

**1. Requested Motion:**

**Meeting Date: Apr. 18, 2011**

Motion to Approve 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." The Ordinance was introduced at the April 4, 2011 Town Council Meeting.

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
						

**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 \_\_\_\_\_  
Tom Babcock \_\_\_\_\_  
Alan Mandell \_\_\_\_\_

Bob Raymond, Vice Mayor \_\_\_\_\_  
Jo List \_\_\_\_\_

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

ATTEST:

TOWN OF FORT MYERS BEACH

BY:

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

\_\_\_\_\_  
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

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**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*

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**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

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- (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