

TOWN OF FORT MYERS BEACH
ORDINANCE NO. 96-19

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH FLORIDA, TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH RECOVERY FROM DISASTER ORDINANCE PROVIDING AUTHORITY; TITLE AND CITATION; DEFINITIONS; DISASTER ADVISORY COUNCIL; POST-DISASTER RECOVERY TASK FORCE; EMERGENCY REVIEW BOARD; POST-DISASTER REDEVELOPMENT PRIORITIES; ESSENTIAL SERVICE AND FACILITY RESTORATION; POST-DISASTER DEBRIS CLEARANCE AND DISPOSAL STRATEGIES; DETERMINATION OF DAMAGE, BUILDBACK POLICY, MORATORIA, EMERGENCY REPAIRS AND EMERGENCY PERMITTING SYSTEM; ECONOMIC REDEVELOPMENT POLICIES; GUIDELINES FOR ACQUIRING DAMAGED PROPERTY; AUTHORITY; PENALTIES; CONFLICT AND SEVERABILITY AND EFFECTIVE DATE

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA as follows:

SECTION ONE: Authority

This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapter 166, Florida Statutes, and other applicable provisions of law.

SECTION TWO: Title and Citation

This ordinance shall be know and cited as the "Town of Fort Myers Beach Recovery From Disaster Ordinance"

SECTION THREE: Definitions

For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular and words in the singular include the plural. The words "shall" and "will" are mandatory and not discretionary.

A. "Building Value" means the latest total assessment of all improvements on a parcel of land recorded on the Lee County Property Appraiser's file before the structure was damaged.

B. "Catastrophic Disaster" means a disaster that will require massive state and federal assistance including immediate military involvement.

C. "Chief Building Official" means the Director of Codes and Building Services or his/her designee, who is hereby designated to implement, administer and enforce the building permit moratoria

provisions of this Ordinance.

D. "Current regulatory standards for new construction" means the following:

1. federal requirements for elevation above the 100-year flood level;
2. building code requirements for flood proofing;
3. repair work meets current building and life safety codes;

E. "Damage Assessment" means a systematic procedure for evaluating damage to public and private property, based on current replacement cost. The assessment may be used to determine if the damaged area can qualify for federal or state disaster assistance.

F. "Destroyed Structure" means a structure that is a total loss or damaged to such an extent that repairs are not technically or economically feasible. The indicator for this category is if the cost to repair exceeds fifty percent (50%) of the replacement value at the time of damage or destruction.

G. "Disaster Advisory Council" means a group of officials designated by this Ordinance for the effectuation of its purposes.

H. "Emergency Review Board" means a committee of three members from the Post Disaster Recovery Task Force established for the purposes of this Ordinance.

I. "Historic resource" means any prehistoric or historic district, site, building, structure, object or other real or personal property of historical, architectural or archaeological value. Historic resources may include but are not limited to monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government or culture of the town, county, the state or the United States.

J. "Local Damage Assessment Team" means a group of individuals designated by the local jurisdiction to perform damage assessment according to State and Federal requirements.

K. "Major Damage Structure" means a structure that can be made habitable with extensive repairs. Damage may include foundation, roof structure, and major structural components. The indicator for this category is if the cost to repair is greater than twenty percent (20%) and up to and including fifty percent (50%) of the replacement value at the time of damage.

L. "Major Disaster" means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance.

M. "Minor Damage Structure" means a structure that can be made habitable in a short period of time with minimal repairs. Damages may include doors, windows, floors, roofs, central air conditioners, and other minor structural damage. The indicator for this category is if the cost to repair is twenty percent (20%) or less than the replacement value at the time of damage.

N. "Minor Disaster" means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance. ' '

O. "Post-Disaster Recovery Task Force" means a group of officials designated by and for the purposes of this Ordinance.

P. "Replacement Cost" means the actual cost to repair, reconstruct, rebuild or replace a damaged structure. It will not include the following parts of a structure or items not considered a permanent part of the structure: building plans, surveys, permits, sidewalks, pools, screens, sheds, gazebos, fences, furniture and carpeting. For purposes of this Ordinance, the replacement cost will be compared to the structure's replacement value to determine the percent of the structure damaged.

Q. "Replacement Value" of a structure means the market building value contained in the Lee County Property Appraiser's File multiplied by one of the following factors:

1. 120% in a major disaster, or
2. 150% in a catastrophic disaster.

The structure's owner may opt to establish replacement value by hiring a state certified property appraiser rather than use the formula stated in this definition.

R. "Structure" means that building or accessory building which is built or constructed.

SECTION FOUR: Disaster Advisory Council

A. A Disaster Advisory Council is hereby established. The Council's functions will primarily be pre-disaster planning and post-disaster recommendations. It will consist of the same members serving on the "Recovery Task Force" with some additions at the Disaster Advisory Council's discretion, and as set forth below.

