



Fort Myers Beach Local Planning Agency

**Council Chambers
2525 Estero Blvd.
Fort Myers Beach, FL 33931**

Agenda

Wednesday, December 21, 2022

9:00 AM

ORDER OF BUSINESS

- I. CALL TO ORDER**
- II. INVOCATION**
- III. PLEDGE OF ALLEGIANCE**
- IV. APPROVAL OF MINUTES**
 - A. Draft minutes 12/6/2022
- V. PUBLIC HEARINGS**
 - A. LDC Text Amendment - Building Codes and Floodplain Management
Floodplain Management Ordinance - Amend Article IV Floodplain Regulations to update various sections to comply with state and federal law; provide for higher standards within a Coastal A Zone; and to implement local flood regulations.
- VI. ADMINISTRATIVE AGENDA**
- VII. LPA MEMBERS ITEMS/REPORTS**
- VIII. LPA ATTORNEY ITEMS/REPORTS**
- IX. COMMUNITY DEVELOPMENT ITEMS/REPORTS**
 - A. Priority list for 2021
- X. ITEMS FOR NEXT MONTHS AGENDA**
- XI. PUBLIC COMMENT**
- XII. ADJOURNMENT**

NOTE: THIS MEETING IS TELEVISED LIVE ON COMCAST CHANNEL 98.

IF A PERSON DECIDES TO APPEAL A DECISION MADE BY THE COUNCIL IN ANY MATTER CONSIDERED AT THIS MEETING/HEARING, SUCH PERSONS MAY

NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDING IS MADE, TO INCLUDE THE TESTIMONY AND EVIDENCE UPON WHICH ANY SUCH APPEAL IS TO BE BASED.



For special accommodations, please notify the Town Clerk's Office at least 72 hours in advance. (239) 765-0202



Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained from the Town Clerk's Office.

In accordance with the Americans with Disabilities Act (ADA), persons needing a special accommodation to participate in the Board's proceedings should contact the Town Clerk's Office not later than three days prior to the proceedings.

**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2022-867**

1. **Requested Motion:**

Meeting Date: December 21, 2022

Approval of Draft minutes 12/6/2022

Why the action is necessary:

What the action accomplishes:

2. **Agenda:**

APPROVAL OF MINUTES

3. **Requirement/Purpose:**

5. **Background:**

Attachments:

Financial Impact:

6. **Alternative Action**

7. **Staff Recommendations:**

8. **Recommended Approval:**

ORDINANCE NO. 22-xx

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING ARTICLE II AND ARTICLE IV OF CHAPTER 6 OF THE LAND DEVELOPMENT CODE OF THE TOWN OF FORT MYERS BEACH TO XX SPECIFY ELEVATION OF MANUFACTURED HOMES IN FLOOD HAZARD AREAS; PROVIDING FOR CODIFICATION, SEVERABILITY, SCRIVENER ERRORS, CONFLICTS OF LAW AND AN EFFECTIVE DATE.

WHEREAS, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

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

WHEREAS, the Town of Fort Myers Beach participates in the National Flood Insurance Program and participates in the NFIP's Community Rating System, a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum program requirements; and,

WHEREAS, the Town of Fort Myers Beach achieved a CRS rating of Class 5, making citizens who purchase NFIP flood insurance policies eligible for premium discounts; and

WHEREAS, in 2020, the NFIP Community Rating System established certain minimum prerequisites for communities to qualify for or maintain class ratings of Class 8 or better; and

WHEREAS, to satisfy the prerequisite and for the Town of Fort Myers Beach to maintain the current CRS rating, all manufactured homes installed or replaced in special flood hazard areas must be elevated at or above at least the base flood elevation plus 1 foot, which necessitates modification of the existing requirements; and

WHEREAS, the Federal Emergency Management Agency delineated a limit of moderate wave action on the Flood Insurance Rate Maps and the Town Council has determined it appropriate to apply coastal high hazard area (Zone V) requirements in areas designated Coastal A Zones to increase resiliency; and

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

to the Florida Building Code to implement the National Flood Insurance Program and incentives; and

WHEREAS, the Town Council is adopting a requirement to apply coastal high hazard area requirements to one- and two-family dwellings in Coastal A Zones, for the purpose of participating in the National Flood Insurance Program's Community Rating System and, pursuant to section 553.73(5), F.S., is formatting that requirement to coordinate with the *Florida Building Code*; and

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

WHEREAS, a public hearing was held before the Local Planning Agency (LPA) on _____, 2022, at which the LPA gave full and complete consideration of the request, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA voted _____, to recommend approval of the requested ordinance amending Article IV of Chapter 6 of the Land Development Code; and

WHEREAS, on _____, 2022, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the request of the proposed ordinance to amend Article IV of Chapter 6 of the Land Development Code, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

WHEREAS, on _____, 2022, the Town Council held a second reading of the proposed Ordinance; and

WHEREAS, the Town Council determined in a _____ vote that it is in the public interest to amend the floodplain management regulations to better protect owners and occupants of manufactured homes and to continue participating in the Community Rating System at the current class rating.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:¹

Section 1. The above recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. Article II of Chapter 6 of the Land Development Code of the Town of Fort Myers Beach entitled "Building Codes" is hereby amended as shown in Exhibit A.

^{1/} Additions to existing text are shown by underline, changes to existing text on second reading are shown by double underline, and deletions are shown as strikethrough.

Section 3. Article IV of Chapter 6 of the Land Development Code of the Town of Fort Myers Beach entitled “Floodplain Regulations” is hereby amended as shown in Exhibit B.

Section 4. In terms of design, plan application review, construction and inspection of buildings and structures, the cost impact as an overall average is negligible in regard to the local technical amendments because all development has been subject to the requirements of the local floodplain management ordinance adopted for participation in the National Flood Insurance Program. Therefore, in terms of lower potential for flood damage, there will be continued savings and benefits to consumers.

Section 5. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Land Development Code, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 6. Whenever the requirements or provisions of this Ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 7. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the Ordinance as a whole, or any part thereof, other than the part so declared.

Section 8. This Ordinance shall become effective upon adoption by the Town Council.

The forgoing Ordinance was adopted by the Town Council upon a motion by _____ and seconded by _____, and upon being put on a roll call vote, the results was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John King, Council Member	_____
Karen Woodson, Council Member	_____
Bill Veach, Council Member	_____

ADOPTED this ____ day of _____, 2023 by the Town Council of the Town of Fort Myers Beach, Florida

TOWN OF FORT MYERS BEACH

Dan Allers, Mayor

ATTEST:

Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND
RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

John R. Herin, Jr., Town Attorney

This Ordinance was filed in the Office of the Town Clerk on this ____ day of _____, 2023

EXHIBIT A

ARTICLE II. - BUILDING CODES

DIVISION 1. - GENERALLY

Sec. 6-41. - Applicability of article.

This article applies to the incorporated area of the Town of Fort Myers Beach.

Sec. 6-42. - Penalty for violation of article; additional remedies.

Any person, or any agent or representative thereof, who violates any provision of this article shall, upon conviction, be subject to the following penalties:

- (1) *Criminal penalties.* Such person shall be subject to punishment as provided in § 1-5 of this LDC.
- (2) *Civil penalties.* The town council may institute in any court, or before any administrative board of competent jurisdiction, action to prevent, restrain, correct or abate any violation of this article or of any order or regulations made in connection with its administration or enforcement, and the court or administrative board shall adjudge such relief by way of injunction, or any other remedy allowed by law, or otherwise, to include mandatory injunction as may be proper under all the facts and circumstances of the case in order to fully effectuate the regulations adopted under this article, or any amendment thereto, and any orders and rulings made pursuant thereto.

Sec. 6-43. - Conflicting provisions.

Whenever the requirements or provisions of this article are in conflict with the requirements or provisions of any other lawfully adopted ordinance, code or regulation, the provisions providing the greater degree of life safety will apply. Any conflict between the building code and applicable fire safety codes will be resolved by agreement between the building official and the fire official in favor of the requirement of the code which offers the greatest degree of life safety or alternative which would provide an equivalent degree of life safety and an equivalent method of construction.

Sec. 6-44. - Enforcing officers.

Designated officials such as the building official referenced by the codes adopted in this chapter shall be appointed by the town manager. The designated officials shall carry out the duties enumerated in these codes and shall be deemed the responsible officials with respect to enforcement of the provisions of these codes.

Sec. 6-45. - Permit fees.

The town council has the power to determine and set reasonable permit fees. Unless a different fee schedule is set, permits fees shall be as referenced in Lee County Administrative Code 3-10, Appendix C (External Fees and Charges Manual).

Secs. 6-46—6-70. - Reserved.

DIVISION 2. - LEE COUNTY'S BOARDS OF ADJUSTMENT AND APPEALS

Sec. 6-71. - Applicability of division.

This division shall include, but not be limited to, any contractor, owner, agent, manufacturer or supplier providing construction services or materials regulated by standard codes enforced by the Town of Fort Myers Beach.

Sec. 6-72. - Intent of division.

