such as sewers, electrical and water systems located and constructed to minimize flood damage.

**Exhibit A**

*Sec. 6-474*

(c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(d) Base flood elevation data shall be provided for all subdivision and development proposals.

**CHAPTERS 7--9 RESERVED**

DRAFT

RESOLUTION OF THE LOCAL PLANNING AGENCY OF THE  
TOWN OF FORT MYERS BEACH, FLORIDA  
RESOLUTION NUMBER 2011-004

WHEREAS, the existence of the Local Planning Agency (LPA) is mandated by Florida Statutes Section 163.3174; and

WHEREAS, the Local Planning Agency is statutorily responsible under Chapter 163, Florida Statutes, and the Town of Fort Myers Beach Land Development Code (LDC) Section 34-120 for the review of proposed land development regulations, land development codes, or amendments thereto, and for making recommendations to the Town Council with regard thereto and performing such other reviews as are requested by the town Council; and

WHEREAS, following proper notice and as required under Florida Statute and the LDC, the LPA conducted a public hearing on March 8, 2011, to consider a proposed Town Ordinance amending the LDC with regard to Floodplain Regulations, specifically Sections 6-405, 6-408, 6-410, 6-441, 6-444, 6-471, and 6-472, of the LDC; and

WHEREAS, a copy of the proposed Ordinance 11-02 is attached hereto as Exhibit A and is hereby incorporated by reference.

NOW THEREFORE BE IT RESOLVED, that the LPA **recommends** that the Town Council of the Town of Fort Myers Beach **approve** and adopt a Town Ordinance amending the LDC with regard to the Floodplain Regulations, as set forth in the Ordinance 11-02 attached as Exhibit A.

The foregoing Resolution was adopted by the LPA upon a motion by LPA Member **Ryffel** and second by LPA Member **Kakatsch**, and upon being put to a vote, the result was as follows:

Joanne Shamp, Chair	Aye	Bill Van Duzer, Vice Chair	Aye
Carleton Ryffel, Member	Aye	Rochelle Kay, Member	Aye
Joe Kosinski, Member	Absent	John Kakatsch, Member	Aye
Hank Zuba, Member	Aye		

DULY PASSED AND ADOPTED THIS 8th day of March, 2011.

LPA of the Town of Fort Myers Beach

By: Joanne K. Shamp  
Joanne Shamp, LPA Chair

Approved as to legal sufficiency:

By: Marilyn W. Miller  
Marilyn Miller, Esquire  
LPA Attorney

ATTEST:

By: Michelle Mayher  
Michelle Mayher, Town Clerk

**MINUTES**  
**FORT MYERS BEACH**  
**Local Planning Agency**

Town Hall – Council Chambers  
2523 Estero Boulevard  
Fort Myers Beach, FL 33931

**Tuesday, March 8, 2011**

**I. CALL TO ORDER**

Meeting was called to order at 9:03 AM by Chairperson Joanne Shamp. Other members present:

Bill Van Duzer  
Joe Kosinski-late  
John Kakatsch  
Hank Zuba  
Rochelle Kay  
Carleton Ryffel

LPA Attorney Marilyn Miller

Staff present: Community Development Director Walter Fluegel, Tina Ekblad, Planning Coordinator; Leslee Chapman and Keith Laakkonen, Environmental Coordinator

**II. PLEDGE OF ALLEGIANCE and INVOCATION**

Ms. Kay

**III. MINUTES**

A. Minutes of February 8, 2011

**Motion: Mr. Zuba moved to accept the minutes, as recorded.**

**Seconded by Ms. Kay;**

**A few name spelling corrections were noted.**

**Vote: Motion passed 6-0.**

**IV. PUBLIC HEARING**

Ms. Shamp opened the hearing for Ordinance 11-02 Flood Management, acknowledging the Affidavit of Publication of Legal Advertisement and asking Ms. Miller to read the caption: *“An ordinance of the Town of Fort Myers Beach amending the floodplain regulations and references to the Federal Flood Insurance Study and Flood Insurance Rate Maps in the LDC, adopting amendments to Article 4, Floodplain Regulations of Chapter 6 of the LDC, titled ‘Maintenance Codes, Building Codes and Coastal Regulations,’ and which provides article 4 Floodplain Regulations, Division 1, providing authority, providing for conflicts, severability and establishing an effective date.”*

Ms. Ekblad referred to information she had forwarded to each member regarding a visit

from Florida Division of Emergency Management and the results of that visit. This ordinance addresses some of the federal regulations missing from the Town ordinance and helps to clarify certain other parts.

There were a few questions regarding clarification of wording and identification of personnel involved with brief discussion.

Ms. Shamp asked for public comment; there were no comments. Ms. Shamp welcomed further discussion and comments.