B. The Disaster Advisory Council will meet on a continuing and regularly scheduled basis to discuss its specific roles and responsibilities in accordance with this Ordinance, and relative issues associated with recovery from a major or catastrophic disaster. The Council's duties and responsibilities include, but are not limited to:

1. overseeing the recovery and reconstruction process,

2. advising the Town Council on relevant recovery and reconstruction issues,

3. identifying opportunities to mitigate future loss of life and property damage through the management of recovery and reconstruction,

4. maintaining a post-disaster redevelopment plan for the town, including recommending changes regarding the Town of Fort Myers Beach Post-Disaster Strategic Plan, the Town of Fort Myers Beach Comprehensive Plan and the Post-Disaster Ordinance to the Town Council,

5. developing procedures to carry out the Town's buildback policy, as defined by the Town Plan and the Post-Disaster Redevelopment Plan,

6. maintaining established policies for redeveloping high hazard land areas that have sustained repeated damage from flooding or hurricanes,

7. defining principles and establishing criteria for prioritizing acquisition of property damaged as the result of a major or catastrophic disaster,

8. establishing special committees and subcommittees within the Disaster Advisory Council to deal with specific issues arising during the disaster recovery process,

9. implementing a management system that allows for rebuilding and reconstruction to be conducted in an orderly and timely manner through control of the issuance of building permits, development orders and site plans considering the location, timing, and sequence of reconstruction and repair,

10. developing procedures that promote the mitigation of future disaster damage through activities carried out during recovery and reconstruction,

11. setting priorities to guide community redevelopment following a major or catastrophic disaster, including, but not limited to:

a. priorities in restoring essential community services (electrical power, communications, water, and waste water service),

b. predetermined strategies for clearing, removing and disposing of disaster-caused debris, and

12. establishing an education program to advise the public of the Town's Post Disaster Redevelopment Plan.

13. developing and recommending procedures to document actual uses, densities and intensities, and compliance with regulations in effect at the time of construction, through such means as photographs, diagrams, affidavits, permits, appraisals, tax records, etc.

14. if considered necessary, recommending changes in approved land uses in land areas with sustained, repeated damage from flooding or hurricanes in accordance with the criteria set forth in this Ordinance.

15. making recommendations for participation in federal and state post-disaster hazard mitigation planning.

16. evaluating damaged public facilities and formulating alternative mitigation options (i.e., repair, replace, modify or

relocate).

17. making recommendations for revision of the Town's redevelopment plan in conjunction with federal, state, and local emergency officials.

18. recommending any changes in the Comprehensive Plan, development standards, zoning regulations, setback, density, open space, buffering and elevation requirements, building codes, or any other ordinances necessary or advisable to prevent a recurrence of damage.

19. developing procedures to address the rehabilitation of historic resources in a manner that preserves their historic integrity.

C. Composition of Disaster Advisory Council. The Disaster Advisory Council will consist of the following officials and such other officials as may be approved annually by the Town Council:

1. Town Manager
2. Assistant Town Manager
3. Town Attorney
4. Fort Myers Beach Fire Control District designee
5. Lee County Utilities designee
6. Florida Cities Water Company designee
7. Franchisee Recycling Corporation designee
8. Lee County Health Department designee
9. Lee County Sheriff's designee
10. Other representatives as appointed by the Town Council.

The officials set forth above may be represented by a designee chosen to serve in their place providing the appointment is made in writing to the Disaster Advisory Council chair.

D. Chair of the Disaster Advisory Council. The Town Manager (or designee) will serve as the Chair of the Disaster Advisory Committee. All town personnel will serve as staff for the Disaster Advisory Council.

E. Quorum. For all meetings of the Disaster Advisory Council those members present will constitute a quorum.

SECTION FIVE: Post-Disaster Recovery Task Force

A. Post-Disaster Recovery Task Force. A Post-Disaster Recovery Task Force is established that will be comprised of the following nine officials:

1. Town Manager
2. Assistant Town Manager
3. Town Attorney
4. Fort Myers Beach Fire Control District designee
5. Lee County Utilities designee
6. Florida Cities Water Company designee
7. Franchisee Recycling Corporation designee

8. Lee County Health Department designee
9. Lee County Sheriff's designee

Additionally, all Disaster Advisory Council members will be ex-officio members of the Post-Disaster Recovery Task Force.

B. Activation of Post-Disaster Recovery Task Force. For post-disaster responsibilities, the post-disaster recovery task force will be activated and mobilized by a disaster declaration made either by the Town Council or the Office of the Governor of the State of Florida.

