

TOWN OF FORT MYERS BEACH  
ORDINANCE NO. 09-\_\_

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH EMERGENCY RESPONSE AND POST-DISASTER RECOVERY AND RECONSTRUCTION ORDINANCE; PROVIDING AUTHORITY; TITLE; PURPOSE AND INTENT; DEFINITIONS; DISASTER RECOVERY ORGANIZATION; RECOVERY PLAN; GENERAL PROVISIONS; DAMAGE ASSESSMENT, BUILD-BACK POLICY, MORATORIA, EMERGENCY REPAIRS, AND EMERGENCY PERMITTING SYSTEM; DEMOLITION OF DAMAGED BUILDINGS; TEMPORARY AND PERMANENT HOUSING; HAZARD MITIGATION PROGRAM; RECOVERY AND RECONSTRUCTION STRATEGY; POST-DISASTER DEBRIS CLEARANCE AND DISPOSAL STRATEGIES; GUIDELINES FOR ACQUIRING DAMAGED PROPERTY; PENALTIES; CONFLICT AND SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, The Town of Fort Myers Beach is vulnerable to a variety of hazards that may result in major or catastrophic disasters causing substantial injury or harm to the population and substantial to or loss of property; and [Lee County Ordinance; see also Ordinance 06-12]

WHEREAS, safeguarding the life and property of its citizens is an innate responsibility of the Town Council; and [Lee County Ordinance]

WHEREAS, it is essential to the well-being of the Town of Fort Myers Beach to expedite recovery and reconstruction, mitigate hazardous conditions, and improve the community after such disasters; and

**[Statutory provisions]:**

WHEREAS, Chapter 252, Florida Statutes, confers upon the Town Council the authority to declare a state of local emergency and take actions necessary to ensure the public safety and well-being of its residents, visitors, business community, and property during and after such disasters; and [Lee County Ordinance; see also Ordinance 06-12]

WHEREAS, Section 163.3177(6)(g), Florida Statutes, requires a comprehensive planning element for coastal management; and

WHEREAS, Section 163.3178(2)(h), Florida Statutes, affords discretion to the Town Council to apply mitigation, development, and redevelopment policies to designated coastal high hazard coastal areas; and

WHEREAS, Section 163.3178(8), Florida Statutes, requires that Lee County identify and prioritize coastal properties for acquisition according to criteria that include, among others, recognition of hazard mitigation; and [Lee County Ordinance]

**[Comprehensive Plan provisions]:**

WHEREAS, The Town Council adopted the Comprehensive Plan effective January 1, 1999; and

WHEREAS, Comprehensive Plan Goal 5 requires the Town to plan a more sustainable redevelopment pattern that protects coastal resources, minimizes threats to life and property, and limits public expenditures in areas subject to destruction by storms; and

WHEREAS, Comprehensive Plan Policy 5-B-4 requires the Town to adopt a storm emergency plan for preparing for, responding to, and recovering from a hurricane or tropical storm, and evaluate hazard mitigation recommendations of local peacetime emergency plan or interagency hazard mitigation reports for inclusion in the Town plans; and

WHEREAS, Comprehensive Plan Objective 5-C requires the Town to plan for post-disaster rebuilding that will reduce the exposure of human life and property to future disasters and improve the community in other ways during the rebuilding process; and

WHEREAS, Comprehensive Plan Policy 5-C-1 By requires the Town in cooperation with Lee County officials to prepare a post-disaster redevelopment plan, consistent with the Comprehensive Plan and using the following priorities:

- i. Activities that prevent further loss of life or that minimize public health risks;
- ii. Activities that restore the basic public infrastructure and services to support the population;
- iii. Activities that prevent further damage to public or private property;
- iv. Activities that begin the rebuilding process as promptly as possible; and

WHEREAS, Policy 5-C-4 requires the Town to further coordinate the redevelopment activities proposed under the Comprehensive Plan with state and federal floodplain management programs by pursuing the following activities:

- i. all potential measures to encourage corrective and preventative measures to improve existing houses and businesses to increase their resistance to flooding and high winds before a disaster occurs. Examples include storm shutters; shatterproof glass; strengthening roof attachments, floors, and walls; and minor floodproofing;
- ii. Allow non-conforming buildings to be modified provided the modifications do not increase the non-conformity;

- iii. Investigate the feasibility of promoting pedestrian activity in some redeveloping commercial zones by raising the existing grade of roads and sidewalks one to three feet, thus allowing adjoining commercial space to remain at ground level while reducing the required height of dry floodproofing;
- iv. Explore with the Department of Environmental Protection an alternative method of controlling building intensity seaward of the Coastal Construction Control Line. The current rule allows 20% of any single building's frontage to be enclosed at ground level. This percentage may be too high for most parts of the town, but is too low where pedestrian zones exist or are being created. An alternative means of computing the 20% rule could better meet the state's coastal management goals and the town's revitalization program; and

WHEREAS, Policy 5-C-5 requires that new publicly-funded buildings within the Town must be designed to withstand major storms and be able to serve as shelters/operation centers for emergency personnel; and

WHEREAS, Policy 5-C-6 requires the Town to design new and replacement infrastructure to minimize damage caused by flooding and high winds:

- i. Power lines must be relocated underground whenever possible;
- ii. Water and sewer systems should eliminate infiltration of flood waters and be designed to function with auxiliary power when needed;
- iii. Roads should be designed to manage minimum levels of flooding and be located where least susceptible to storm damage; and

POLICY 5-C-7 requires the Town to continue to inventory buildings that are repeatedly damaged by flood waters to identify those that have recorded one or more National Flood Insurance Program (NFIP) flood losses since 1978,

WHEREAS, experience in post-disaster situations has shown that provisions addressing rehabilitation of historic resources must be included in post-disaster recovery efforts in order to preserve their historic character; and [Lee County Ordinance]

WHEREAS, Section 166.21, Florida Statutes, provides the authority for the Town Council to adopt ordinances necessary for the exercise of its powers and prescribe fines and penalties; and [Lee County Ordinance]

WHEREAS, it is the intent of the Town Council to take reasonable action to guide redevelopment during the response and recovery period following a major or catastrophic disaster, that may be caused by tropical storms and hurricanes; and [Lee County Ordinance]

WHEREAS, disaster recovery and reconstruction can be facilitated by establishing a recovery organization within the Town of Fort Myers Beach to plan, coordinate, and expedite recovery and long-term reconstruction activities; and

WHEREAS, preparation of a pre-event plan for emergency response and disaster recovery and reconstruction can help the Town of Fort Myers Beach organize to expedite recovery in advance of a disaster and to identify and mitigate hazardous conditions, both before and after such a disaster; and [\[See Ordinance 06-12\]](#)

WHEREAS, recovery can be expedited by pre-event adoption of an ordinance authorizing certain extraordinary governmental actions to be taken during the declared local emergency to expedite implementation of emergency response and disaster recovery and reconstruction measures identified in a pre-event plan; and

WHEREAS, it is mutually beneficial to cooperatively plan relationships needed between the Town of Fort Myers Beach, Lee County, other municipalities within Lee County, and other state and federal governmental authorities.

NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

**SECTION 1. AUTHORITY**

This Ordinance is enacted pursuant to the provisions of Chapters 83-334 and 95-494, Laws of Florida, Chapters 166 and 252, Florida Statutes, and other applicable provisions of law.

**SECTION 2. TITLE**

This Ordinance will be known as the "Town of Fort Myers Beach Emergency Response and Post-Disaster Recovery and Reconstruction Ordinance."

**SECTION 3. PURPOSE AND INTENT**

It is the intent of the Town under this Ordinance to:

- A.** Authorize creation of an organization to plan and prepare in advance of a disaster for orderly and expeditious post-disaster recovery and to direct and coordinate recovery and reconstruction activities; [\[LC DAC\]](#)
- B.** Direct the preparation of a pre-event plan for emergency response and post-disaster recovery and reconstruction to be updated on an ongoing basis; [\[LC DAC\]](#)
- C.** Authorize in advance of a disaster the exercise of certain planning and regulatory powers related to disaster recovery and reconstruction to be implemented upon declaration of a local emergency; [\[LC PDRTF; ERB\]](#) and

D. Identify means by which the Town will take cooperative action with other governmental entities in expediting recovery; and

E. Replace provisions of Ordinance 96-19 repealed by Ordinance 06-12, but not provided for in that or any other Ordinance; and

F. Establish, prior to a storm event or emergency constituting a major or catastrophic disaster, organizations that will oversee the recovery and reconstruction process and also serve to advise the Town Council on recovery and reconstruction issues. These organizations will also identify opportunities to mitigate future damages through the management of recovery and reconstruction. It is further the intent of the Town to allow rebuilding and reconstruction in an orderly manner by controlling the issuance of building permits, development orders, site plans, and building permits in order to manage the location, timing, and sequence of reconstruction and repair. Although usual preservation procedures cannot be followed in the aftermath of a disaster, generally accepted standards for historic preservation will be followed in the post-disaster response. To further this intent, the Town will make every effort to develop its capacity to identify and coordinate various post-disaster recovery and reconstruction resources while at the same time ensuring maximum local control over the recovery and reconstruction process.

Following a major or catastrophic disaster, sufficient time must be provided to conduct damage assessment, classify and categorize individual structure damage, and evaluate the effectiveness and enforcement of the existing building code.

In the event of a major or catastrophic disaster occurring in the Town, a public health and safety threat may result from the generation of widespread debris. Such debris constitutes a hazardous environment for all modes of movement and transportation of residents as well as emergency aid and relief services, endangerment to all properties of the Town, an environment conducive to breeding disease and vermin, and greatly increased risk of fire. Under these circumstances, it is in the public interest to collect and remove disaster debris from properties whether public lands, public or private roads, and gated communities to eliminate an immediate threat to life, public health and safety, to reduce the threat of additional damage to improved property, and to promote economic recovery of the community at large. [County Ordinance]

#### **SECTION 4. DEFINITIONS**

For purposes of this ordinance, the following definitions will apply. The word must is mandatory and not discretionary.

**Chief Building Official** means the Town's chief building official or designee, who has been designated by the town manager to implement, administer, and enforce the building permit moratoria provisions of this Ordinance. [Cf. LDC Sec. 6-44]

**Current regulatory standards for new construction** means the following:

**A.** Town requirements for elevation to or above the 100-year flood level in accordance with data supplied by the Federal Emergency Management Agency pursuant to Title 44 of the Code of Federal Regulations.

**B.** Florida Building Code requirements for flood-proofing.

**C.** Repair work that meets all then current building and life safety codes. [Lee County Ordinance]

**Damage Assessment Survey** means a systematic procedure for evaluating damage to public and private property, based on current replacement cost. The damage assessment survey may be used to determine if the damaged area can qualify for federal or state disaster assistance. [Lee County Ordinance]

**Damage Assessment Team** means a group of individuals designated by the Town Manager to conduct damage assessment surveys, assess damages, and declare the level or severity of an event, and thereby the level of response needed to survive and recover according to state and federal requirements. [Lee County Ordinance; FEMA]

**Damage Survey Report (DSR)** means a report that forms the basis of a claim by the Town for financial reimbursement for repair or replacement of a public facility damaged in a disaster, as authorized under the Stafford Act and other federal and/or state regulations, plans, and policies. [See Stafford Act]

**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. [Lee County Ordinance]

**Development moratorium** means a temporary hold, for a defined period of time, on the issuance of building permits, approval of land-use applications or other permits and entitlements related to the use, development, redevelopment, repair, and occupancy of private property in the interests of protection of life, safety and property. [Model ordinance]

**Disaster** means any natural, technological, or civil emergency that causes damage of sufficient severity and magnitude to result in a declaration of a state of emergency by a

county, the Governor, or the President of the United States. Disasters will be identified by the severity of resulting damage, as follows:

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

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

**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.

[F.S. §352.34(1); Model Ordinance; see also Ordinance 06-12]

**Disaster Recovery Organization (DRO)** means an interdepartmental/interagency organization that coordinates actions of the Town staff in planning and implementing disaster recovery and reconstruction functions. [Model Ordinance]

**Emergency** means any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, that results or may result in substantial injury or harm to the population or substantial damage to or loss of property. [F.S. §352.34(3)]

**Emergency Review Board (ERB)** means a committee of three members from the Disaster Recovery Organization (DRO) established for the purposes of this Ordinance. [County Ordinance]