The town has adopted various standard codes relating to building, plumbing, mechanical, gas, electrical, unsafe buildings, housing and fire. This division is intended to be construed in conjunction with these codes.

Sec. 6-73. - Boards established; jurisdiction.

Lee County has established a construction board of adjustment and appeals known as the Lee County Board of Adjustment and Appeals through chapter 6, article 2, division 2 of the Lee County Land Development Code. The purpose of that board is to hear and decide appeals from the decision of the county's building official and fire official or their designees on any of the various standard codes regulated and enforced by the county except the plumbing code and mechanical code. Lee County has also established separate boards of adjustment and appeals to arbitrate matters involving the plumbing code and mechanical code.

Sec. 6-74. - Delegation of authority to Lee County's Boards of Adjustment and Appeals.

- (a) The Town of Fort Myers Beach hereby delegates to each of the three Lee County Boards of Adjustment and Appeals the authority to make decisions on appeals that may be filed in accordance with § 6-80 of this division.
- (b) The town attorney will provide legal advice to each of the three Lee County Boards of Adjustment and Appeals when warranted.

Secs. 6-75—6-79. - Reserved.

Sec. 6-80. - Right of appeal; notice of appeal.

- (a) Whenever the building official or fire official or their designees shall reject or refuse to approve the mode or manner of construction to be followed or materials to be used, or when it is claimed that the provisions of a code do not apply, or that an equally good or more desirable form of construction can be employed in any specific case, or when it is claimed that the true intent and meaning of a code or any of the regulations thereunder have been misconstrued or wrongly interpreted, the owner of such building or structure, or his duly authorized agent, may appeal from the decision of the building official or fire official or their designees to Lee County's appropriate Board of Adjustment and Appeals. Notice of appeal shall be in writing and filed within 30 days after the decision is rendered by the building official or fire official or their designees. All requests for appeal shall be on forms provided by the building official with payment of the appropriate fee.
- (b) In the case of a building or structure which in the opinion of the building official is unsafe or dangerous, the building official may, in his order, limit the time for such appeal to a shorter period.

Sec. 6-81. - Variations and modifications.

- (a) Lee County's Boards of Adjustment and Appeals, pursuant to an appeal from a decision of the building official or fire official or their designees, may vary the application of a code to any particular case when, in its opinion and based upon sufficient evidence, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of a code

or public interest, or when, in its opinion and based upon sufficient evidence to the contrary, the interpretation of the building official or fire official or their designees should be modified or reversed.

- (b) Any decision of Lee County Boards of Adjustment and Appeals to vary the application of any provision of a code or to modify an order of the building official or fire official or their designees shall specify the variation or modification made, the conditions upon which it is made, and the reasons therefor.
- (c) Variances to the floodplain regulations must meet the additional criteria in article IV of this chapter.

Sec. 6-82. - Decisions.

- (a) Every decision of Lee County's Boards of Adjustment and Appeals shall be final; subject, however, to any remedy an aggrieved party might have at law or in equity. Every decision shall be in writing and shall indicate the vote upon the decision. Every decision of Lee County's Boards of Adjustment and Appeals shall be signed and attested to by the chairman of the board.
- (b) Lee County's Boards of Adjustment and Appeals shall, in every case, reach a decision without unreasonable or unnecessary delay.
- (c) If a decision of any of Lee County's Boards of Adjustment and Appeals reverses or modifies a refusal, order or disallowance of the building official or fire official or their designees, or varies the application of any provision of a code, the appropriate official shall immediately take action in accordance with such decision.
- (d) Any aggrieved person may obtain judicial review of the decision of Lee County's Boards of Adjustment and Appeals by filing a petition for writ of certiorari in the circuit court. Such petition must be filed within 30 calendar days after the board of adjustment and appeals' decision, but not thereafter, pursuant to the Florida Rules of Civil Procedure. The original petition for writ of certiorari must be filed with the clerk of the circuit court. Copies of the petition shall be filed with the building official for forwarding to the town attorney.

Secs. 6-83—6-110. - Reserved.

DIVISION 3. - BUILDING CODE

Sec. 6-111. - Adoption; amendments.

The Florida Building Code is hereby adopted by reference and made a part of this article, including all revisions and amendments approved in accordance with state law, with the exceptions set forth as follows:

Chapter 1, Administration.

Sections 103.1 through 103.6 relating to powers and duties of the building official are added as follows:

103.1 General. The building official is hereby authorized and directed to enforce the provisions of this code and building codes adopted by the state of Florida. The building official has the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures must be in compliance with the intent and purpose of this code, and may not have the effect of waiving requirements specifically provided for in this code.

103.2 Right of entry.

103.2.1 Whenever necessary to make an inspection to enforce any of the provisions of this code, or whenever the building official has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building, structure, premises, electrical, gas, mechanical, or plumbing systems unsafe, dangerous, or hazardous, the building official may enter such building, structure, or premises at all reasonable times to inspect the same or to perform any duty imposed upon the building official by this code. If such building or premises are occupied, he must first present proper credentials and request entry. If such building, structure, or premises are unoccupied, he must first make a reasonable effort to locate the owner or other persons having charge or control of such and request entry. If entry is refused, the building official has recourse to every remedy provided by law to secure entry.

103.2.2 When the building official has obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care, or control of any building, structure, or premises may fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the building official for the purpose of inspection and examination pursuant to this code.

103.3 Stop work orders. Upon notice from the building official, work on any building, structure, electrical, gas, mechanical, or plumbing system that is being done contrary to the provisions of this code, or in a dangerous or unsafe manner, must immediately cease. Such notice must be in writing and posted on the permit board, stating the reasons for the order. Work may only resume after lifting of the stop work order by the building official.

103.4 Revocation of permits. The building official is authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate, or incomplete information, or in violation of any ordinance or regulation or any provision of any code of the Town of Fort Myers Beach.

103.4.1 Misrepresentation of application. The building official may revoke a permit or approval issued under the provisions of this code if there has been any false statement or misrepresentation as to a material fact in the application or plans on which the permit or approval was based.

103.4.2 Violation of code provisions. The building official may revoke a permit upon determination by the building official that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the building, structure, electrical, gas, mechanical, or plumbing systems for which the permit was issued is in violation of, or not in conformity with, the provisions of this code.

103.5 Unsafe buildings or systems. All buildings, structures, electrical, gas, mechanical, or plumbing systems which are unsafe, unsanitary, or do not provide adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health, are considered unsafe buildings or service systems. All such unsafe buildings, structures or service systems are hereby declared illegal and must be abated by repair and rehabilitation or by demolition in accordance with the provisions of the Unsafe Building Abatement Code (see article I of this chapter).

103.6 Requirements not covered by code. Any requirements necessary for the strength, stability, or proper operation of an existing or proposed building, structure, electrical, gas, mechanical, or plumbing system, or for the public safety, health, and general welfare, not specifically covered by this or the other technical codes, will be determined by the building official.

Section 104.1.4 is amended to read as follows:

104.1.4. Minor repairs.

Ordinary minor repairs, routine maintenance, or incidental work of a nonstructural nature may be made without a permit, provided that such repair shall not violate any of the provisions of the technical codes. For purposes of this section, "ordinary minor repairs" include the replacement of damaged or worn materials by similar new materials and any other repairs defined as such by the building official. Ordinary minor repairs under this section may not involve the cutting of any structural beam or supporting member or include any alterations that would increase habitable floor area, change the use of any portion of the building, remove or change any required means of egress or exit access, or affect the structural integrity or fire rating of the building.

Section 104.1.6, relating to time limitations, is amended to add the following:

104.1.6.1 A permit issued shall be construed to be a license to proceed with the work but shall not be construed as authority to violate, cancel, alter or set aside any of the provisions of this code, nor shall such issuance of a permit prevent the building official from thereafter requiring a correction of errors in plans or in construction or of violations of this code. Although a permit issued to an owner is transferable to another owner, actual notice of the transfer of permit shall be given to the building official prior to the transfer. Building permits shall be issued following the approval of site and construction plans. Building permits on multifamily projects shall be issued on each individual building or structure. Multitenant occupancies, including but not limited to shopping malls, may be permitted on an individual building or structure (shell); however, individual permits shall be used separately for tenant spaces.

104.1.6.2 The first inspection required by the permit must be successfully completed within a six-month period of issuance or the permit shall be deemed invalid. All subsequent inspections shall be made within a six-month period of the most recent inspection until completion of work or the permit shall become invalid. For purposes of this section, the foundation inspection will be considered the first inspection.

104.1.6.3 The entire foundation must be completed within the first six months from the issuance of the permit. Partial inspections due to complexity of the foundation may be made with building inspector's approval, and job site plans shall be initialed by the inspector only on that portion of the plans that is inspected, and these inspections are for compliance to plans and specifications and are in no way to be construed as the first inspection. Subsequent inspections may be made until the entire foundation is completed. At that time, the foundation will be signed off as the first inspection. One or more extensions of the building permit for good cause may be granted by the building official on a project for a period not exceeding 90 days each. The request shall be made by written notice to the building official at least 30 days prior to expiration of the building permit. The building official may require compliance with any revised building code, mechanical code, plumbing code, electrical code, gas code, swimming pool code or fire code requirements in effect at the time of granting any extension to the building permit. Any extension request denied may be

appealed to the town council by the applicant on a form provided by the building official. The council shall grant or deny the extension upon a finding of good cause or lack thereof. If granted, the extension or extensions shall not exceed a period of 90 days each.