C. Duration of Post-Disaster Recovery Task Force. In the event of a disaster declaration, the Post-Disaster Recovery Task Force will activate and mobilize for a minimum period of sixty (60) days. Unless the Town Council extends its tenure, the Post-Disaster Recovery Task Force's post-disaster function will de-activate after 60 days.

D. Repealing or Extending of Post-Disaster Recovery Task Force. The Town Council may, by resolution, extend or repeal the activation of the Post-Disaster Recovery Task Force.

E. Responsibilities of the Post-Disaster Recovery Task Force. The Post-Disaster Recovery Task Force will be responsible for advising the Disaster Advisory Council or the Town Council on a wide range of post-disaster recovery, reconstruction, and mitigation issues. The Post-Disaster Recovery Task Force will have the following responsibilities:

1. To receive and review damage reports and other analyses of post-disaster circumstances and to compare these circumstances with mitigation opportunities identified prior to the disaster in order to identify areas for post-disaster change and innovation. Where needed, the Post Disaster Recovery Task Force may review alternative mechanisms for achieving these changes and recommend the coordination of internal and external resources for achieving these ends.

2. In addition to the responsibilities above, the Post-Disaster Recovery Task Force may:

- a. Initiate recommendations for the enactment, repeal or extension of emergency ordinances and resolutions.

- b. Review the nature of damages, identify and evaluate alternate program objectives for repairs and reconstruction, and formulate recommendations to guide community recovery, and assist other local municipalities with their programs.

- c. Formulate special committees and sub-committees as conditions may warrant.

- d. Recommend and implement an economic recovery program focusing on rapid recovery of the tourism industry.

- e. Recommend rezoning changes in areas of damage, when

deemed appropriate.

- f. Set a calendar of milestones for recovery tasks.
- g. Recommend repealing or extending any moratorium.
- h. Recommend land areas and land use types that will receive priority in recovery operations.
- i. As conditions may warrant, appoint an Historic Rehabilitation Coordinator responsible for: evaluating the extent and type of historic rehabilitation activities needed based upon assessments of damage; assisting the Chief Building Official and staff in related historic resource rehabilitation activities; providing information on historic resource rehabilitation and redevelopment in historic districts to interested parties to coordinate and maximize such efforts; and fulfill other duties assigned by the Disaster Advisory Council or the Town Council.
- j. Recommend changes to procedures to document actual uses, densities and intensities, and compliance with regulations in effect at the time of construction, through such means as photographs, diagrams, plans, affidavits, permits, appraisals, tax records, etc.
- k. Evaluate hazards and the effectiveness of mitigation policies and recommend appropriate amendments, if considered advisable.
- l. If considered necessary, recommend changes in approved land uses in land areas which sustained repeated damage from flooding or hurricanes in accordance with the criteria set forth in this Ordinance.
- m. Initiate recommendations for acquisition of damaged property.
- n. Make recommendations for participation in federal and state post disaster hazard mitigation planning.
- o. Recommend hazard mitigation projects or programs for consideration of post-disaster state or federal funding.
- p. Evaluate damaged public facilities and formulate alternative mitigation options (i.e., repair, replace, modify or relocate).
- q. Make recommendations for revision of the Town's redevelopment plan in conjunction with federal, state, and local emergency officials.
- r. Review emergency actions and recommend amendments to Town's: 1) Post-Disaster Ordinance; 2) Post-Disaster Strategic Plan, 3) Comprehensive Emergency Management Plan; 4) Emergency Operations Center's Standard Operating Procedures; and 5) relevant Administrative Codes.

3. The Post-Disaster Recovery Task Force may recommend any changes in the Comprehensive Plan, Land Development Code, or any other ordinances which it deems necessary or advisable to prevent recurring damage or mitigate hazards.

4. The Post-Disaster Recovery Task Force may also recommend that the Disaster Advisory Council or the Town Council consider objectives such as the following:

- a. enhancing local recreational and open space opportunity.
- b. enhancing public access to estuarine, riverine and gulf beaches.
- c. enhancing and restoring local natural ecosystems.
- d. reducing traffic congestion, noise, and other transportation-related problems.
- e. enhancing long-term economic vitality of the local commercial and industrial base.
- f. enhancing and rehabilitating historic resources.

F. Function and Duties of Certain Post-Disaster Recovery Task Force Members

1. Disaster Recovery Coordinator.

a. Purpose. To coordinate disaster assistance available from the federal government and state agencies to the Town following a major or catastrophic disaster.

b. Duties. Will consist of, but not be limited to, the following:

(1) Determine the types of assistance available to the Town and the types of assistance most needed.

(2) Assist in the local coordination of federal and state disaster recovery efforts.

(3) Provide local assistance to facilitate federal and state disaster assistance programs.

(4) Act as facilitator in securing federal or state disaster assistance.

(5) Inform the community of types of disaster assistance available.