**Motion: Mr. Ryffel moved to approve the ordinance.  
Seconded by Mr. Kakatsch;  
Vote: Motion passed 6-0.**

Hearing closed at 9:18 AM.

## V. ADMINISTRATIVE AGENDA

### A. EAR Presentation

Ms. Ekblad offered a PowerPoint presentation about the EAR (Evaluation and Appraisal Report) and said it is the foundation to revise the Comprehensive Plan, required by the Department of Community Affairs every seven years. She said it is also required that the Town have "Scoping" meetings, which are used to determine the scope of review for the report, and must be completed a year prior to the adoption date. Adoption date for the Town is April 2012 and, she said, the LPA is required to hold at least one public hearing prior to making recommendations to Council. Ms. Ekblad continued with the presentation and pointed out items in the handouts.

Mr. Fluegel asked that the LPA review and offer their opinions and views about this ordinance. He added that they need to do a series of public workshops and asked for their help in reaching many different stakeholders for their input.

Ms. Shamp asked how definite is the "due by" date and Ms. Ekblad explained that she has constant communication with the DCA and, as long as they are working on this plan, the time limit has some flexibility. Ms. Shamp said that perhaps the HAC and the HAB could look at the historic preservation element of the Comp Plan and Mr. Fluegel agreed. Mr. Ryffel asked if the scope can be changed once they've had the scoping meetings. Mr. Fluegel said that it should be an ongoing communication.

Ms. Shamp asked for an explanation of the scoping meeting process since their first meeting is scheduled for April. Ms. Ekblad said she will bring the main discussion points to the LPA before the meeting so they have the time to prepare their comments, but they need to bring other issues regarding this to the meetings to add to the discussion. Mr. Fluegel added that there will likely be surveys distributed and hopefully an informational section on the website for input from the public. He added that there is a possibility that LPA members can be invited to join staff at their meetings and workshops with stakeholders and Ms. Shamp was in agreement with

this.

**B. Parasailing Ordinance**

Ms. Shamp noted that this is not a hearing but just an introduction of the ordinance that will go to hearing in the future.

Ms. Miller advised the LPA that this came up in the fall when a vendor at Seafarer's had to move because of the pending sale of the property. It was discovered then that there is some ambiguity in the wording of Sec. 27-55. She said that Council then interpreted the original meaning of "non-conforming parasail" and decided that any existing parasail business (conforming or not), could move their license to a new conforming location as their intent was not to put an existing business out of business by not allowing the transfer of license. Ms. Miller yielded to Mr. Laakkonen to give further explanation. He said that originally there was intent to cap the licenses at a certain number and this system has worked well for the Town for several years but the wording is confusing as it stands. There is a reference to Sec. 27-54e, which does not exist, so this will be removed from the ordinance but otherwise, he insisted, nothing else changes in the ordinance. There was discussion about the cap number of licenses and conforming locations, which was explained to be any location not within 500 ft. of another parasail vendor.

**Public Comment:**

Dory Smith, owner Paradise Parasail, Inc., read her statement regarding specific areas of the Sec. 27-55, availability of the parasail licenses (see statement) to the board. Basically she is concerned about the effect that the revision of the ordinance would have on the number of licenses issued, especially in terms of "co-location" of parasailing and personal watercraft businesses.

Ms. Shamp asked the attorney if the proposed revisions address Ms. Smith's concerns and asked if the subject of "co-location" is being dealt with fairly. Mr. Laakkonen said that there is nothing that would need to be revised to "encourage the spirit of co-location" which is a "good thing." Ms. Miller said there will be a review of the language to be sure that they clarify to encourage this and Ms. Shamp confirmed a consensus of the members in agreement with this.

**VI. ADJOURN AS LPA AND RECONVENE AS THE HPB**

**Motion: Mr. Ryffel moved to adjourn as LPA and Reconvene as HPB.**

**Seconded by Mr. Kakatsch;**

**Vote: Motion passed 7-0.**

Meeting commenced at 10:00 AM and Ms. Kay stated that the presentation of the historic cottage plaque went well, lasting about 20 minutes, and they now have a regular program for addressing these.

The HAC met on Feb. 15 and it was mostly covered the presentation program to be able to follow in future presentations. The next one will be the Pink Shell, with the

Mound House possibly after that. The vista signage project will be addressed and Ms. Ekblad will research grants for this project. She said the next meeting is March 22.

**Motion:** Ms. Shamp moved to adjourn as HPB and reconvene as the LPA.

**Seconded by Mr. Zuba;**

**Vote:** Motion passed 7-0.

#### **VII. ADJOURN AS HPB AND RECONVENE AS THE LPA**

Meeting was reconvened at 10:08 AM, with the same members still present.

#### **VIII. LPA MEMBER ITEMS AND REPORTS**

Ms. Shamp and Mr. Van Duzer wished Mr. Kosinski luck in the election and thanked him for his service to the LPA.