Section 106.1.4 relating to new or changed land uses is added as follows:

106.1.4 New or changed land use. A certificate of occupancy will only be granted for a new or changed use of land if that use is allowable under ch. 34 of this code.

~~107.6.1 Building permits issued on the basis of an affidavit.~~ Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), the authority granted to the Building Official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to 105.14 and Section 107.6, shall not extend to the flood load and flood resistance construction requirements of the Florida Building Code.

~~117 VARIANCES IN FLOOD HAZARD AREAS~~

~~117.1 Flood hazard areas.~~ Pursuant to F.S. § 553.73(5), the variance procedures adopted in the local floodplain management ordinance shall apply to requests submitted to the Building Official for variances to the provisions of Section 1612.4 of the Florida Building Code, Building or, as applicable, the provisions of R322 of the Florida Building Code, Residential. This section shall not apply to Section 3109 of the Florida Building Code, Building.

~~Florida Building Code, Building, Section 1612.2.~~

~~SUBSTANTIAL DAMAGE.~~ Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. The term also includes flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the costs of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

~~SUBSTANTIAL IMPROVEMENT.~~ Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

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

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

~~SUBSTANTIAL IMPROVEMENT.~~ Any repair, reconstruction, rehabilitation, addition or improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. If the structure

~~has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:~~

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

Florida Building Code, Residential, Section R322.

R322.1.12 ~~R322.1.14~~ *Enclosed areas below THE REQUIRED elevation.* Enclosed areas, including crawl spaces, that are below the design flood elevation shall:

1. Be permitted to enclose up to 100 percent of the area below an elevated building and shall not extend beyond the perimeter of the building.
2. Have the interior portion of any enclosed area:
 - a. Partitioned only to separate parking areas from building access or storage areas;
 - b. The minimum number of interior doors necessary for access to the stairway or elevator to the elevated buildings from areas used for parking or storage;
 - c. Not temperature-controlled.
3. Have access to enclosed areas intended for building access or storage by no more than one standard 36-inch exterior door, or one windowless 72-inch double exterior door, in any exterior wall.
4. Have construction documents include an agreement, signed by the owner, acknowledging the limitations on allowable uses of the enclosed areas and the conditions of the building permit, using a form provided by the Floodplain Administrator. This agreement shall be recorded in the official record books in the office of the clerk of the circuit court to provide additional notice of these limitations to future purchasers.

~~R322.1.12 Accessory structures. Accessory structures used for parking and storage shall be permitted below the base flood if designed and constructed in compliance with Section R322 and the total cost of an accessory structure does not exceed 10% of the market value of the building or \$17,500 per dwelling unit, whichever is greater. The dollar amount specified may be increased each year beginning in 2014 by the percentage increase of the Consumer Price Index—All Urban Consumers (CUP-U), All Items, U.S. City Average maintained by the federal Bureau of Labor Statistics.~~

R322.3.3 Foundations. Buildings and structures erected in coastal high-hazard areas and Coastal A Zones shall be supported on pilings or columns and shall be adequately anchored to such pilings or columns. The space below the elevated building shall be either free of obstruction or, if enclosed with walls, the walls shall meet the requirements of Section R322.3.5. Pilings shall have adequate soil penetrations to resist the combined wave and wind loads (lateral and uplift). Water-loading values used shall be those associated with the design flood. Wind-loading values shall be those required by this code. Pile embedment shall include consideration of decreased resistance capacity caused by scour of soil strata surrounding the piling. Pile systems design and installation shall be certified in accordance with Section R322.3.9. Spread footing, mat, raft or other foundations

that support columns shall not be permitted where soil investigations that are required in accordance with Section R401.4 indicate that soil material under the spread footing, mat, raft or other foundation is subject to scour or erosion from wave-velocity flow conditions. If permitted, spread footing, mat, raft or other foundations that support columns shall be designed in accordance with ASCE 24.

~~Exception: Reserved. In Coastal A Zones, stem wall foundations supporting a floor system above and backfilled with soil or gravel to the underside of the floor system shall be permitted provided the foundations are designed to account for wave action, debris impact, erosion and local scour. Where soils are susceptible to erosion and local scour, stem wall foundations shall have deep footings to account for the loss of soil.~~

Chapter 33, Site Work, Demolition and Construction.

Section 3311.5 is added, to read as follows:

3311.5 Trash containers.

It shall be unlawful to bury construction debris on the construction site or on any other public or private property not specifically approved for such use. A suitable trash container and adequate collection service shall be provided for each construction site. For purposes of this requirement, a suitable container is any structure, device, receptacle, designated location or combination thereof which holds construction debris on the construction site in a central location long enough for it to be removed from the site by means of whatever collection service the contractor chooses to use or may be required to use pursuant to other applicable laws before such debris is: (1) washed or blown off-site, (2) contaminates subsurface elements, (3) becomes volatile or malodorous, (4) makes an attractive nuisance, or (5) otherwise becomes a threat to the public health, safety and welfare.

Chapter 34, Existing Buildings.

~~Section 3401.1, relating to scope, is modified to read as follows:~~

~~3401.1 Scope. Provisions of this chapter and of division 4 of this article shall govern the application of this code to existing buildings. In interpreting this code, the building official may be guided by the Nationally Applicable Recommended Rehabilitation Provisions, published in 1997 by the U.S. Department of Housing and Urban Development.~~

~~Exception: Buildings and structures located within the High Velocity Hurricane Zone shall comply with the provisions of sections 3401.5, 3401.8, and 3401.2.2.1.~~

~~Section 3401.2.2.1, relating to change of occupancy, is deleted, and replaced with a new section 3401.2.2.1, to read as follows:~~

~~3401.2.2.1 If the occupancy classification or any occupancy subclassifications of any existing building or structure is changed to a more hazardous occupancy, the building, electrical, gas, mechanical, and plumbing systems shall be made to conform to the intent of the technical codes as required by the building official.~~

~~Section 3401.5, relating to special historic buildings, is deleted, and replaced with a new section 3401.5, to read as follows:~~

~~3401.5 Special historic buildings.~~

~~3401.5.1 The provisions of the technical codes relating to the construction, alteration, repair, enlargement, restoration, relocation or moving of buildings or structures shall not be mandatory for an existing building or structure identified and classified by the federal, state, county, or town government as a historic structure, or as a contributing structure in a historic district, when such building or structure is judged by the building official to be safe and in the public interest of health, safety, and welfare regarding any proposed construction, alteration, repair, enlargement, restoration, relocation or moving.~~

~~3401.5.2 If it is proposed that a historic building that is undergoing repair, renovation, alternation, reconstruction, or change of occupancy not comply literally with certain technical standards of this code, the building official may require the building to be investigated and evaluated by a registered design professional. Such evaluation shall identify each required feature of the building not in technical compliance and shall demonstrate how the intent of these provisions is to be complied with in providing an equivalent level of safety.~~

(Ord. No. 13-06, § 3, 9-3-2013; Ord. No. 17-09, § 2, 6-19-2017)

Sec. 6-112. - Wind-borne debris region and basic wind speed map.

The entire incorporated area of the Town of Fort Myers Beach lies within the wind-borne debris region and the 160 mph basic wind speed zone as established by section 1606.1.6 and figure 1606 of the Florida Building Code.

Sec. 6-113. - Compliance with outdoor lighting standards.

All building permits must comply with the outdoor lighting standards in §§ 34-1831—34-1860 of this code.

Sec. 6-114. - Compliance with NPDES erosion control standards.

Stormwater runoff from construction sites must be managed in compliance with §§ 10-606—10-607 of this land development code.

Secs. 6-115—6-120. - Reserved.

DIVISION 4. – RESERVED EXISTING BUILDINGS CODE

~~Sec. 6-121. – Purpose.~~

~~The purpose of this code is to encourage the continued use or reuse of existing buildings. This code is designed to supplement the other codes adopted in this article. In interpreting this code, the building official may be guided by the Nationally Applicable Recommended Rehabilitation Provisions, published in 1997 by the U.S. Department of Housing and Urban Development.~~

~~Sec. 6-122. – Adoption; amendments.~~

~~The following chapters and sections of the 1997 Standard Existing Buildings Code, as published by the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama, 35213-1206, are hereby adopted by reference and made a part of this article, with the exceptions set forth as follows:~~

Chapter 1, Administration.