(6) Fulfill other duties as directed by the Disaster Advisory Council or the Town Council.

2. Economic Recovery Coordinator.

a. Purpose. To coordinate economic recovery with the business community following a major or catastrophic disaster.

b. Duties. Will consist of, but not be limited to, the following:

(1) Determine the potential or actual impacts to the local economy and determine short and long term strategies to be considered by the Post-Disaster Recovery Task Force.

(2) Assist in the local coordination of federal and state economic recovery efforts.

(3) Disseminate accurate information to and from the business community.

(4) Inform the business community of types of disaster assistance available.

(5) Fulfill other duties as directed by the Disaster

Advisory Council or the Town Council.

3. Hazard Mitigation Coordinator.

a. Purpose. To coordinate hazard mitigation assistance available from the federal government and state agencies and Lee County to the Town following a major or catastrophic disaster.

b. Duties. Will consist of, but not be limited to, the following:

(1) Determine the types of hazard mitigation assistance or funding available to the Town and the types of assistance most needed.

(2) Assist in the local coordination of federal and state hazard mitigation efforts.

(3) Provide local assistance to facilitate federal and state hazard mitigation assistance programs.

(4) Act as facilitator in securing federal or state hazard mitigation funding for hazard mitigation projects to local entities.

(5) Fulfill other duties as directed by the Disaster Advisory Council or the Town Council.

4. Tourism Recovery Coordinator.

a. Purpose To coordinate tourism recovery with the visitor and convention community following a major or catastrophic disaster.

b. Duties. Will consist of, but not be limited to, the following:

(1) Determine the potential and actual impacts to the local tourism industry and its economy and determine short and long term strategies for expedient recovery.

(2) Acquire and disseminate accurate information from and to the tourism industry and to and from the local, state, national and international media.

(3) Inform the tourism industry of types of disaster assistance available.

(4) Fulfill all other duties as directed by the Disaster Advisory Council or the Town Council.

G. Quorum. For all meetings of the Post-Disaster Recovery Task Force those members present will constitute a quorum.

SECTION SIX: Emergency Review Board

A. Emergency Review Board.

1. An Emergency Review Board is established in major or catastrophic disasters to review disputes arising from the implementation of the town's buildback policy. The Emergency Review

Board will consist of three representatives from the Post-Disaster Recovery Task Force appointed by the Town Manager. Decisions rendered by the Emergency Review Board may be appealed to the Town Council through the administrative appeals process.

2. The Emergency Review Board may refer and make recommendations to the appropriate town department for any requests for modifications that are beyond those authorized in this Ordinance.

SECTION SEVEN. Post-Disaster Redevelopment Priorities

The following priority sequence will govern community rebuilding and redevelopment efforts:

A. Re-establishing services that meet the physical and safety needs of the community: to include water, food, ice; medical care; emergency access; continuity of governmental operations; emergency communications; security of residents and possessions from harm; health, and temporary housing.

B. Reestablishing infrastructure necessary for community reconstruction (i.e., electrical distribution systems; potable water and sanitary sewer service; restoring medical and health care; rebuilding damaged transportation facilities; and housing facilities).

C. Restoring the community's economic base, as defined by the Town Plan or accepted econometric principles and practices.

D. Improving the community's ability to withstand the effects of future major or catastrophic disasters.

SECTION EIGHT. Essential Service and Facility Restoration Priorities

A. The following priorities will govern power and communication service restoration once damaged electrical transmission systems, substations and distribution systems are restored:

1. Priority # 1- Emergency response and recovery facilities having no emergency power or telephone service (community emergency operations or command centers, response/recovery centers); medical facilities having no emergency power; repairing emergency communication centers and facilities; and designated facilities providing emergency food, water and ice.

2. Priority # 2- Water treatment and pumping facilities, special care centers, nursing home facilities having no emergency power, law enforcement and fire stations having no emergency power, staging areas and distribution centers requiring emergency power.

3. Priority # 3- Wastewater treatment plants and lift stations, general telephone service, solid waste facilities,

medical facilities having emergency power, nursing homes having emergency power, law enforcement and fire stations having emergency power, public shelters still housing evacuees and the homeless, adult congregate living facilities, facilities serving as disaster application centers for federal disaster relief, and public and private facilities necessary for resource management and distribution activities (government facilities handling emergency purchasing, designated grocery store/restaurant outlets).

4. Priority # 4- Community areas receiving minor damage, and other government facilities.

5. Priority # 5- Community areas receiving major damage.

6. Priority # 6- Community areas receiving catastrophic damage.

B. The following procedures will govern restoration of water service:

1. Valve off major leak areas.

2. Work with private franchises providing service to determine extent of damaged facilities and reestablish service.

3. Identify highly damaged areas.

4. Assess and provide service to meet critical customer needs (i.e., emergency response and recovery facilities, hospitals, nursing homes, emergency public shelters, kidney dialysis patient facilities, and other identified emergency response facilities).