**Event** means any natural, technological, or civil occurrence that results in the declaration of a state of emergency and will include, but not be limited to, an earthquake, fire, flood, wind storm, hurricane, or tropical storm. [Model Ordinance]

**Federal Response Plan (FRP)** means a plan to coordinate efforts of the Town and other governments in providing response to disasters and other incidents requiring federal assistance under the Stafford Act in an expeditious manner. [See Stafford Act]

**FEMA** means the Federal Emergency Management Agency.

**Flood Insurance Rate Map (FIRM)** means an official map of the Town, on which FEMA has delineated both the areas of special flood hazard and the risk premium zones for the Town, including base flood elevations and coastal high hazard areas. [FEMA; Model Ordinance; LDC]

**Hazard Mitigation Grant Program (HMGP)** means a federal program that assists states and local communities in implementing long-term hazard mitigation measures following a disaster declaration. [Model Ordinance]

**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 also include but are not limited to monuments, memorials, native American 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, the County, the State, or the United States. [Model Ordinance; LDC]

**Land Development Code** means the Town of Fort Myers Beach Land Development Code, as amended from time to time.

**Major Damage Structure** means a structure that can be made habitable with extensive repairs. Damage may include foundation, roof structure, and major structure components. The indicator for this category is if the cost to repair is greater than twenty-five point zero one percent (25.01%) and up to and including fifty percent (50%) of the replacement value at the time of damage. [County Ordinance]

**Market value of structure** 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. [LDC Ch. 6, Sec. 6-405]

**Minor Damage Structure** means "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 structure damage. The indicator for this category is if the cost to repair is twenty-five percent (25%) or less than the replacement value at the time of damage. [County Ordinance]

**Reconstruction** means the rebuilding of permanent replacement housing, construction of large-scale public or private facilities badly damaged or destroyed in a disaster, the addition of community improvements, and full restoration of a healthy economy in the Town. [Model Ordinance]

**Recovery** means the process by which most of private and public buildings and structures not severely damaged or destroyed in a disaster are repaired and most public and commercial services are restored to normal. [Model Ordinance]

**Recovery Plan** means a pre-event plan for emergency response and post-disaster recovery and reconstruction, composed of policies, plans, implementation actions, and designated responsibilities related to expeditious and orderly post-disaster recovery and rebuilding, with an emphasis on mitigation. [Model Ordinance]



**Recovery strategy** means a post-disaster strategic program identifying and prioritizing actions contemplated or under way regarding such essential recovery functions as business resumption, economic reinvestment, industrial recovery, housing replacement, infrastructure restoration, and potential sources of financing to support these functions.

[Model Ordinance]

**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. [County Ordinance]

**Replacement Value** means the market value of structure 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 the process provided for establishing "Market value of the structure" in Section 6-405 of the Town Land Development Coder rather than use the formula stated in this definition. [County Ordinance; LDC]

**Stafford Act**" means the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288, as amended).

**Structure** means that which is built or constructed. The term structure will be construed as if followed by the words "or part thereof". [LDC]

**Town Manager** means the Town Manager of the Town of Fort Myers Beach or his designee. [LDC]

## SECTION 5. DISASTER RECOVERY ORGANIZATION (DRO)

**A. Powers and duties.** The DRO is hereby established and has such powers as are required or advisable to enable it to carry out the purposes, provisions, and procedures of this Ordinance.

**B. Composition.** The DRO is comprised of the following officials and such other officials as may be approved annually by the Town Council:

1. Town Manager, who will be Chair
2. Town Attorney
3. Town Community Development Director
4. Town Finance Director
5. Town Public Works Director
6. Representative from Fort Myers Beach Fire Control District
7. County Sheriff Liaison
8. County School District Liaison
9. County Public Safety Director

[This is a list of potential participants. Staff will have to determine if there should be more or less or if any of these members should play only an ex-officio or advisory role in terms of actual decision making]

**Commentary.** *The formal structure of a recovery organization varies from community to community. The important concept is to include representatives from agencies and organizations so that the broadest array of functions that may have a direct or indirect role in recovery and reconstruction can be addressed. Formal leadership may also vary by size and structure of the local governmental organization. In a big-city environment, presence and availability of the mayor or a deputy mayor may be important from a leadership standpoint, even though recovery in most instances is largely a staff-driven process. On the other hand, in the typical council-manager form of government, inclusion of elected officials may be more problematic. The overarching idea is to provide a communications connection with the appropriate legislative body as well as a ceremonial function.*

**C. Operations and Meetings.** The Chair will be responsible for DRO operations. When an emergency declaration is not in force, the DRO will meet as necessary, upon call of the Chair. After a declaration of an emergency, and for the duration of declared emergency period, the DRO will meet daily or as frequently as determined by the Chair.

**Commentary:** *The main point is for the town manager to run the recovery organization operations on behalf of the town council, reserving the presence of the elected officials for those times when policy matters are being discussed or at critical junctures following a disaster. In actuality, the town manager inevitably becomes the pivotal party for informing and advising the town council on recovery matters, interpreting council policy, and coordinating staff functions.*

**D. Succession.** In the absence of the Town Manager, the Acting Chair will serve as Chair and will be empowered to carry out the duties and responsibilities of the Chair. On or before May 1<sup>st</sup> of each year, the Town Manager will name the succession of officials to carry on the duties of the Chair and to serve as Acting Chair in the event of the unavailability of the Chair.

**E. Organization.** The DRO may create such standing or ad hoc committees as determined necessary by the **Public Safety Task Force**.

**F. Relation to County.** The DRO will work in concert with the Lee County departments charged with interrelated functions.

*Commentary. As noted in the introductory paragraphs, there are certain fundamental differences in function that make it preferable to establish a recovery organization that can operate parallel to the emergency responders. However, because of the inherent linkage of emergency preparedness and response with disaster recovery, reconstruction, and hazard mitigation functions, a close relationship must be continuously maintained. For most purposes, these overlapping organizations should meet and work jointly. The value of having a separate recovery organization is best recognized when hard-core building, planning, redevelopment, and economic recovery issues require extended attention during the pre-event and post-event planning phases or during the long months and years it is likely to take to fully rebuild.*

## **SECTION 6. RECOVERY PLAN**

**A. Pre-Disaster Planning.** The DRO is responsible for preparing the Emergency Response and Post-Disaster Recovery Plan (Recovery Plan).