~~Section 101.7.1, relating to a change of occupancy, is deleted, and replaced with a new section 101.7.1 to read as follows:~~

~~If the occupancy classification or any occupancy subclassifications of any existing building is changed to a more hazardous occupancy, the building shall be made to conform to the intent of the Florida Building Code for new construction as required by the building official.~~

~~Section 105, relating to the board of adjustment and appeals, is deleted, and replaced by the procedures set forth for the delegation of authority to Lee County's construction board of adjustment and appeals found in division 2 of this chapter and article.~~

~~Chapter 2, Definitions and Abbreviations.~~

~~Chapter 3, Historic Structures,~~ is hereby amended to read as follows:

~~The provisions of this code relating to the construction, alteration, repair, enlargement, restoration, relocation or moving of buildings or structures shall not be mandatory for an existing building or structure identified and classified by the federal, state, county, or town government as a historic structure, or as a contributing structure in a historic district, when such building or structure is judged by the building official to be safe and in the public interest of health, safety, and welfare regarding any proposed construction, alteration, repair, enlargement, restoration, relocation or moving.~~

~~If it is proposed that a historic building that is undergoing repair, renovation, alternation, reconstruction, or change of occupancy not comply literally with certain technical standards, the building official may require the building to be investigated and evaluated by a registered design professional. Such evaluation shall identify each required feature of the building not in technical compliance and shall demonstrate how the intent of these provisions is to be complied with in providing an equivalent level of safety.~~

~~Chapter 4, Means of Egress.~~

~~Chapter 5, Fire Protection.~~

~~Chapter 6, Light, Ventilation and Sanitation.~~

~~Chapter 7, Building Services.~~

~~Chapter 8, Maintenance.~~

~~Appendix A, Rehabilitation Guidelines.~~

~~Secs. 6-123—6-230. Reserved.~~

DIVISION 5. - CONTRACTOR LICENSING

Sec. 6-231. - Contractor licenses required.

Lee County authorizes the issuance of contractor licenses, as authorized by F.S. ch. 489 and Lee County Ordinance No. 96-20, granting the privilege of engaging in the contracting business within the jurisdiction of Lee County. The Town of Fort Myers Beach desires to restrict those engaging in the contracting business to those holding the same categories of licensure as required by Lee County:

- (1) State-certified contractors holding an active state certificate of competency;

- (2) State-registered contractors holding an active state registration and Lee County certificate of competency. A Lee County certificate of competency alone is not sufficient if state statute requires that the contractor also hold a state certificate or registration;
- (3) Locally licensed contractors holding an active Lee County certificate of competency; or
- (4) Restricted specialty contractors holding an active Lee County restricted certificate of competency.

Sec. 6-232. - Contractors required to be state-certified.

In accordance with F.S. ch. 489, the following types of contractors must hold a valid state certification in order to contract in the Town of Fort Myers Beach:

- (1) General contractor;
- (2) Building contractor;
- (3) Residential contractor;
- (4) Class A air conditioning contractor;
- (5) Class B air conditioning contractor;
- (6) Commercial pool/spa contractor;
- (7) Residential pool/spa contractor;
- (8) Swimming pool servicing contractor;
- (9) Sheet metal contractor;
- (10) Mechanical contractor;
- (11) Plumbing contractor;
- (12) Residential solar water heating contractor;
- (13) Underground utilities and excavation contractor;
- (14) Asbestos abatement contractor;
- (15) Roofing contractor;
- (16) Pollutant storage system contractor.

Sec. 6-233. - Contractor categories licensed by Lee County.

- (a) The Town of Fort Myers Beach accepts Lee County certificates of competency in the following specialty categories:
 - (1) Alarm system contractor I;
 - (2) Alarm system contractor II;
 - (3) Aluminum specialty structures contractor;
 - (4) Aluminum (without concrete) contractor;
 - (5) Aluminum (nonstructural) contractor;
 - (6) Asphalt sealing and coating contractor;
 - (7) Awning contractor;
 - (8) Cabinet and millwork contractor;

- (9) Carpentry contractor;
- (10) Concrete coatings contractor;
- (11) Concrete forming and placing contractor;
- (12) Concrete placing and finishing (flatwork) contractor;
- (13) Court (outdoor) contractor;
- (14) Demolition contractor;
- (15) Dredging contractor;
- (16) Drywall contractor;
- (17) Excavation contractor;
- (18) Fence erection contractor;
- (19) Finish carpentry contractor;
- (20) Garage door contractor;
- (21) Glass and glazing contractor;
- (22) Guniting contractor;
- (23) Gutter and downspout contractor;
- (24) Insulation (building) contractor;
- (25) Insulation (all types) contractor;
- (26) Irrigation sprinkler contractor;
- (27) Journeyman air conditioning;
- (28) Journeyman electrician;
- (29) Journeyman mechanical;
- (30) Journeyman plumber;
- (31) Marbling contractor;
- (32) Marine contractor;
- (33) Masonry contractor;
- (34) Master electrical contractor;
- (35) Painting contractor;
- (36) Paver block contractor;
- (37) Paving contractor;
- (38) Pile driving contractor;
- (39) Plastering/stucco contractor;
- (40) Reinforcing steel contractor;
- (41) River rock contractor;
- (42) Sandblasting contractor;
- (43) Sign contractor - limited;

- (44) Sign contractor - restricted;
 - (45) Structural steel erection contractor;
 - (46) Terrazo contractor;
 - (47) Tile and marble contractor.
- (b) The Town of Fort Myers Beach also accepts certain older Lee County certificates of competency that the county has determined to be vested with respect to the scope of work allowed under the certificate category. These certificates may be in the following categories:
- (1) Air conditioning contractor - Class A;
 - (2) Air conditioning contractor - Class B;
 - (3) Air conditioning contractor - Class C;
 - (4) Alteration and repair (nonstructural) contractor;
 - (5) Building contractor;
 - (6) Cement, concrete and masonry contractor;
 - (7) Cement finishing contractor;
 - (8) Demolition contractor;
 - (9) Dredging and landfilling contractor;
 - (10) Exposed aggregate contractor;
 - (11) Flooring contractor;
 - (12) General contractor;
 - (13) Glazing and window installation contractor;
 - (14) Mechanical contractor;
 - (15) Mobile home alteration and repair (including aluminum work) contractor;
 - (16) Paint and roof painting contractor;
 - (17) Paving and sealing contractor;
 - (18) Plastering, lathing, stucco, and drywall contractor;
 - (19) Plumbing contractor;
 - (20) Pool contractor - Class A;
 - (21) Pool contractor - Class C;
 - (22) Remodeling contractor;
 - (23) Residential contractor;
 - (24) Roofing contractor;
 - (25) Roof painting contractor;
 - (26) Roof spraying contractor;
 - (27) Seawall and dock contractor;
 - (28) Sign contractor - electrical;

- (29) Sign contractor - non-electrical;
- (30) Solar water heating contractor;
- (31) Tile contractor;
- (32) Tile, terrazo, river rock, and marble contractor;
- (33) Waterproofing contractor;
- (34) Underground utility contractor.

Sec. 6-234. - Delegation of authority to the Lee County Construction Licensing Board.

- (a) The Town of Fort Myers Beach hereby delegates to Lee County and the Lee County Construction Licensing Board the authority to make decisions regarding:
 - (1) The categories of certificates of competency that Lee County may require or issue;
 - (2) The requirements for obtaining and retaining Lee County certificates of competency;
 - (3) The issuance, revocation, and cancellation of Lee County certificates of competency;
 - (4) Disciplinary actions concerning activities within the town by holders of a Lee County certificate of competency or by state-certified or registered contractors; and
 - (5) Any other matter within the authority of the Lee County Construction Licensing Board.
- (b) The policies, procedures and safeguards applicable to the Lee County Construction Licensing Board according to Lee County Ordinance No. 96-20, are hereby adopted by the Town of Fort Myers Beach for all actions of the board regarding violations alleged to have occurred within the town.
- (c) The town attorney will provide legal advice to the Lee County Construction Licensing Board when warranted.

Sec. 6-235. - Owner-builder exemption.

- (a) Owners of property may act as their own contractor and provide direct on-site supervision themselves of all work not performed by licensed contractors when building or improving:
 - (1) One-family or two-family residences on the owner's property for the occupancy or use of the owners and not offered for sale or lease; and
 - (2) Commercial buildings on the owner's property at a cost not to exceed \$25,000.00 for the occupancy or use of the owners and not offered for sale or lease.
- (b) If, within one year of completion, an owner-builder sells, leases, or offers for sale or lease any building constructed or improved under an owner-builder exemption, the town can presume the construction or improvement was undertaken for the purposes of sale or lease.
- (c) This section does not exempt any person the owner-builder employs, or has a contract with, to act in the capacity of a contractor. The owner cannot delegate the owner's responsibility to directly supervise all work to any other person unless that person is duly licensed in accordance with this ordinance and the work performed is within the scope of that contractor's license.
- (d) To qualify for exemption under this section, an owner must personally appear and sign the building permit application. The owner must also execute a disclosure statement prepared by the building official acknowledging compliance with all applicable regulations.

Sec. 6-236. - Other exemptions.