5. Establish emergency water sites as necessary.

6. Establish priorities and repair damaged facilities in the following order: treatment plants, trunk mains, distribution mains, service connections.

7. Re-pressurize area water systems as necessary.

8. Establish area water potability.

C. The following procedures will govern wastewater service restoration:

1. Assess damages to system (wastewater treatment plants, lift stations, electrical support systems, to include evaluating the need to take lift stations off line in flooded evacuated areas to avoid damage to property when power is restored).

2. Work with private franchises providing service to determine extent of damaged facilities and reestablish service.

3. Coordinate recovery operations in determining and repairing any damages to wastewater treatment plants.

4. Determine need and provide emergency service to emergency response and recovery facilities and hospitals.

5. Repair damaged facilities in the following sequence: treatment plants first, then lift stations starting with those closest to the treatment plants.

6. Reestablish wastewater service to franchise areas as power and water service are restored.

SECTION NINE: Post-Disaster Debris Clearance and Disposal

Strategies.

A. The following policies will govern emergency debris clearance, removal and disposal strategies:

1. Emergency access to aid search and rescue operations,
2. Major arterial roadways linking to intercounty traffic,
3. Major arterial roadways providing access to designated response/recovery centers, public/private utility companies providing water service, and entry roads to the County's designated solid waste disposal facilities.
4. Major arterial roadways providing access to roadways carrying intercounty traffic.
5. Roadways providing access to designated staging areas and distribution centers supporting disaster relief efforts,
6. Roadways providing access to major commercial activity centers,
7. Minor arterial roadways coming under town maintenance responsibility,
8. Collector roadways under town maintenance responsibility, and
9. Other roadways under town maintenance responsibility.

B. Once road clearing operations supporting search and rescue operations, clearing intercounty roadways, and providing access to designated response/recovery centers are completed, debris clearance will be guided by the following priority sequence:

1. Area medical facilities with emergency rooms, areas designated for field medical sites, areas designated for staging and distributing disaster relief aid,
2. Facilities designated as centers for emergency response operations, fire district and law enforcement stations,
3. Areas with minor damage,
4. Areas with major damage, and
5. Areas with catastrophic damage.

C. Debris will be separated to avoid mixing hazardous materials and hazardous waste with other types of debris.

D. Agencies or organizations contracted to clear, remove and dispose of debris will follow the following principles:

1. Debris collection and removal procedures from residential and commercial properties will adhere to the following collection sequence: priority 1 - raw garbage; priority 2 - rubbish; priority 3 - yard waste; and priority 4 - construction demolition debris.
Debris will be separated into these four general priority classes. Instructions will be provided by contract providers to separate debris in this fashion and also provide notification of the established schedule for picking up the four general debris classes.

2. Storage areas will be operational within seven to ten days after the disaster to separate debris that does not fall under the residential and commercial property programs.

3. Open pit burning, burning by incineration, mulching or chipping horticultural debris, hauling mulched or chipped debris out of the county, disposal at approved solid waste sites and debris reuse and recycling will be acceptable methods of debris disposal, provided these methods meet all applicable rules and regulations established for such operations.

SECTION TEN: Determination of Damage, Buildback Policy, Moratoria, Emergency Repairs and Emergency Permitting System.

A. **Determination of Damage.** The primary task of the local damage assessment team is to identify structures damaged as a result of the disaster. The Town damage assessment team will catalogue and report to the Chief Building Official those structures which have: (1) been destroyed; (2) received major damage; and (3) received minor damage. The Chief Building Official will then inspect the damaged structures and place each structure in one of the damaged categories. The assessment will also serve as a basis for determining if a disaster declaration is warranted.

B. **Town Buildback Policy.** Structures which have been damaged by fire or other natural forces to the extent that the cost of their reconstruction or repair exceeds fifty percent (50%) may be reconstructed at (but not to exceed) the legally documented actual use, density, and intensity existing at the time of destruction, thereby allowing those structures to be rebuilt or replaced to the size, style, and type of their original construction, including original square footage; provided, however, that the affected structure, as rebuilt or replaced, complies with all federal and state regulations, local building and life safety regulations, and other local regulations, which do not preclude reconstruction otherwise intended by this policy.

In accordance with this policy, this Ordinance provides:

1. Structures damaged up to and including fifty percent (50%) may be rebuilt to their original conditions, with repair work subject to current building and life safety codes, except that structures damaged by flood waters in a disaster by more than twenty percent (20%) which have recorded one or more national flood insurance losses of one thousand dollars (\$1,000.00) or more since 1978, must be brought into compliance with current regulatory standards for new construction.