**B. Recovery Plan Content.** The Recovery Plan will include the post-disaster policies of implementation actions and designated responsibilities for such subjects as business resumption, damage assessment, **demolitions**, debris removal and storage, expedited repair permitting, fiscal reserves, hazards evaluation, hazard mitigation, historical buildings, unlawful buildings and uses, development moratorium procedures, nonconforming buildings and uses, rebuilding plans, redevelopment procedures, relation to comprehensive plan, restoration of infrastructure, restoration of standard operating procedures, temporary and replacement housing, and/or such other subjects as may be appropriate to expeditious and wise emergency response and post-disaster recovery.

**C. Coordination of Recovery Plan with County and Regional Plans, FEMA, and other Agencies.** The Recovery Plan will identify relationships of planned response and recovery actions with those of adjacent communities and Lee County, state, federal,

and/or mutual aid agencies involved in disaster recovery and reconstruction, including but not limited to the Federal Emergency Management Agency (FEMA), the American Red Cross, the Department of Housing and Urban Development (HUD), the Small Business Administration (SBA), the Environmental Protection Administration (EPA), the Department of Transportation (DOT), the Department of Community Affairs / Division of Emergency Management (DCA/DEM), the Lee County emergency agency or agencies, and other entities that may provide assistance in the event of a disaster. The Town Manager will provide a copy of the plan to the appropriate state and Lee County officials.

***Commentary. In contrast to most local emergency management and response organizations, FEMA and the Florida Department of Community Affairs / Division of Emergency Management (DCA/DEM) have substantial recovery and reconstruction responsibilities. FEMA has historically been a source of significant funds made available by Congress under the Stafford Act for rebuilding public facilities. Because DCA/DEM is an important point of coordination between localities and FEMA, it is important to solicit from that agency as much advance information as can be obtained regarding post-disaster procedures essential to recovery and reconstruction. The Town should become fully informed through communications with Lee County and DCA/DEM about Damage Survey Report (DSR) and Hazard Mitigation Grant Program (HMGP) procedures before disaster strikes. Because recovery issues often affect jurisdictions outside the immediate disaster area, the recovery plan should be coordinated with recovery planning activities of adjacent municipalities, Lee County, and regional agencies.***

**D. Recovery Plan Adoption.** Following formulation, the Recovery Plan will be transmitted to the Local Planning Agency and Town Council pursuant to the requirements of the Town of Fort Myers Beach Land Development Code (LDC) for review and approval. The Town Council will hold one or more public hearings to receive comments from the public on the Recovery Plan. Following one or more public hearings, the Town Council will adopt the Recovery Plan, including any modifications deemed appropriate, or transmit the plan back to the DRO for further modification and review prior to final action.

***Commentary. Town Council adoption of this ordinance together with the pre-event plan is extremely important to its successful post-disaster implementation. Town Council needs to become comfortable with the concept of pre-event planning and ordinance adoption in order to be supportive of the delegation of decisions to staff that may be necessary during post-disaster recovery operations. If Town Council adoption is not possible immediately because of the priorities of other business, look for opportunities to bring the***

***plan and ordinance forward, such as when a catastrophic disaster has struck in another jurisdiction.***

**E. Recovery Plan Implementation.** The DRO is responsible for implementation of the Recovery Plan both before and during an emergency and after a disaster, as applicable. The Chair will prepare reports annually, or more frequently as necessary, to fully advise the Town Council on the progress of preparation or implementation of the Recovery Plan. After a declaration of emergency in a disaster, the Chair will report to the Town Council as often as necessary on implementation actions taken in the post-disaster setting, identify policy and procedural issues, and receive direction and authorization to proceed with plan modifications necessitated by specific circumstances.

**F. Recovery Plan Training and Exercises.** The DRO will organize and conduct periodic training and exercises annually, or more often as necessary, in order to develop, convey, and update the contents of the Recovery Plan. Such training and exercises will be conducted in coordination with similar training and exercises related to Lee County's Comprehensive Emergency Plan and emergency operations plan(s).

***Commentary. Clearly, training and exercises are functions that should happen on a joint, ongoing basis with the Town's emergency responders. For greatest value, training and exercises should include careful attention to critical relationships between early post-disaster emergency response and recovery actions that affect long-term reconstruction, such as street closings and re-openings, demolitions, debris removal, damage assessment, and hazards evaluation. FEMA has tabletop exercises for use by communities, including early recovery for earthquakes, flood, and hurricane scenarios. Such exercises may help inform the Town's short-term and long-term disaster recovery planning.***

**G. Recovery Plan Consultation with Citizens.** The DRO may schedule and conduct community meetings, periodically convene advisory committees comprised of representatives of homeowner, business, and community organizations, or implement such other means as to provide information and receive input from members of the public regarding preparation, adoption, or amendment of the Recovery Plan.

**H. Recovery Plan Amendments.** During implementation of the Recovery Plan, the DRO will address key issues, strategies, and information bearing on the orderly maintenance and periodic revision of the Recovery Plan. In preparing modifications to the Recovery Plan, the DRO will consult with departments, businesses, community organizations, and other government entities to obtain information pertinent to possible Recovery Plan amendments.

**I. Recovery Plan Coordination with Related Plans.** The Recovery Plan will be prepared in coordination with related elements of the Comprehensive Plan, provisions of the Land Development Code, emergency management plan, and such other plan(s) as may be pertinent. Town Council will amend such related documents as necessary to be mutually consistent.

## **SECTION 7. GENERAL PROVISIONS**

The following general provisions will be applicable to implementation of this Ordinance following a disaster:

### **A. Powers, Procedures, and Duration.**

1. Following a declaration of local emergency contemporaneous to a disaster and while such declaration is in force, the Chair and the DRO will have authority to exercise powers and procedures authorized by this ordinance, subject to extension, modification, or replacement of all or portions of these provisions by separate ordinances adopted by the Town Council. The provisions of this ordinance will be in effect for a period of six (6) months from the date of a local emergency declaration contemporaneous to a disaster or until termination of a state of local emergency, whichever occurs later, or until these provisions are extended, modified, replaced by new provisions, or terminated, in whole or in part, by action of the Town Council through separate ordinance(s).
2. Up to 72 hours prior to an impending storm event, the Chair and the DRO will have authority to require and effect the removal of signs, barricades, and other potentially dangerous or damaging projectiles, and the removal or securing of portable latrines, construction materials, construction debris, and commercial, construction, and residential dumpsters.