The licensing provisions of this article do not apply to:

- (1) Any employee of a duly licensed contractor who is acting within the scope of the employer's license or with the employer's knowledge and permission. However, if the employer is not licensed to perform the type of services the employee is contracting to perform, then the employee is not exempt if the employee:
 - a. Holds himself or his employer out to be licensed or qualified by a licensee to perform services outside the scope of the employer's license;
 - b. Leads the consumer to believe that the employee has an ownership or management interest in the company; or
 - c. Performs any of the acts which constitute contracting for services outside the scope of the employer's license.

The intent of this subsection is to place equal responsibility on the unlicensed business and its employees for the protection of the consumers in contracting transactions.

- (2) An authorized employee of the United States, the state, the county, the town, or any political subdivision of the state, if the employee does not hold himself out for hire or otherwise engage in contracting except in accordance with his employment.
- (3) Contractors and employees working on bridges, roads, streets, highways, or railroads, including services incidental thereto, that are under the responsible charge of a professional engineer, duly licensed general contractor, the county, or the state.
- (4) A registered professional engineer or architect acting within the scope of his practice or any person exempted by the law regulating engineers and architects, including a person doing design work as specified in F.S. § 481.229(1)(b). However, an engineer or architect cannot act as a contractor unless properly licensed in accordance with this article.
- (5) An architect or landscape architect licensed under F.S. ch. 481 or a professional engineer licensed under F.S. ch. 471 who offers or renders design-build services. However, a state-certified general contractor must perform the construction services under the design-build contract.

Sec. 6-237. - Penalties.

Penalties for violations of this article shall be as authorized by Lee County through its Ordinance No. 96-20, as may be amended from time to time.

Secs. 6-238—6-330. - Reserved.

ARTICLE III. - COASTAL CONSTRUCTION CODE

DIVISION 1. - GENERALLY

Sec. 6-331. - Origin.

The Florida legislature adopted a Coastal Zone Protection Act in 1985 (F.S. § 161.52 et seq.), as later amended by Laws of Florida 2000-141, with requirements for enforcement by local governments. This article contains relevant requirements of that Act plus other local regulations, which will reduce the harmful consequences of natural disasters on sensitive coastal areas including the entire Town of Fort Myers Beach.

Sec. 6-332. - Intent of article; applicability of article.

The purpose of this article is to provide minimum standards for the design and construction of buildings and structures to reduce the harmful effects of hurricanes and other natural disasters throughout the town. These standards are intended to specifically address design features which affect the structural stability of the beach, dunes, and topography of adjacent properties. In the event of a conflict between this article and other portions of this code, the requirements resulting in the more restrictive design will apply. No provisions in this article will be construed to permit any construction in any area where prohibited by state or federal regulation.

- (1) *Applicability generally.* The requirements of this article will apply to the following types of construction:
 - a. New construction as defined herein;
 - b. Substantial improvements to existing structures as defined in § 6-405 of this code; and
 - c. Any construction which would change or alter the character of the shoreline, e.g., excavation, grading, or paving. This article does not apply to minor work in the nature of normal beach cleaning or debris removal, which is regulated by article I of ch. 14 of this LDC.
- (2) *Construction seaward of mean high-water.* Structures or construction extending seaward of the mean high-water line which are regulated by F.S. § 161.041, e.g., groins, jetties, moles, breakwaters, beach nourishment, inlet dredging, etc., are specifically exempt from the provisions of this article. In addition, this article does not apply to those portions of piers, pipelines, or outfalls which are located seaward of the mean high-water line and are regulated pursuant to the provisions of F.S. § 161.053.
- (3) *Certification of compliance.* All plans for buildings must be signed and sealed by an architect or engineer registered in the state. Upon completion of the building and prior to the issuance of a certificate of occupancy, a statement must be filed with the director signed and sealed by an architect or engineer registered in the state in substantially the following form: "To the best of my knowledge and belief the above-described construction of all structural loadbearing components complies with the permitted documents and plans submitted to the Town of Fort Myers Beach."

Sec. 6-333. - Definitions.

The following words, terms and phrases, when used in this article, will have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words or phrases not defined will be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

Beach or *shore* has the same meaning given the word "beach" in § 14-1 of this LDC.

Coastal construction control lines have been established by the state department of environmental protection in accordance with F.S. § 161.053. The most recent lines at Fort Myers Beach were established in 1991, and a copy of the aerials depicting these coastal construction lines are recorded in the public records at Plat Book 48, Pages 15-34. These and the previous (1978) coastal construction control lines may also be reviewed at Town Hall.

Construction means the carrying out of any building, clearing, filling, excavation. When appropriate to the context, the term "construction" refers to the act of construction or the result

of construction. Construction also includes substantial improvements to existing structures as defined in § 6-405 of this code.

Director means the person to whom the town council has delegated authority for enforcing this article.

Dune has the same meaning given it in § 14-1 of this LDC.

Major structure includes, but is not limited to, residential, commercial, institutional, or other public buildings and other construction having the potential for substantial impact on coastal zones (also see definitions of *minor structure* and *minor habitable structure* below).

Mean high-water line means the intersection of the tidal plane of mean high water with the shore. Mean high-water is the average height of high waters over a 19-year period. (See F.S. § 177.27(15).)

Minor structure includes, but is not limited to, pile-supported elevated dune and beach walkover structures; beach access ramps and walkways; stairways; pile-supported elevated viewing platforms, gazebos, and boardwalks; lifeguard support stands; public and private bathhouses; sidewalks, driveways, parking areas, shuffleboard courts, tennis courts, handball courts, racquetball courts and other uncovered paved areas; earth retaining walls; and sand fences, privacy fences, ornamental walls, ornamental garden structures, aviaries, and other ornamental construction. It shall be characteristic of minor structures that they are considered expendable under design wind, wave, and storm forces.

Nonhabitable major structure includes, but is not limited to, swimming pools and public piers.

100-year storm means a shore-incident hurricane or any other storm with accompanying wind, wave and storm surge intensity having a one percent chance of being equaled or exceeded in any given year, during any 100-year interval.

Cross reference— Definitions and rules of construction generally, § 1-2 of this LDC.

Sec. 6-334. - Variances.

Requests for variances from the provisions of this article shall be processed and decided in the same manner as for variances under ch. 34 of this code.

Secs. 6-335—6-360. - Reserved.

DIVISION 2. - COASTAL CONSTRUCTION STANDARDS

Sec. 6-361. - Generally.

The following minimum standards will apply to all construction in the Town of Fort Myers Beach.

Secs. 6-362, 6-363. - Reserved.

Sec. 6-364. - Special requirements near beaches.

(a) *Major structures.* Nonhabitable major structures must be designed to produce the minimum adverse impact on the beach and dune system.

(1) Locational criteria for major structures are found in § 6-366(b) of this LDC.

- (2) Structural and permitting criteria for major structures are found in ch. 31 of the Florida Building Code and in ch. 62B of the Florida Administrative Code.
- (3) All sewage treatment and public water supply systems must be floodproofed to prevent infiltration of surface water anticipated from a 100-year storm event.
- (4) Underground utilities, excluding pad transformers and vaults, must be floodproofed to prevent infiltration of surface water expected from a 100-year storm event, or must otherwise be designed to function when submerged under such storm conditions.
- (b) *Minor structures.* Minor structures must be designed to produce the minimum adverse impact on the beach and dune system and adjacent properties and to reduce the potential for water and wind-blown material.
 - (1) Locational criteria for minor structures are found in § 6-366(b) of this LDC.
 - (2) Construction of a rigid coastal or shore protection structure designed primarily to protect a minor structure is not permitted; see article II of ch. 26 of this LDC for detailed regulations.

Sec. 6-365. - Reserved.

Sec. 6-366. - Location of construction near beaches.

- (a) All construction must be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability. In addition to complying with all other provisions of this code, major structures must be built landward of the 1978 Coastal Construction Control Line except where a major structure may be specifically allowed by this code to extend across this line. The 1978 Coastal Construction Control Line is depicted on the future land use map as the seaward edge of land-use categories allowing urban development and as the landward edge of the recreation land-use category. This line is also the landward edge of the EC (Environmentally Critical) zoning district. A copy of the 1978 Coastal Construction Control Line is recorded at Plat Book 48, Page 15, and available at the Ft. Myers Beach Town Hall.
- (b) When existing major structures that were built partially or fully seaward of the 1978 Coastal Construction Control Line are reconstructed, they shall be rebuilt landward of this line. Exceptions to this rule may be permitted through the planned development zoning process only where it can be scientifically demonstrated that the 1978 Coastal Construction Control Line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions. Exceptions must also comply all state laws and regulations regarding coastal construction.
 - (1) Repairs to existing primary structures, in the EC zoning district, are permitted without a special exception only if the repairs do not exceed 25 percent of the value of the structure. Expansion of existing primary structures, in the EC zoning district, are not permitted without a special exception.
 - (2) Repairs to accessory structures in the EC zoning district are not permitted.
- (c) For newly created lots and parcels, a 50-foot separation between structures and dunes is required by § 10-415(b) of this LDC.

([Ord. No. 20-02](#), § 2, 2-18-2020)

Sec. 6-367. - Public access.