2. Structures damaged more than fifty percent (50%) may be rebuilt to their original square footage and density, provided they comply with:

a. federal requirements for elevation above the 100-year flood level;

- b. building code requirements for flood proofing;
- c. repair work meets current building and life safety codes;
- d. Coastal Construction Control Lines regulations (if applicable);
- e. disability access regulations; and
- f. any required zoning or other development regulations (other than density or intensity), unless compliance with those regulations would preclude reconstruction otherwise intended by the buildback policy as may be determined by the Emergency Review Board set forth below.

3. To minimize the need for individual variances or compliance determinations before reconstruction or redevelopment of structures damaged more than fifty percent (50%), and in order to expedite the processing of the large number of anticipated applications for reconstruction, the development regulations affecting setbacks, parking, buffering and open space in any area declared a disaster may be modified by majority action of the Emergency Review Board as set forth below. Additionally, the listed development regulations will be evaluated for their applicability to allow reconstruction or redevelopment that will most closely comply with current regulations. These regulations will be prioritized as to their relative importance based upon, among other factors, the sites' use, location, size, and the condition of any remaining pre-existing structures. More specific guidelines will be established by administrative code.

a. for single family, two family and duplexes and their accessory structures-the Emergency Review Board is authorized to apply and modify development regulations for lot area and dimension, setbacks, lot coverage, height, handicapped access and open space.

b. for multiple family, commercial and industrial buildings-the Emergency Review Board is authorized to modify development regulations for lot area and dimensions, setbacks, lot coverage, height, handicapped access, buffering, open space, loading space and parking.

c. any modifications granted will be the minimum necessary. No modifications will be granted that will totally eliminate buffering or open space, or that will allow buildings to exceed the special height limitations specified in Town Development Code Chapter 34, Zoning, Division 30, Property Development Regulations, Subdivision II, Height.

d. the Emergency Review Board is specifically authorized to modify street, rear side or waterbody setback requirements under the following circumstances:

(1) Street, rear, side, or waterbody setbacks may be modified to permit the reconstruction of, or additions to, pre-existing structures that are nonconforming with regard to a specific setback so long as:

(a) the reconstruction will not result in a further diminution of the setback, however, the Emergency Review Board may approve bay windows, chimneys and similar architectural features that encroach further into a setback provided the encroachment does not protrude beyond the pre-existing overhang of the building; and

(b) setbacks may be modified to allow the replacement of stairs or decking that will provide access into a reconstructed dwelling unit.

(2) prior to approving any modification of street or street easement setbacks a determination will be made through consultation with Lee County Department of Transportation regarding future road widening requirements.

e. the Emergency Review Board is specifically authorized to modify the parking requirements under the following circumstances:

(1) to improve ingress and egress to the site.

(2) to eliminate or reduce the instances where parked vehicles were required to back out onto thoroughfares to gain access to the roadway system.

(3) to provide on-site handicapped parking.

f. the Emergency Review Board is specifically authorized to modify buffering requirements to accommodate modifications to parking or additional proposed parking.

g. The Emergency Review Board may also consider other modifications, conditions or variances necessary to reconstruct a pre existing structure in a timely and expeditious manner, including requests for reconstruction not specifically set forth above.

h. The Emergency Review Board may require documentation as to the actual uses, densities, and intensities in existence at the time of earlier construction through such means as photographs, diagrams, plans, affidavits, permits, etc. before authorizing modifications to the requirements referenced above.

5. No provision is made to redevelop property containing damaged structures for a more intense use or at a density higher than that which existed prior to a major or catastrophic disaster. No redevelopment at a higher density or more intense use will be permitted unless appropriate Zoning, Development Review, Building Permit and other applicable land development approvals are granted.

C. Moratoria. The following moratoria will apply for the purpose of prioritizing repair and reconstruction immediately needed for public health, safety and welfare purposes.

1. Initial building moratorium.

a. Effective date of an initial Building Moratorium. An

initial building moratorium will become effective when one or more of the following actions or findings occur:

(1) The Governor of the State of Florida or the President of the United States declares the town a disaster area.

(2) The Chief Building Official determines that one hundred (100) or more structures have received major damage or have been destroyed.

(3) Upon a finding by the Board of County Commissioners of the existence of a state of local emergency in accordance with Chapter 252 of the Florida Statutes.

(4) The County is unable to maintain acceptable levels of public service expected during non-emergency situations.

b. Duration. The initial building moratorium will remain in effect for up to seventy-two (72) hours. No building permits may be issued during this time period. After expiration of this initial building moratorium, the following moratoria will become immediately effective unless modified by the Board.

2. Destroyed structure moratorium. No building permit may be issued within thirty (30) days following the expiration of the initial building moratorium for the replacement of any structure which has been destroyed.