**Commentary.** *This provision allows for flexibility in the duration of application of the temporary regulations, so that any portion can be terminated, modified, or extended depending upon local circumstances. It also reflects a recognition that temporary regulations may be in effect for an extended period of time beyond either termination of the local emergency or passage of the six-month period. Depending on the nature and scale of the disaster, such as an earthquake or a category 5 hurricane, temporary provisions may be in effect for several years after the disaster.*

**B. Post-Disaster Operations.** The Chair will direct and control emergency response and post-disaster recovery and reconstruction operations, that may include, but are not limited to, the following:

1. Activate and deploy hazard evaluation teams to locate and determine the severity of hazards that may influence the location, timing, and procedures for repair and rebuilding processes;

2. Activate and deploy damage assessment teams to identify damaged structures and to determine further actions that should be taken regarding such structures;
3. Cooperate with Lee County, state emergency personnel, and other public and private entities, such as FEMA, and the American Red Cross in providing necessary information on damaged and destroyed buildings or infrastructure, natural and technological hazards, street and utility restoration priorities, temporary housing needs and similar recovery concerns;
4. Recommend to the Town Council and other appropriate entities necessary actions for reconstruction of damaged infrastructure;
5. Prepare plans and proposals for action by the Town Council for redevelopment projects, redesign of previously established projects or other appropriate special measures addressing reconstruction of heavily damaged areas;
6. Establish a development moratorium subject to the Town Council ratification;
7. Activate streamlined procedures to expedite repair and rebuilding of properties damaged or destroyed in the disaster;
8. Establish a “one-stop” field office staffed to provide information about repair and rebuilding procedures, issue repair and reconstruction permits, and provide information and support services on such matters as business resumption, and temporary and permanent housing;
9. Formulate proposals for action by the Town Council to amend the comprehensive plan, land development code, or other Town ordinances and other relevant plans, programs, and regulations in response to new needs resulting from a disaster;
10. Implement such other emergency response and post-disaster recovery and reconstruction activities identified in the Recovery Plan or by this Ordinance, or as deemed by the Chair as necessary to public health, safety, and well-being.

**C. Coordination with FEMA and Other Agencies.** The Chair and the DRO will coordinate recovery and reconstruction actions with those of Lee County, state, federal, or mutual aid agencies involved in disaster response and recovery, including but not limited to the Federal Emergency Management Agency (FEMA), the American Red Cross, the Department of Housing and Urban Development (HUD), the Small Business Administration (SBA), the Florida Department of Community Affairs Division of Emergency Management and other entities that provide assistance in the event of a disaster.

**D. Essential Service and Facility Restoration Priorities.**

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

- a. 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.
- b. 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.
- c. 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 (governmental facilities handling emergency purchasing, designated grocery store/restaurant outlets).
- d. Priority #4 – Community areas receiving damage, and other government facilities.

2. The following procedures will govern restoration of water service.

- a. Valve off major leak areas.
- b. Work with private franchises providing service to determine extent of damaged facilities and re-establish service.
- c. Identify highly damaged areas.
- d. 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).
- e. Establish emergency water sites as necessary.
- f. Establish priorities and repair damaged facilities in the following order: treatment plants, trunk mains, distribution mains, service connections.
- g. Re-pressurize area water systems as necessary.
- h. Establish area water potability.

3. The following procedures will govern wastewater service restoration:

- a. 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).

- b. Work with Lee County to determine extent of damaged facilities and re-establish service.
- c. Coordinate recovery operations in determining and repairing any damages to wastewater treatment plants.
- d. Determine need and provide emergency service to emergency response and recovery facilities and hospitals.
- e. Repair damaged facilities in the following sequence: treatment plants first, then lift stations starting with those closest to the treatment plants.
- f. Re-establish wastewater service to franchise areas as power and water service are restored.

**4. Procedures for the return of the evacuees to their home: Upon the satisfactory restoration of the water supply to fight fires; an operational sewer system and after assessment of the structural damage, properly identified residents, property owners and business owners will be permitted on island.**

**E. Debris Removal.** The Chair will have the authority to order removal from public rights-of-way of debris and rubble, trees, damaged or destroyed cars, trailers, equipment and other private property, without notice to owners, for protection of life and property, provision of emergency evacuation, assurance of firefighting or ambulance access, mitigation of otherwise hazardous conditions, or restoration of public infrastructure. The Chair will also have the authority to secure emergency waivers of environmental regulations from state and federal authorities and to call upon outside support from such agencies for debris clearance, hazardous materials spills, and restoration of ground access.

**Commentary.** *Although clearance of privately owned debris is routinely considered a function of local government, it can become very controversial where owners take the position that such property is salvageable and has value (e.g., used brick after an earthquake). Pre-event adoption of such a provision reinforces the expectation that debris clearance functions will be carried out decisively, thus minimizing a problem otherwise compounded by Town hesitation or ambiguity of intention. The U.S. Army Corps of Engineers has the lead under the Federal Response Plan for ensuring resources for local emergency and long-term debris clearance. FEMA and the DCA/DEM in consultation and coordination with local jurisdictions such as Lee County and the Town determine priorities for the entire disaster area.*

## **SECTION 8. DAMAGE ASSESSMENT, BUILD-BACK POLICY, MORATORIA, EMERGENCY REPAIRS, AND EMERGENCY PERMITTING SYSTEM.**

**Commentary. The following temporary regulations are at the heart of the recovery process. Although existing state law or municipal ordinances may already authorize some of these functions, it is preferable to have a single source for locally adopted ordinances that, among other things, identifies regulatory functions related to post-disaster recovery, clearly places responsibility for implementation, and provides a coordinated rationale for municipal intervention in case of challenge. Among the components of these temporary regulations are provisions dealing with duration, damage assessment, development moratoria, debris clearance, permit expediting, temporary uses and repairs, nonconforming buildings and uses, condemnation and demotion, and temporary and permanent housing. Each of these components should be examined carefully and, as appropriate, adjusted based on local policies and conditions. Pre-event adoption of this ordinance (adjusted to take into account local circumstances) provides a solid basis for initial post-disaster action and legitimizes the policies established as part of the planning process. It is not possible to anticipate the exact character, magnitude, and distribution of damage from a major disaster. Pre-adopted regulations, however, provide a basis for more efficient action that is substantially less subject to policy reversals and other uncertainties typically found in municipalities that have not prepared in this manner.**

