

**ORDINANCE NO. 17-09**

**AN ORDINANCE BY THE FORT MYERS BEACH TOWN COUNCIL AMENDING THE TOWN OF FORT MYERS BEACH CODE OF ORDINANCES TO AMEND FORT MYERS BEACH LAND DEVELOPMENT CODE CHAPTER 6; TO ADOPT TECHNICAL AMENDMENTS TO THE FLORIDA BUILDING CODE; PROVIDING FOR APPLICABILITY; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.**

**WHEREAS**, the Legislature of the State of Florida has, in Chapter 166, Florida Statutes, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

**WHEREAS**, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of the Town of Fort Myers Beach and such areas may be subject to periodic inundation which may result in loss of life and property, 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, and

**WHEREAS**, the Town of Fort Myers Beach desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for participation in the National Flood Insurance Program; and

**WHEREAS**, Chapter 553, Florida Statutes, was adopted by the Florida Legislature to provide a mechanism for the uniform adoption, updating, amendment, interpretation and enforcement of a state building code, called the *Florida Building Code*; and

**WHEREAS**, Chapter 553, Florida Statutes, allows for local technical amendments to the *Florida Building Code* that provide for more stringent requirements than those specified in the Code and allows adoption of local administrative and local technical amendments to the Florida Building Code to implement the National Flood Insurance Program and incentives;

**WHEREAS**, the Town Council previously adopted a requirement to require accumulation of costs of improvements and repairs to buildings, based on issued building permits, over a 5-year period, for buildings and structures in flood hazard areas as part of Ordinance 16-02 and,

**WHEREAS**, the Town Council has determined that it is in the public interest to rescind a local technical amendment to the *Florida Building Code* and the proposed amendments are not more stringent than necessary to address the need identified, do not discriminate against materials, products or construction techniques of demonstrated capabilities, are in compliance with section 553.73(4), Florida Statutes, and

**NOW, THEREFORE, BE IT ORDAINED** by the Town Council of the Town of Fort Myers Beach that the following amendments to the Florida Building Code and floodplain management regulations are hereby adopted.

**SECTION 1. RECITALS.**

The foregoing whereas clauses are incorporated herein by reference and made a part hereof.

## SECTION 2. AMENDMENT OF TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE CHAPTER 6.

The Town of Fort Myers Beach Land Development Code Chapter 6, Article IV, pertaining to Floodplain Regulations, is hereby amended with underlining representing new text and strikethrough identifying deleted text.

### ARTICLE II. BUILDING CODES

#### DIVISION 3. BUILDING CODE

##### Sec. 6-111. - Adoption; amendments.

*Florida Building Code, Building, Section 1612.2.*

**SUBSTANTIAL IMPROVEMENT.** Any ~~combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a 5-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. For each building or structure, the 5-year period begins on the date of the first improvement or repair of that building or structure subsequent to February 4, 2002.~~ If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

*Florida Building Code, Existing Building, Chapter 2.*

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1. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

## ARTICLE IV. FLOODPLAIN REGULATIONS

### DIVISION 3. DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

#### **Sec. 6-424. Substantial improvement and substantial damage determinations.**

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, will:

- (1) Estimate the market value or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure will be the market value before the damage occurred and before any repairs are made; any appraisal used for the purposes of substantial improvement/substantial damage determinations must be current within one year of work commencing;
- (2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; ~~the determination requires evaluation of previous permits issued for improvements and repairs as specified in the definition of "substantial improvement;"~~ and for proposed work to repair damage caused by flooding, the determination requires evaluation of previous permits issued to repair flood-related damage as specified in the definition of "substantial damage;" and
- (4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood-resistant construction requirements of the *Florida Building Code* and this article is required.

### DIVISION 9. DEFINITIONS

#### **Sec. 6-494. Definitions.**

*Market value.* The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this article, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser, Actual Cash Value (replacement cost depreciated for age and quality of construction), or tax assessment value adjusted upward by 20%.