3. Major damaged structure moratorium. No building permit for repairs of a major damaged structure may be issued for at least ten (10) days following the expiration of the initial building moratorium.

4. Minor damaged structure moratorium. No building permits for the repair of minor damaged structures may be issued for at least four (4) days following the expiration of the initial building moratorium.

5. New development moratorium. No building permit for new construction or reconstruction unrelated to rebuilding or repairing disaster damaged structures may be issued for at least thirty (30) days following the expiration of the initial building moratorium in order to allow an examination of existing building and life safety codes. The Disaster Advisory Committee or Post Disaster Recovery Task Force will determine and advise the Board of County Commissioners whether a new development moratorium is necessary based upon the results of damage assessment and recommendations from the Chief Building Official and the Recovery Task Force.

6. Outstanding building permit inspection moratorium.

a. With the exception of inspections for certificates of occupancy, inspections for all building permits issued prior to the disaster will be suspended for a minimum period of thirty (30) days

following the expiration of the initial building moratorium, unless the Chief Building Official determines on an area wide or case-by-case basis that sufficient inspection staff will be available to inspect the structures. Suspension of inspections of building permits process means that except as allowed by the Chief Building Official no building permit inspections by the town Division of Codes and Building Services will be performed during the moratorium period, and that no further building permit work is authorized beyond the point at which any inspection is otherwise required.

b. The town may reinspect all building permit work in place prior to the disaster to verify that the work was not damaged during the disaster. If the town determines the building permit work was damaged during the disaster or suspects damage occurred, the developer will be responsible for rework, removal, retesting, and uncovering work to facilitate inspection to ensure compliance with the building permit documents and the building code.

c. Scheduled inspections and requests for building permit inspections suspended under this section will be adjusted to reflect the thirty (30) day moratorium.

7. Outstanding development order moratorium.

a. All applications for development orders, inspections of development order work, and all development orders issued prior to a major or catastrophic disaster will be suspended for a minimum period of thirty (30) days following the expiration of the initial building moratorium. Suspension of outstanding development order process means that no development order work is authorized beyond the point at which a development order inspection is required and that no development order inspections will be performed by the town Division of Zoning and Development Services during this moratorium except as may be authorized by the Department of Community Development Director on an area wide or case-by-case basis.

b. The Town may reinspect all development order work in place prior to the disaster to verify that the work was not damaged during the disaster. If the Town determines that such work was damaged during the disaster or suspects that damage occurred, the developer will be responsible for rework, removal, retesting, and uncovering work to facilitate inspection to ensure compliance with the development order documents and Chapter 10 of the Land Development Code.

c. All applications for development orders, inspections required for approval of development orders, and development orders that would otherwise expire, are suspended under this section and their corresponding dates will be adjusted to account for the effect of this moratorium period.

8. Moratorium on review of site plans, zoning requests and subdivision plats.

a. Site plans, zoning requests and subdivision plats submitted

to the Town prior to the disaster will not be reviewed by the staff or considered by the Town Council for a period of thirty (30) days following the expiration of the initial building moratorium.

b. No new site plans, zoning requests or subdivision plats will be accepted by the Town for a period of thirty (30) days following the expiration of the initial building moratorium.

c. All submittal dates and review periods will be adjusted to reflect the thirty (30) day moratorium.

d. Notwithstanding these restrictions, the Director of Community Development may authorize review otherwise precluded by this moratorium, on a case-by-case basis.

9. Duration of moratoria. All moratoria other than the initial building moratorium will be in effect for the duration described above and may be repealed or extended upon resolution by the Town Council.

E. Emergency Repairs.

1. No construction or reconstruction activity may be undertaken without a building permit while a building moratorium is in effect. Emergency repairs necessary to prevent injury, loss of life, imminent collapse or additional damage to the structure or its contents will not be subject to temporary moratoria. Examples of activities considered acceptable emergency repairs include:

a. Temporary roof repairs with plywood or plastic sheeting to make structures habitable or to prevent continuing damage due to rain and wind to building interiors and exteriors,

b. Covering exterior wall openings with plywood or plastic sheeting,

c. Repairs to interior ceilings to make buildings habitable or to drain accumulated water,

d. Repairs to steps, and

e. Temporary shoring measures to avoid imminent building or structure collapse.

2. Emergency repairs to buildings or infrastructure that house the following organizations or activities will not be subject to temporary moratoria because of their necessity to protect the public health and safety: electrical power, potable water, wastewater, power and communications facilities; emergency stabilization of roadways; police, fire and medical facilities; essential governmental facilities; response/recovery centers and distribution centers; debris removal; and stabilization or removal of structures about to collapse.

3. Nothing in this Ordinance will be construed to exempt development from compliance with State and Federal permit regulations.