**A. Damage Assessment.** The Chair will direct local damage assessment teams. The primary task of the damage assessment teams is to conduct field damage assessment surveys and identify structures damaged as a result of the disaster. The damage assessment teams will catalogue and report to the Chief Building Official those structures that have: (1) been destroyed; (2) received major damage; and (3) received minor damage; and post color-coded placards designating the condition of such structures as follows:

1. A placard indicating "Inspected – Lawful Occupancy Permitted" is to be posted on any building in which no apparent structural hazard has been found. This does not mean there are not other forms of damage that may temporarily affect occupancy. This is the "green tag placard."
2. A placard indicating "Restricted Use" is to be posted on any building in which damage has resulted in some form of restriction to continued occupancy. The individual posting this placard will note in general terms the type of damage encountered and will clearly and concisely note the restrictions on continued occupancy. This is the "yellow tag placard."

3. A placard indicating “Unsafe – Do Not Enter or Occupy” is to be posted on any building that has been damaged to the extent continued occupancy poses a threat to life safety. Buildings posted with this placard will not be entered under any circumstances except as authorized in writing by the department that posted the building or by authorized members of damage assessment teams. The individual posting this placard will note in general terms the type of damage encountered. This placard is not to be considered a demolition order. This is the "red tag placard."
4. Reference to this Ordinance, including the section number, plus the name of the initiating department, its address, and phone number will be permanently affixed to each placard.
5. Once a placard has been attached to a structure, the placard must not be removed, altered, or covered until done so by an authorized representative of the Town or upon written notification from the Town. Failure to comply with this prohibition will be considered a violation of this Ordinance punishable as provided herein.

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. Build-back Policy.** Structures that 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 structure 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, that 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 five percent (25%) that 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.

[This is the current policy according to the Comprehensive Plan. This provision is proposed to be modified by the pending Comprehensive Plan E/A Report. When that process is complete, this provision should be amended or the proposed language may be substituted if the process is complete contemporaneously with the adoption of this ordinance.]

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 evaluation above the 100-year flood level;
  - b. building code requirements for floodproofing;
  - 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 and other development regulations (other than density or intensity), unless compliance with those regulations would preclude reconstruction otherwise intended by the build-back 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 setback, 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.
  - 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, handicapped access, and open space.

- b. For multiple-family, commercial and civic buildings: the Emergency Review Board is authorized to modify development regulations for lot area and dimensions, setbacks, lot coverage, 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 Chapter 34 of the Land Development Code.
- d. The Emergency Review Board is specifically authorized to modify street, rear, or side setback requirements under the following circumstances:
- (1) Street, rear, or side setbacks may be modified to permit the reconstruction of, or additions to, pre-existing structures that are nonconforming with regard to a specific setback as long as:
- (2) When appropriate, prior to approving any modification of street or street easement setbacks a determination will be made through consultation with the Town Department of Public Works and Lee County Department of Transportation regarding future road widening requirements that
- (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.
- 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) 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 Town Council of the existence of a state of local emergency.
  - (4) The Town 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 that 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 or minor damaged structures may be issued for at least four (4) days following the expiration of the initial building moratorium.
5. No 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 DRO will determine and advise the Town Council whether a new development moratorium is necessary based upon the results of damage assessment and recommendations from the Chief Building Official.
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 Department of Community Development 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 re-inspect 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 permitted building 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 Department of Community Development 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 re-inspect 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 the Land Development Code.

c. All applications for development orders, inspections required for approval of development orders, and development order expiration dates, 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 Town 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 on 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.

**D. 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.
  - 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: police, fire, and medical facilities; essential governmental facilities; response/recovery centers and emergency distribution centers; debris removal; stabilization or removal of structures about to collapse; electrical power, potable water, wastewater, power, and communications facilities; and emergency stabilization of roadways.
3. Nothing in this Ordinance will be construed to exempt development from compliance with State and Federal permit regulations.

**E. One-Stop Center for Permitting.** The Chair may establish a one-stop center, staffed for the purpose of establishing and implementing streamlined permit processing to expedite repair and reconstruction of buildings, and may provide information support for provision of temporary housing and encouragement of business resumption. The Chair will have the authority to establish such center and procedures in coordination with other governmental entities that may provide services and support, such as FEMA, SBA, HUD, and/or applicable state or county emergency personnel.

**Commentary.** *One-stop permit centers have become more common with recent major disasters, often combining the presence of multiple agencies to provide better coordination of information that disaster victims may need in order to rebuild. There may be an opportunity for financial support from FEMA to establish such processes. Benefits to be gained for establishing a special one-stop center include not only accelerated review but also integration of information and permitting functions. Setting up a team of specialists working exclusively on repair and rebuilding permit issues has the added advantage of insulating normal development review from disruption by the recovery process and vice versa.*

**F. Temporary Use Permits.** The Chair will have the authority to issue permits in any zoning district for the temporary use of property that will aid in the immediate restoration of an area adversely impacted by a disaster, subject to the following provisions:

1. Critical response facilities. Any police, fire, emergency medical or emergency communications facility that will aid in the immediate restoration of the area may be permitted in any zoning district for the duration of the declared emergency.
2. Other temporary uses. Temporary use permits may be issued in any zone, with conditions, as necessary, provided written findings are made establishing a factual basis that the proposed temporary use:
  - a. will not be detrimental to the immediate neighborhood;
  - b. will not adversely affect the (comprehensive plan or any applicable specific plan); and
  - c. will contribute in a positive fashion to the reconstruction and recovery of areas adversely impacted by the disaster.

Temporary use permits may be issued for a period of one year following the declaration of local emergency and may be extended for an additional year, to a maximum of two years from the declaration of emergency, provided such findings are determined to be still applicable by the end of the first year. If during this period, substantial evidence contradicting one or more of the required findings comes to the attention of the Chair, the temporary use permit will be revoked.