Ms. Kay asked when the rental item will come before them and Ms. Miller said they are meeting about it today. She also asked about the signs at the Lani Kai and the Holiday Inn. Mr. Fluegel said the Holiday Inn came in with a permit which the Town denied since it didn't meet the criteria for the landmark designation but they are in talks about what is permitted and what is not.

Mr. Zuba asked Mr. Fluegel for the analysis of the Nature Conservancy report on water quality in Estero Bay that he asked for last month, especially since Mr. Laakkonen is present; Mr. Fluegel apologized and said he forgot but "will get that for you." He also asked about rental units and if the proposal will include inspections, as well as why this issue would come to the LPA. Mr. Fluegel explained the LDC involvement and the Chapter 34 items which come to the LPA. Mr. Zuba feels that this is important and should come before the LPA. Mr. Fluegel pointed out that the LDC is specific about things that come to the LPA and what authority they would have in this area.

Mr. Kakatsch commended the Town for the "great job on the north end" and he encouraged them to continue that work to the south end. He asked about the status of some buildings across from the Newton Park saying that they are unoccupied and have been in terrible shape for quite some time. He wondered what they can do to address this as there are homeless people sleeping around there and it is unattractive as well as unhealthy to the beach. He also commented about the lack of bike paths and the fact that this is a safety concern too.

Mr. Fluegel said that he will try to deal with these properties through code enforcement and Ms. Miller will also check into this. He also talked about the situation with the bike paths and sidewalks and said that he has begun checking into school grants and funding for some of this. Discussion ensued about this and possible funding avenues.

Mr. Van Duzer said that there are no pedestrian sidewalks on the beach as they were actually put in as bike paths years ago.

Ms. Shamp commented on what Mr. Zuba brought up earlier and say that the role of the LPA is to be supportive and assist the Council, providing an additional review for LDC

regulations, ordinances, etc. to be sure they are fully vetted and feels that the rental unit issue should be reviewed by the LPA, especially as stated in LDC Sec. 34-121.1 wherein it states “prepare recommendations for changes to boundaries of various zoning districts or the regulations applicable thereto.” She feels that the rental issue is certainly one that is a regulation within specific zoning districts where short term rentals are allowed and an attempt to skirt the LPA by researching whether an ordinance needs to be heard by them diminishes the intent of their function.

**IX. LPA ATTORNEY ITEMS**

Ms. Miller had nothing to report.

**X. COMMUNITY DEVELOPMENT DIRECTOR ITEMS**

Mr. Fluegel responded to Ms. Shamp and said “in no way, shape or form is staff trying to skirt the LPA” as they are required to follow the code and are directed by Council. He added that he must follow the advice of the attorney and if something is supposed to be reviewed by the LPA, it will be brought to them.

**XI. PUBLIC COMMENT**

Mr. Melsick commented about Seafarer’s and said it is “the island’s biggest slum” and it needs to be torn down. He said that the LPA should demand that the county remove its slum at the beach and he has no knowledge of any negotiations for the sale of the property by the county.

He asked that the LPA insist that the county to “retake its right-of ways” along Estero Blvd. and maintain them since the Town needs the property to progress on any of its projects.

**XII. LPA ACTION LIST REVIEW**

**Resolutions to Town Council**

- Special exceptions-Surf Club and Mermaid Lounge-Van Duzer/Kay
- Shipwreck-Continued at LPA request-May 10, 2011
- Sign ordinance-goes to Council on April 18; Kay/Kakatsch
- 216 Connecticut-April 4; Kay/Kakatsch
- Flood plane-April 4; Kay/Kakatsch
- Parasail, jet ski ordinances-April meeting

**Future Work Activities**

- ROW Residential Connection; Van Duzer-TBD  
Ms. Shamp explained that this has been dragging on for a long time and going back and forth and believes that the ROW maps should be updated by now. She said this was a top priority before. Mr. Fluegel said was not aware of the new maps but said that he will check into this. Mr. Ryffel added that this was a very important issue and has gone too long without the attention it needs.
- LDC 613-14 10-255 Storm Water-TBD
- Post-disaster reconstruction/recovery-TBD; Ms. Miller

- IPMC (code enforcement clean-up) possibly April
- COP ordinance

Ms. Shamp reminded the members to continue to read their copies of the LDC.

### **XIII. ADJOURNMENT**

**Motion: Mr. Van Duzer moved to adjourn.**

**Seconded by Ms. Kay;**

**Vote: Motion passes 7-0.**

Meeting adjourned at 11:04 AM.

Adopted \_\_\_\_\_ with/without changes. Motion by \_\_\_\_\_  
(DATE)

Vote: \_\_\_\_\_ Signature: \_\_\_\_\_

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