Development or construction activity may not interfere with accessways established by the public through private lands to lands seaward of mean high tide line or mean high-water line by prescription, prescriptive easement or any other legal means, unless the developer provides a comparable alternative accessway. The developer has the right to improve, consolidate or relocate such public accessways if the accessways provided are:

- (1) Of substantially similar quality and convenience to the public;
- (2) Approved by the town council;
- (3) Consistent with the Fort Myers Beach Comprehensive Plan; and
- (4) Approved by the Florida Department of Environmental Protection whenever changes are proposed seaward of the 1991 Coastal Construction Control Line.

Secs. 6-368—6-400. - Reserved.

EXHIBIT B

ARTICLE IV. - FLOODPLAIN REGULATIONS

DIVISION 1. - GENERAL

Sec. 6-401. - Title.

These regulations shall be known as the Floodplain Management Ordinance of Fort Myers Beach, hereinafter referred to as "this article."

(Ord. No. 13-06, § 2, 9-3-2013)

Sec. 6-402. - Scope.

The provisions of this article apply to all development that is wholly within or partially within any flood hazard area, including but not limited to, the subdivision of land; filling, grading, and other site improvements and utility installations; construction, alteration, remodeling, enlargement, improvement, replacement, repair, relocation or demolition of buildings, structures, and facilities that are exempt from the Florida Building Code; placement, installation, or replacement of manufactured homes and manufactured buildings; installation or replacement of tanks; placement of recreational vehicles; installation of swimming pools; and any other development.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-403. - Intent.

The purposes of this article and the flood load and flood-resistant construction requirements of the Florida Building Code are to establish minimum requirements to safeguard the public health, safety and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to:

- (1) Minimize unnecessary disruption of commerce, access and public service during times of flooding;
- (2) Require the use of appropriate construction practices in order to prevent or minimize future flood damage;
- (3) Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development that may increase flood damage or erosion potential;
- (4) Manage the alteration of flood hazard areas, watercourses, and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain;
- (5) Minimize damage to public and private facilities and utilities;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas;
- (7) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events; and

- (8) Meet the requirements of the National Flood Insurance Program for community participation as set forth in the Title 44 Code of Federal Regulations, Section 59.22.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-404. - Coordination with the Florida Building Code.

This article is intended to be administered and enforced in conjunction with the Florida Building Code. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the Florida Building Code.

(Ord. No. 13-06, § 2, 9-3-2013)

Sec. 6-405. - Warning.

The degree of flood protection required by this article and the Florida Building Code, as amended by this community, is considered the minimum reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by manmade or natural causes. This article does not imply that land outside of mapped special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management Agency, requiring the town to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with this article.

(Ord. No. 13-06, § 2, 9-3-2013)

Sec. 6-406. - Disclaimer of liability.

This article will not create liability on the part of Town Council of the Town of Fort Myers Beach or by any officer or employee thereof for any flood damage that results from reliance on this article or any administrative decision lawfully made thereunder.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-407—6-410. - Reserved.

DIVISION 2. - APPLICABILITY

Sec. 6-411. - General.

Where there is a conflict between a general requirement and a specific requirement, the specific requirement will be applicable.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-412. - Areas to which this article applies.

This article shall apply to all flood hazard areas within the Town of Fort Myers Beach, as established in section 6-413.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-413. - Basis for establishing flood hazard areas.

The Flood Insurance Study for Lee County Florida and Incorporated Areas, dated November 17, 2022 ~~August 28, 2008~~, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of this article and serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the Fort Myers Beach Town Hall, ~~2525 Estero Boulevard, Fort Myers Beach, Florida.~~

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-414. - Submission of additional data to establish flood hazard areas.

To establish flood hazard areas and base flood elevations, pursuant to division 5 of this article, the floodplain administrator may require submission of additional data. Where field surveyed topography prepared by a Florida licensed professional surveyor or digital topography accepted by the town indicates that ground elevations:

- (1) Are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area will be considered as flood hazard area and subject to the requirements of this article and, as applicable, the requirements of the Florida Building Code.
- (2) Are above the closest applicable base flood elevation, the area will be regulated as special flood hazard area unless the applicant obtains a letter of map change that removes the area from the special flood hazard area.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-415. - Other laws.

The provisions of this article will not be deemed to nullify any provisions of local, state or federal law.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-416. - Abrogation and greater restrictions.

This article supersedes any ordinance in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing ordinances, including but not limited to, land development regulations, zoning ordinances, stormwater management regulations, or the Florida Building Code. In the event of a conflict between this article and any other ordinance, the more restrictive will govern. This article will not impair any deed restriction, covenant or easement, but any land that is subject to such interests will also be governed by this article.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-417. - Interpretation.

In the interpretation and application of this article, all provisions will be:

- (1) Considered as minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-418—6-420. - Reserved.

DIVISION 3. - DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

Sec. 6-421. - Designation.

The town manager is designated as the floodplain administrator. The floodplain administrator may delegate performance of certain duties to other employees.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-422. - General.

The floodplain administrator is authorized and directed to administer and enforce the provisions of this article. The floodplain administrator will have the authority to render interpretations of this article consistent with the intent and purpose of this article and may establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures will not have the effect of waiving requirements specifically provided in this article without the granting of a variance pursuant to division 7 of this article.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-423. - Applications and permits.

The floodplain administrator, in coordination with other pertinent offices of the town, will:

- (1) Review applications and plans to determine whether proposed new development will be located in flood hazard areas;
- (2) Review applications for modification of any existing development in flood hazard areas for compliance with the requirements of this article;
- (3) Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination will have the opportunity to appeal the interpretation;
- (4) Provide available flood elevation and flood hazard information;
- (5) Determine whether additional flood hazard data will be obtained from other sources or will be developed by an applicant;

- (6) Review applications to determine whether proposed development will be reasonably safe from flooding;
- (7) Issue floodplain development permits or approvals for development other than buildings and structures that are subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code, when compliance with this article is demonstrated, or disapprove the same in the event of noncompliance; and
- (8) Coordinate with and provide comments to the building official to assure that applications, plan reviews, and inspections for buildings and structures in flood hazard areas comply with the applicable provisions of this article.

(Ord. No. 16-02, § 2, 8-8-2016)

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

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

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

(Ord. No. 16-02, § 2, 8-8-2016; Ord. No. 17-09, § 2, 6-19-2017)

Sec. 6-425. - Modifications of the strict application of the requirements of the Florida Building Code.

The floodplain administrator will review requests submitted to the building official that seek approval to modify the strict application of the flood load and flood-resistant construction requirements of the Florida Building Code to determine whether such requests require the granting of a variance pursuant to division 7 of this article.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-426. - Notices and orders.

The floodplain administrator will coordinate with appropriate local agencies for the issuance of all necessary notices or orders to ensure compliance with this article.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-427. - Inspections.

The floodplain administrator will make the required inspections as specified in division 6 of this article for development that is not subject to the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. The floodplain administrator will inspect flood hazard areas to determine if development is undertaken without issuance of a permit.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-428. - Other duties of the floodplain administrator.

The floodplain administrator will have other duties, including but not limited to:

- (1) Establish, in coordination with the building official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to section 6-424 of this article;
- (2) Require that applicants proposing alteration of a watercourse notify adjacent communities and the Florida Division of Emergency Management, State Floodplain Management Office, and submit copies of such notifications to the Federal Emergency Management Agency (FEMA);
- (3) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions will be made within six months of such data becoming available;
- (4) Review required design certifications and documentation of elevations specified by this article and the Florida Building Code to determine that such certifications and documentations are complete;
- (5) Notify the Federal Emergency Management Agency when the corporate boundaries of the Town of Fort Myers Beach are modified; and
- (6) Advise applicants for new buildings and structures, including substantial improvements, that are located in any unit of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591) that federal flood insurance is not available on such construction; areas subject to this limitation are identified on Flood Insurance Rate Maps as "Coastal Barrier Resource System Areas" and "Otherwise Protected Areas."

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-429. - Floodplain management records.

Regardless of any limitation on the period required for retention of public records, the floodplain administrator will maintain and permanently keep and make available for public inspection all records that are necessary for the administration of this article and the flood-resistant construction requirements of the Florida Building Code, including Flood Insurance Rate Maps; letters of map change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations specified by the Florida Building Code and this article; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood-carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and, records of enforcement actions taken pursuant to this article and the flood-resistant construction requirements of the Florida Building Code. These records are available for public inspection at the Town of Fort Myers Beach Town Hall.

(Ord. No. 16-02, § 2, 8-8-2016)

Secs 6-430—6-440. - Reserved.

DIVISION 4. - PERMITS

Sec. 6-441. - Permits required.

Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any development activity within the scope of this article, including buildings, structures and facilities exempt from the Florida Building Code, which is wholly within or partially within any flood hazard area must first make application to the floodplain administrator, and the building official, if applicable, and must obtain the required permits and approvals. No such permit or approval will be issued until compliance with the requirements of this article and all other applicable codes and regulations has been satisfied.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-442. - Floodplain development permits or approvals.