**Commentary.** *Most zoning ordinances have no provisions for temporary use of property following a disaster. A few, such as the Town's, allow temporary placement of mobile units or manufactured housing on residentially zoned sites pending reconstruction of a residence. Time limits vary, but are usually for a two-year period (the Town's allows 18 months following a Presidential declaration; 6 months if no federal declaration; one 60 day extension may be granted administratively—See LDC Sec. 34-3046). After a major disaster, special latitude may be needed, however, to support various recovery needs. Care must be taken not to set precedents that will erode or destroy a pre-existing pattern of zoning that the jurisdiction may wish to protect.*

*The jurisdiction may wish to restrict temporary uses to those already allowed by the zone in which they are located, limiting the provision to temporary structures, such as tents, domes, or mobile units.*

**G. Emergency Permitting System.** Following a declaration of disaster, temporary emergency repairs may be undertaken to secure structures and property damaged in

the disaster against further damage or to protect adjoining structures or property. The Chair or designee must be notified of such repairs by the owner or person making the repair(s) within five (5) working days of such repair being initiated, and regular permits with fees may then be required by the Town. Except for temporary emergency repairs performed pursuant to this ordinance, all other repairs, restoration, and reconstruction of buildings damaged or destroyed in a disaster must be pursued through application for approval(s) under the provisions of the Land Development Code.

**Commentary.** *This provision is for repairs that may not be exempt under standard building code permit exemptions but that are justifiable from a public health and safety standpoint to avoid further damage to property after a disaster.*

*Pressure to waive or defer processing fees frequently arises after a disaster when victims are unsure of their sources of financing for rebuilding. It is inadvisable to succumb to pressures to waive fees entirely due to the need for cost recovery for disaster-related services at a time when there may be substantial uncertainties in revenue flows. Also, it is helpful to buy time to determine the degree to which sources other than the victims may help offset fee costs. For example, sometimes insurance will cover the cost of processing fees. Also, such costs have been covered by FEMA. Deferral of fees until occupancy permit issuance provides time in which such alternate sources can be worked out, without sacrificing the basic revenue flow to the Town treasury. This provision is modeled after similar language in the Los Angeles temporary regulations.*

## **SECTION 9. DEMOLITION OF DAMAGED BUILDINGS**

The Chair will have authority to order the demolition of buildings and structures damaged in the disaster in accordance with the standard provisions of the Land Development Code and other applicable state and federal laws.

**Commentary.** *One of the more difficult aspects of post-disaster response and recovery in older communities is the existence of damaged historically significant structures. Since these can be very old, measures needed to make them structurally sound may be more difficult and costly and complicated than normal. Because of the emotion frequently attached to this issue and the often widely conflicting views, community controversy can erupt when a badly damaged historical structure is subject to demolition. Therefore, it is wise to have language already in place to guide the planning and building officials involved.*

***Because of problems with seemingly premature or unjustifiable demolition of historic structures in previous disasters, the National Historic Preservation Act of 1966, as amended, identifies steps that must be taken by a jurisdiction or owner to mitigate public health and safety hazards resulting from disaster-caused damage when using federal funding. The intent is to establish predictable rules by which proposed demolitions, except in extreme cases of danger to the public, can be reviewed by state and federal officials in order to provide time to identify options for preservation of a damaged historic building or structure. The review process is also intended to discourage hasty demolition action by local officials when such action may not be justified.***

***This provision supplements provisions of the Uniform Code for the Abatement of Dangerous Buildings by providing specific time frames and actions for abatement of hazards created by damage to historic buildings. The important element of local judgment here is the establishment of a specific time frame for declaring a structure an imminent hazard to public health and safety justifying immediate demolition without a condemnation hearing. Such time frames are generally from three to five days, though sometimes stretched to ten days. After the established time frame, the threat may no longer be justified as imminent and, therefore, the remaining procedures kick in.***

#### **SECTION 10. TEMPORARY AND PERMANENT HOUSING**

The Chair may assign staff to work with FEMA, SBA, HUD, the state, Lee County, and other appropriate governmental and private entities to identify special programs by which provisions can be made for temporary or permanent replacement housing that will help avoid undue displacement of people and businesses. Such programs may include deployment of manufactured housing and manufactured housing developments under the temporary use permit procedures provided elsewhere in this ordinance, use of SBA loans, and available Section 8 and Community Development Block Grant funds to offset repair and replacement housing costs, and other initiatives appropriate to the conditions found after a disaster.

***Commentary. The issue of post-disaster temporary and permanent replacement housing has grown to one of critical dimensions in the San Francisco area since the Loma Prieta earthquake. After that earthquake, many displaced low-income occupants of damaged or destroyed housing simply disappeared – a common pattern following many disasters as witnessed more recently in the aftermath of Hurricane Katrina. Relatively little real progress has been made since then in finding effective ways by which to handle this issue on a broad scale. For example, after the Northridge earthquake, HUD became active immediately in attempting to assist localities in dealing with housing issues. Available resources were insufficient to cover the cost of much of the replacement housing needed. Housing issues were extremely***

***complex. Low-and moderate-income rental housing replacement problems were somewhat alleviated by the existence of a high rate of apartment vacancies. However, recession-generated housing devaluation combined with substantial damage costs altered loan-to-value ratios to uneconomical levels. Repairs of single-family and multifamily buildings dragged out for many months due to lending, engineering, and permitting problems. As a consequence, some middle-income households simply walked away from mortgages. The most visible evidence of earthquake-induced housing impacts were the large condominium and apartment complexes that remained in a fenced-off, unprepared state until financing and repairs began to catch up two years later.***

***For these reasons, this section is essentially a placeholder for language that should be made more specific on the basis of a pre-event plan for post-disaster recovery and reconstruction that takes into account the level of local housing vulnerability. For example, a community with a long history of flooding may have developed temporary shelter arrangements, such as in school gymnasiums, sufficient for short-term displacement. If there are no other hazards present, that community may not need to consider replacement housing. Whereas a community in an earthquake hazard area with a large portion of its housing inventory in unreinforced masonry (URM) construction should consider both temporary shelters and interim housing, such as some form of manufactured housing, with the expectation that several years will be needed for replacement housing to be built.***