F. Emergency Permitting System.

An Emergency Permitting System will be established by administrative code to assure the quality of rebuilt or reconstructed buildings or structures and to implement the provisions of the town's buildback policy. The provisions contained in the administrative code will take effect when a disaster designated as major or catastrophic has affected in the Town, or when the Town Council requests the Governor to declare the Town a Disaster Area.

SECTION ELEVEN: Economic Redevelopment Policies ' '

A. The following general policies will guide the use of resources employed toward rebuilding the community's economic base:

1. Reestablish the tourist industry,
2. Reestablish banking and financial institutions,
3. Reopen the business community,
4. Restore agriculture and industry.

B. Damaged businesses and other economic enterprises necessary for the public health and safety and for restoring the community's economic base may use temporary structures (such as modular buildings, mobile homes or similar type structures) to carry out their activities until their damaged structure is rebuilt or replaced according to applicable development and redevelopment regulations.

SECTION TWELVE: Guidelines for Acquiring Damaged Property

A. When in the public interest, the Town Council may enter into negotiations with a property owner or owners whose improved real property has been damaged by the disaster for the purpose of acquiring such buildings and associated land or lot for transfer by sale, lease or donation to the Town when the following acquisition conditions are met:

1. the property is located in an area damaged by the disaster, and
2. the property is free of encumbrances (i.e., taxes, liens and judgments) unless the extent of the encumbrances is determined to be acceptable given the property's location and value, and
3. the property meets at least one of the following conditions:
 - a. there are buildings or structures damaged substantially beyond repair or damaged to the extent that the cost of reconstruction or repair exceeds fifty percent (50%) of the replacement value of the building or structure at the time of the disaster.
 - b. there are buildings or structures determined to be repetitive loss properties under Lee Plan Policy 80.1.7.
 - c. there are buildings or structures damaged by a

single event that are not repairable because of buildback policy provisions or significantly increased building costs.

d. the property is abandoned by the owner and may create a blighted area as defined by Section 163.340 (8), Florida Statutes.

B. Property acquired pursuant to Sub-section A must be dedicated for such purposes as the Town Council may agree are consistent with:

1. open space uses, or
2. managing the land for its dedicated purposes.

Future uses which would likely result in a threat to human life or property damage of the same type that occurred during previous disasters is prohibited.

C. Allowable open space uses will include parks for outdoor recreational activities, nature preserves or trails, beach access, unimproved parking lots, and structures functionally related to these uses such as open-sided picnic facilities, refreshment stands, or other non-habitable structures primarily supporting the recreational activities.

SECTION THIRTEEN: Authority

Nothing in this Ordinance limits the authority of the Town Council to declare, repeal or extend a state of local emergency.

SECTION FOURTEEN: Penalties

A. Any person, firm, company or corporation who fails to comply with this Ordinance, or the emergency measures made effective pursuant to this Ordinance, is guilty of a misdemeanor of the second degree, and upon conviction for such offense, may be punished by a fine not to exceed five-hundred dollars (\$500.00) or by imprisonment not to exceed sixty (60) days in the Lee County Jail, or both, in the discretion of the Court hearing the case. Each day of continued non-compliance or violation will constitute a separate offense.

B. In addition, any construction licensee of the Town or the State of Florida who violates any provision of this Ordinance or the emergency measures which are effective as a result of this Ordinance may be charged with a violation and the matter will be heard before the appropriate Board, in a state administrative proceeding or a court of law.

C. Nothing contained in this Section prevents the Town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy any failure to comply with, or violation of, this Ordinance or the emergency

measures which may be made effective according to this Ordinance. Other lawful action will include, but is not limited to, an equitable action for injunctive relief or an action at law for damages.

SECTION FIFTEEN. Conflict and Severability.

A. In the event of conflict between provisions of this Ordinance, the more restrictive provisions will control. In the event of conflict with other regulations, the provisions of this Ordinance will supersede any other land development regulations, regardless of when they were adopted, to the extent of such conflict.

B. If any phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion will be deemed a separate, distinct and independent provision and such holding will not affect the validity of the remaining portion.

SECTION SIXTEEN: Effective Date

This ordinance shall become effective September 30, 1996.

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

Anita T. Cereceda	<u>47 C</u>
Ted FitzSimons	<u>47 C</u>
William (Rusty) Isler	<u>47 C</u>
Garr Reynolds	<u>47 C</u>
Ray Murphy	<u>47 C</u>

DULY PASSED AND ENACTED this 3rd day of September, 1996.

ATTEST:

TOWN OF FORT MYERS BEACH

By: Marsha Segal-George
Marsha Segal-George, Town Clerk

By: Anita T. Cereceda
Anita T. Cereceda, Mayor

Approved as to form by:

Richard V.S. Roosa
Richard V.S. Roosa, Town Attorney