Any proposed value submitted via a private appraisal that exceeds the property appraiser's valuation by more than 35 percent may be subject to peer review by a qualified local appraiser or submittal of a new independent appraisal, with the full cost of the review or new appraisal paid by the applicant.

*Substantial improvement.* Any combination of repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure taking place during a five-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. For each building or structure, the five-year period begins on the date of the first permit issued for improvement or repair of that building or structure subsequent to February 4, 2002. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either: [Also defined in FBC, B, Section 202.]

- (1) Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- (2) Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure.
- (3) ~~Costs of alterations or improvements whose express purpose is the mitigation of future storm damage, provided the costs of such measures, plus the costs of any other improvements, 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 impact resistant glass, strengthening of roof attachments, floors, or walls, and minor measures to reduce flood damage.~~
  - 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 percent of the market value of the structure.~~
  - b. ~~The annual allowance for storm mitigation improvements is not applicable towards any costs associated with a lateral or vertical addition to an existing structure or to the complete replacement of an existing structure.~~

## **DIVISION 10. FLOOD RESISTANT DEVELOPMENT**

### *Subdivision VII. Other Development*

#### **Sec. 6-526. Concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses in coastal high hazard areas (Zone V).**

In coastal high hazard areas, concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses are permitted beneath or adjacent to buildings and structures provided the concrete slabs are designed and constructed to be:

- (1) Structurally independent of the foundation system of the building or structure;
- (2) Frangible and not reinforced, so as to minimize debris during flooding that is

- capable of causing significant damage to any structure; and
- (3) Have a maximum slab thickness of not more than four inches without turned-down edges, have isolation joints at pilings and columns, and have control or construction joints in both directions spaced no more than 4 feet apart.

### **SECTION 3. FISCAL IMPACT STATEMENT.**

In terms of design, plan application review, construction and inspection of buildings and structures, the cost impact as an overall average is negligible in regard to the local technical amendments because all development has been subject to the requirements of the local floodplain management ordinance adopted for participation in the National Flood Insurance Program. In terms of lower potential for flood damage, there will be continued savings and benefits to consumers.

### **SECTION 4. APPLICABILITY.**

This ordinance applies within the jurisdiction of the Town of Fort Myers Beach. This ordinance applies to all applications for development, including building permit applications, and subdivision proposals, submitted on or after the effective date of this ordinance. However, density, intensity or zoning category cannot be increased without Town council approval.

### **SECTION 5. INCLUSION INTO THE CODE OF ORDINANCES.**

The Town Council intends that the provisions of this ordinance will be made a part of the Fort Myers Beach Code of Ordinances, and that sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish codification; and, regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the Town manager or designee without the need for a public hearing.

### **SECTION 6. SEVERABILITY.**

If any section, subsection, sentence, clause or phrase of this ordinance is, for any reason, declared by the courts to be unconstitutional or invalid, such decision will not affect the validity of the ordinance as a whole, or any part thereof, other than the part so declared.

### **SECTION 7. 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 requirements will apply.

### **SECTION 8. EFFECTIVE DATE.**

This ordinance becomes effective immediately upon adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member Shamp and seconded by Council Member Cereceda, and upon being put to a roll call vote, the results was as follows:

Dennis C. Boback	aye
Tracey Gore	nay
Bruce Butcher	aye
Anita Cereceda	aye
Joanne Shamp	aye

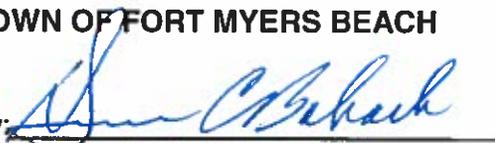
**ATTEST:**

By:

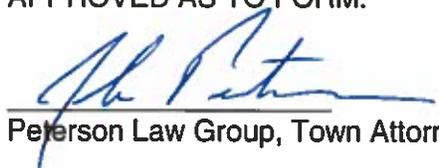
  
Michelle D. Mayher, Town Clerk

**TOWN OF FORT MYERS BEACH**

By:

  
Dennis C. Boback, Mayor

**APPROVED AS TO FORM:**

  
Peterson Law Group, Town Attorney