Floodplain development permits or approvals will be issued pursuant to this article for any development activities not subject to the requirements of the Florida Building Code, including buildings, structures and facilities exempt from the Florida Building Code. Depending on the nature and extent of proposed development that includes a building or structure, the floodplain administrator may determine that a floodplain development permit or approval is required in addition to a building permit.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-443. - Buildings, structures and facilities exempt from the Florida Building Code.

Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), floodplain development permits or approvals will be required for the following buildings, structures and facilities that are exempt

from the Florida Building Code and any further exemptions provided by law, which are subject to the requirements of this article:

- (1) Railroads and ancillary facilities associated with the railroad.
- (2) Nonresidential farm buildings on farms, as provided in F.S. § 604.50.
- (3) Temporary buildings or sheds used exclusively for construction purposes.
- (4) Mobile or modular structures used as temporary offices.
- (5) Those structures or facilities of electric utilities, as defined in F.S. § 366.02, which are directly involved in the generation, transmission or distribution of electricity.
- (6) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other non-wood features.
- (7) Family mausoleums not exceeding 250 square feet in area that are prefabricated and assembled on-site or preassembled and delivered on-site and have walls, roofs, and a floor constructed of granite, marble or reinforced concrete.
- (8) Temporary housing provided by the department of corrections to any prisoner in the state correctional system.
- (9) Structures identified in F.S. § 553.73(10)(k), are not exempt from the Florida Building Code if such structures are located in flood hazard areas established on Flood Insurance Rate Maps.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-444. - Application for a permit or approval.

To obtain a floodplain development permit or approval the applicant must first file an application in writing on a form furnished by the town. The information provided must:

- (1) Identify and describe the development to be covered by the permit or approval.
- (2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
- (3) Indicate the use and occupancy for which the proposed development is intended.
- (4) Be accompanied by a site plan or construction documents as specified in division 5 of this article.
- (5) State the valuation of the proposed work.
- (6) Be signed by the applicant or the applicant's authorized agent.
- (7) Give such other data and information as required by the floodplain administrator.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-445. - Validity of permit or approval.

The issuance of a floodplain development permit or approval pursuant to this article must not be construed to be a permit for, or approval of, any violation of this article, the Florida Building Codes, or any other ordinance of the town. The issuance of permits based on submitted applications, construction documents, and information will not prevent the floodplain administrator from requiring the correction of errors and omissions.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-446. - Expiration.

A floodplain development permit or approval will become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions for periods of not more than 180 days each must be requested in writing and justifiable cause must be demonstrated.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-447. - Suspension or revocation.

The floodplain administrator is authorized to suspend or revoke a floodplain development permit or approval if the permit was issued in error, on the basis of incorrect, inaccurate or incomplete information, or in violation of this article or any other ordinance, regulation or requirement of the town.

(Ord. No. 13-06, § 2, 9-3-2013)

Sec. 6-448. - Other permits required.

Floodplain development permits and building permits must include a condition that all other applicable state or federal permits be obtained before commencement of the permitted development, including but not limited to the following:

- (1) The South Florida Water Management District; F.S. § 373.036.
- (2) Florida Department of Health for on-site sewage treatment and disposal systems; F.S. § 381.0065, and Chapter 64E-6, F.A.C.
- (3) Florida Department of Environmental Protection for construction, reconstruction, changes or physical activities for shore protection or other activities seaward of the Coastal Construction Control Line; F.S. § 161.141.
- (4) Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; F.S. § 161.055.
- (5) Florida Department of Environmental Protection for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.
- (6) Federal permits and approvals.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-449, 6-450. - Reserved.

DIVISION 5. - SITE PLANS AND CONSTRUCTION DOCUMENTS

Sec. 6-451. - Information for development in flood hazard areas.

The site plan or construction documents for any development subject to the requirements of this article must be drawn to scale and must include, as applicable to the proposed development:

- (1) Delineation of flood hazard areas, floodway boundaries and flood zones, base flood elevations, and ground elevations, if necessary for review of the proposed development.
- (2) Location of the proposed activity and proposed structures, and locations of existing buildings and structures; in coastal high hazard areas and Coastal A Zones, new buildings must be located landward of the reach of mean high tide or the 1978 Coastal Construction Control Line, whichever is further inland.
- (3) Location, extent, amount, and proposed final grades of any filling, grading or excavation.
- (4) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.
- (5) Delineation of the coastal construction control line or notation that the site is seaward of the coastal construction control line, if applicable.
- (6) Extent of any proposed alteration of sand dunes or mangrove stands, provided such alteration is approved by the Florida Department of Environmental Protection.
- (7) Existing and proposed alignment of any proposed alteration of a watercourse.

The floodplain administrator is authorized to waive the submission of site plans, construction documents, and other data required by this article but that are not required to be prepared by a registered design professional if it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with this article.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-452. - Additional analyses and certifications.

As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant must have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:

- (1) An operation and maintenance plan when dry floodproofing is proposed, to include:
 - a. Identification of party responsible for maintenance and installation of the flood barriers that will protect wall and door openings and where the flood barriers will be stored when not in use.
 - b. Realistic estimate of the manpower, time and equipment required for installation.

- c. Binding requirement for present and future owners to conduct a test installation before May 31 of each year of all flood barriers, with ten days' advance written notice provided to the floodplain administrator to witness this test.
 - d. Binding requirement that upon completion of each annual test, a written report will be submitted by the owners to the floodplain administrator within 30 days to document the results of the test and set forth any corrective measures that may be necessary, including proposed revisions to the operation and maintenance plan as to responsibility for maintenance, installation, and storage of flood barriers.
- (2) For activities that propose to alter sand dunes or mangrove stands in coastal high hazard areas (Zone V) and Coastal A Zones, an engineering analysis that demonstrates the proposed alteration will not increase the potential for flood damage.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-453. - Submission of additional data.

When additional hydrologic, hydraulic or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a letter of map change from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses must be prepared by a Florida licensed engineer in a format required by FEMA. Submittal requirements and processing fees will be the responsibility of the applicant.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-454—6-460. - Reserved.

DIVISION 6. - INSPECTIONS

Sec. 6-461. - General.

Development for which a floodplain development permit or approval is required will be subject to inspection.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-462. - Development other than buildings and structures.

The floodplain administrator will inspect all development to determine compliance with the requirements of this article and the conditions of issued floodplain development permits or approvals.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-463. - Buildings, structures and facilities exempt from the Florida Building Code.

The floodplain administrator will inspect buildings, structures and facilities exempt from the Florida Building Code to determine compliance with the requirements of this division and the conditions of issued floodplain development permits or approvals.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-464. - Buildings, structures and facilities exempt from the Florida Building Code, Lowest Floor Inspection.

Upon placement of the lowest floor, including basement, and prior to further vertical construction, the owner of a building, structure or facility exempt from the Florida Building Code, or the owner's authorized agent, must submit to the floodplain administrator the certification of elevation of the lowest floor prepared and sealed by a Florida licensed professional surveyor.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-465. - Buildings, structures and facilities exempt from the Florida Building Code, Final Inspection.

As part of the final inspection, the owner or owner's authorized agent must submit to the floodplain administrator a final certification of elevation of the lowest floor or final documentation of the height of the lowest floor above the highest adjacent grade; such certifications and documentations must be prepared as specified in section 6-464.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-466. - Manufactured homes.

The floodplain administrator will inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of this article and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor must be submitted to the floodplain administrator.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-467—6-470. - Reserved.

DIVISION 7. - VARIANCES AND APPEALS

Sec. 6-471. - General.

The town council will hear and decide on requests for appeals and requests for variances from the strict application of this article. Pursuant to F.S. § 553.73(5), the town council will hear and decide on requests for appeals and requests for variances from the strict application of the flood-resistant construction requirements of the Florida Building Code. This section does not apply to section 3109 of the Florida Building Code, Building.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-472. - Appeals.

The town council will hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the administration and enforcement of this article. Any person aggrieved by the decision may appeal such decision to the circuit court, as provided by Florida Statutes.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-473. - Limitations on authority to grant variances.

The town council will base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in section 6-476, the conditions of issuance set forth in section 6-477, and the comments and recommendations of the floodplain administrator and the building official. The town council has the right to attach such conditions as it deems necessary to further the purposes and objectives of this article.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-474. - Historic buildings.

A variance is authorized to be issued for the repair, improvement or rehabilitation of a historic building that is determined eligible for the exception to the flood-resistant construction requirements of the Florida Building Code, Existing Building, chapter 12 Historic Buildings, upon a determination that the proposed repair, improvement or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance will not be granted and the building and any repair, improvement and rehabilitation will be subject to the requirements of the Florida Building Code.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-475. - Functionally dependent uses.

A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in division 9 of this article, provided the variance meets the requirements of section 6-473, is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-476. - Considerations for issuance of variances.

In reviewing requests for variances, the town council will consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this article, and the following:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
- (2) The danger to life and property due to flooding or erosion damage;

- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
- (4) The importance of the services provided by the proposed development to the town;
- (5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
- (6) The compatibility of the proposed development with existing and anticipated development;
- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
- (8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;
- (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-477. - Conditions for issuance of variances.