***A great deal more research is needed to find satisfactory solutions for prompt, efficient provision of both interim and replacement housing. Clearly, the magnitude of the Northridge housing problems caught public and private sector institutions off-guard. Little is yet understood regarding issues like the most effective means for dealing with damaged condominiums or the effect of the secondary mortgage market on housing repair and replacement. With downsizing of federal budgets in future years, this issue will become more critical since levels of support could be diminished.***

## **SECTION 11. HAZARD MITIGATION PROGRAM**

**Prior to a disaster, the Chair will establish a comprehensive hazard mitigation program that includes both long-term and short-term components.**

**A. Long-Term Hazard Mitigation Program. The long-term hazard mitigation program will be prepared and adopted by resolution of the Town Council for the purpose of enhancing long-term safety against future disasters. The long term Hazard Mitigation Program will identify the presence, location, extent, and severity of natural hazards, such as, but not limited to:**

1. severe flooding;
2. wildland and urban fires;
3. seismic hazards such a ground shaking and deformation, fault rupture, liquefaction, tsunamis, and dam failure;
4. slope instability, mudslides, landslides, and subsidence;
5. coastal erosion;
6. hurricanes and other tropical storms;
7. technological hazards, such as oil spills, natural gas leakage and fires, hazardous and toxic materials contamination, and nuclear power plant and radiological accidents.

**B. Short-Term Hazard Mitigation Program.** A short-term hazard mitigation program will be included in the Recovery Plan. It will be comprised of hazard mitigation program elements of highest priority for action, including preparation and adoption of separate ordinances dealing with specific hazard mitigation and abatement measures, as necessary. Such ordinances may require special site planning, land-use, and development restrictions or structural measures in areas affected by flooding, fire, wind, seismic, or other natural hazards, or remediation of known technological hazards, such as oil spills, natural gas leakage and fires, hazardous and toxic materials contamination.

**C. Post-Disaster Actions.** Following a disaster, the Chair may participate in developing a mitigation strategy with FEMA and other entities, as called for in Section 409 of the Stafford Act and related federal regulations. As appropriate, the Chair may recommend to the Town Council that the Town participate in the state's Hazard Mitigation Grant Program, authorized in Section 404 of the Stafford Act, in order to partially offset costs of recommended hazard mitigation measures.

**D. New Information.** As new information is obtained regarding the presence, location, extent, and severity of natural or technological hazards, or regarding new mitigation techniques, such information will be made available to the public, and will be incorporated as soon as practicably possible within the Town comprehensive plan Recovery Plan, LDC, and Town Ordinances, as appropriate.

## **SECTION 12. RECOVERY AND RECONSTRUCTION STRATEGY**

At the earliest practicable time following the declaration of local emergency in a disaster, the Chair and the DRO will prepare a strategic program for recovery and reconstruction based on the Recovery Plan and its policies.

**A. Functions.** To be known as the Recovery Strategy, the proposed strategic program will identify and prioritize major actions contemplated or under way regarding such essential functions as business resumption, economic re-investment, housing

replacement, infrastructure restoration, and potential sources of financing to support these functions.

**B. Review.** The recovery strategy will be provided to the Town Council for review and approval following consultation with other governmental agencies and business and citizen representatives as appropriate. The recovery strategy will provide detailed information as appropriate regarding proposed and ongoing implementation of initiatives necessary to the expeditious fulfillment of critical priorities and will identify amendments to any plans, codes, or ordinances that might otherwise contradict or block strategic action. The Chair will periodically report to the Town Council regarding progress toward implementation of the recovery strategy, together with any adjustments that may be called for by changing circumstances and conditions.

### **SECTION 13. 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 the Town to inter-county 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 inter-county 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,
9. Other roadways under Town maintenance responsibility, and
10. Private roadways, including gated communities, within the Town.



**B.** Once road clearing operations supporting search and rescue operations, clearing inter-county 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 designed for field medical sites, areas designated for staging and distributing disaster relief aid.
2. Facilities designed as centers for emergency response operations, fire district and law enforcement stations,
3. Areas with minor damage,
4. Areas with major damage,
5. Areas with catastrophic damage, and
6. Private roadways, including gated communities, within the Town.

**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 collection sequence priority established by the Town. Instructions will be provided to the public to separate debris. Notification will also be provided of the established schedule for picking up general debris classes.
2. Storage areas will be operational within seven (7) to ten (10) 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 of 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 14. 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 (1) 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 Comprehensive Plan Policy 4-D-1
  - c. There are buildings or structures damaged by a single event that are not repairable because of build-back 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 subsection A of this section 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 use that 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 15. PENALTIES**

**A.** Any person who fails to comply with any provision of this Ordinance, or the emergency measures made effective pursuant to this Ordinance is guilty of a code violation and subject to enforcement and penalties as provided in the Town of Fort Myers Beach Land Development Code. Each day of continued non-compliance or violation will constitute a separate offence.

**B.** In addition, any construction licensee of the Town, Lee County, or the State of Florida who violates any provision of this Ordinance or the emergency measures that are effective as a result of this Ordinance may be charged with a violation and the matter will be heard before the appropriate Town entity, Lee County 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 and failure to comply with, or violation of, this Ordinance or the emergency measures that 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 16. SEVERABILITY**

If any provision of this Ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity will not affect the remaining provisions that can be implemented without the invalid provision, and, to this end, the provisions of this Ordinance are declared to be severable.

**SECTION 17. EFFECTIVE DATE**

This Ordinance will become effective immediately upon its adoption.

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

Larry Kiker, Mayor \_\_\_\_\_  
Herb Acken, Vice Mayor \_\_\_\_\_  
Tom Babcock, Councilmember \_\_\_\_\_  
Jo List, Councilmember \_\_\_\_\_  
Bob Raymond, Councilmember \_\_\_\_\_

DULY PASSED AND ENACTED this \_\_\_\_ day of \_\_\_\_\_, 2009.

ATTEST:

TOWN OF FORT MYERS BEACH

By: \_\_\_\_\_  
Michelle Mayher, Town Clerk

By: \_\_\_\_\_  
Larry Kiker, Mayor

Approved as to form by:

\_\_\_\_\_  
Anne Dalton, Town Attorney