Variances may be issued only upon:

- (1) Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this article or the required elevation standards;
- (2) Determination by the town council that:
 - a. Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;
 - b. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and
 - c. The variance is the minimum necessary, considering the flood hazard, to afford relief.
- (3) Receipt of a signed statement by the applicant that the variance, if granted, must be recorded in the office of the clerk of the court in such a manner that it appears in the chain of title of the affected parcel of land; and
- (4) If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the floodplain administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to

amounts as high as \$25.00 for \$100.00 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-478—6-480. - Reserved.

DIVISION 8. - VIOLATIONS

Sec. 6-481. - Violations.

Any development that is not within the scope of the Florida Building Code but regulated by this article, which is: (a) performed without an issued permit, (b) in conflict with an issued permit, or (c) does not fully comply with this article, will be deemed a violation of this article. A building or structure without the documentation of elevation of the lowest floor, other required design certifications, or other evidence of compliance required by this article or the Florida Building Code is presumed to be a violation until such time as that documentation is provided.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-482. - Authority.

For development that is not within the scope of the Florida Building Code, but regulated by this article and determined to be a violation, the floodplain administrator is authorized to serve notices of violation or stop work orders to owners of the property involved, to the owner's agent, or to the person or persons performing the work.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-483. - Unlawful continuance.

Any person who continues any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, will be subject to penalties as prescribed by law.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-484—6-490. - Reserved.

DIVISION 9. - DEFINITIONS

Sec. 6-491. - Scope.

Unless otherwise expressly stated, the following words and terms will, for the purposes of this article, have the meanings shown in this division.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-492. - Terms defined in the Florida Building Code.

Where terms are not defined in this division and are defined in the Florida Building Code, such terms have the meanings ascribed to them in that code.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-493. - Terms not defined.

Where terms are not defined in this division or the Florida Building Code, such terms have ordinarily accepted meanings such as the context implies.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-494. - Definitions.

Accessory structure. A structure on the same parcel of property as a principal structure and the use of which is limited to parking and storage incidental to the use of the principal structure.

Alteration of a watercourse. A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification that may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

Appeal. A request for a review of the floodplain administrator's interpretation of any provision of this article.

ASCE 24. A standard titled Flood-Resistant Design and Construction that is referenced by the Florida Building Code. ASCE 24 is developed and published by the American Society of Civil Engineers, Reston, VA.

Base flood. A flood having a one-percent chance of being equaled or exceeded in any given year. [Also defined in FBC, B, Section 202.] The base flood is commonly referred to as the "100-year flood" or the "one-percent-annual chance flood."

Base flood elevation. The elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the Flood Insurance Rate Map (FIRM). [Also defined in FBC, B, Section 202.]

Basement. The portion of a building having its floor subgrade (below ground level) on all sides. [Also defined in FBC, B, Section 202; see "Basement (for flood loads)".]

Coastal A Zone. Flood hazard areas that have been delineated as subject to wave heights between 1 ½ feet (457 mm) and 3 feet (914 mm). Such areas are seaward of the Limit of Moderate Wave Action shown on the Flood Insurance Rate Map.

Coastal construction control line. The line established by the State of Florida pursuant to F.S. § 161.053, and recorded in the official records of the community, which defines that portion of the beach-dune system subject to severe fluctuations based on a 100-year storm surge, storm waves or other predictable weather conditions.

Coastal high hazard area. A special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal high hazard areas are also referred to as "high hazard areas subject to high velocity wave action" or "V Zones" and are designated on Flood Insurance Rate Maps (FIRM) as Zone V1-V30, VE, or V.

Design flood. The flood associated with the greater of the following two areas: [Also defined in FBC, B, Section 202.]

- (1) Area with a floodplain subject to a one-percent or greater chance of flooding in any year; or
- (2) Area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Design flood elevation. The elevation of the "design flood," including wave height, relative to the datum specified on the community's legally designated flood hazard map. [Also defined in FBC, B, Section 202.]

Development. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of equipment or materials, mining, dredging, filling, grading, paving, excavations, drilling operations or any other land disturbing activities.

Encroachment. The placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

Existing building and existing structure. Any buildings and structures for which the "start of construction" commenced before August 31, 1984. [Also defined in FBC, B, Section 202.]

~~*Existing manufactured home park or subdivision.* A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before August 31, 1984.~~

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

Federal Emergency Management Agency (FEMA). The federal agency that, in addition to carrying out other functions, administers the National Flood Insurance Program.

Flood or flooding. A general and temporary condition of partial or complete inundation of normally dry land from: [Also defined in FBC, B, Section 202.]

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

Flood damage-resistant materials. Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Also defined in FBC, B, Section 202.]

Flood hazard area. The greater of the following two areas: [Also defined in FBC, B, Section 202.]

- (1) The area within a floodplain subject to a one-percent or greater chance of flooding in any year.
- (2) The area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Flood Insurance Rate Map (FIRM). The official map of Fort Myers Beach on which the Federal Emergency Management Agency has delineated both special flood hazard areas and the risk premium zones applicable to the community. [Also defined in FBC, B, Section 202.]

Flood Insurance Study (FIS). The official report provided by the Federal Emergency Management Agency that contains the Flood Insurance Rate Map, the water surface elevations of the base flood, and supporting technical data. [Also defined in FBC, B, Section 202.]

Floodplain administrator. The office or position designated and charged with the administration and enforcement of this article (may be referred to as the floodplain manager).

Floodplain development permit or approval. An official document or certificate issued by the town, or other evidence of approval or concurrence, which authorizes performance of specific development activities that are located in flood hazard areas and determined to be compliant with this article.

Florida Building Code (FBC). The family of codes adopted by the Florida Building Commission, including: Florida Building Code, Building; Florida Building Code, Residential; Florida Building Code, Existing Building; Florida Building Code, Mechanical; Florida Building Code, Plumbing; Florida Building Code, Fuel Gas.

Functionally dependent use. A use that cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; the term does not include long-term storage or related manufacturing facilities.

Highest adjacent grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.

Historic structure. Any structure that is determined eligible for the exception to the flood hazard area requirements of the Florida Building Code, Existing Building, chapter 12 Historic Buildings.

Letter of map change (LOMC). An official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of map change include:

- (1) Letter of map amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
- (2) Letter of map revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
- (3) Letter of map revision based on fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.
- (4) Conditional letter of map revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard

areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a letter of map revision may be issued by FEMA to revise the effective FIRM.

Light-duty truck. As defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds gross vehicular weight rating or less that has a vehicular curb weight of 6,000 pounds or less and a basic vehicle frontal area of 45 square feet or less, which is:

- (1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or
- (2) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (3) Available with special features enabling off-street or off-highway operation and use.

Limit of Moderate Wave Action. Line shown on FIRMs to indicate the inland limit of the 1 ½-foot (457 mm) breaking wave height during the base flood.

Lowest floor. The lowest floor of the lowest enclosed area of a building or structure, including basement, but excluding any unfinished or flood-resistant enclosure, other than a basement, usable solely for vehicle parking, building access or limited storage, provided that such enclosure is not built so as to render the structure in violation of the non-elevation requirements of the Florida Building Code or ASCE 24. [Also defined in FBC, B, Section 202.]

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

Manufactured home. A structure, transportable in one or more sections, which is eight feet or more in width and greater than 400 square feet, and which is built on a permanent, integral chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle" or "park trailer." [Also defined in 15C-1.0101, F.A.C.]

Manufactured home park or subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

~~*Market value.* The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this article, the term refers to the market~~ The value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser, is the actual cash value (in-kind replacement cost depreciated for age, wear and tear, neglect, and quality of construction) determined by a qualified independent appraiser, or tax assessment value adjusted by a factor provided by the County Tax Assessor upward by 20 percent.

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

New construction. For the purposes of administration of this article and the flood-resistant construction requirements of the Florida Building Code, structures for which the "start of

construction" commenced on or after August 31, 1984 and includes any subsequent improvements to such structures.

~~*New manufactured home park or subdivision.* A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after August 31, 1984.~~

Park trailer. A transportable unit that has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. [Defined in F.S. § 320.01.]

Recreational vehicle. A vehicle, including a park trailer, which is: [See F.S. § 320.01.]

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Sand dunes. Naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Special flood hazard area. An area in the floodplain subject to a one- percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. [Also defined in FBC, B Section 202.]

Start of construction. The date of issuance of permits for new construction and substantial improvements, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The actual start of construction means either the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns.

Permanent construction does not include land preparation (such as clearing, grading or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Also defined in FBC, B Section 202.]

Substantial damage. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. **The** term also includes flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. [Also defined in FBC, B Section 202.]

Substantial improvement. Any repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure, the cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. If the

structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either: [Also defined in FBC, B, Section 202.]

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

Variance. A grant of relief from the requirements of this article, or the flood-resistant construction requirements of the Florida Building Code, which permits construction in a manner that would not otherwise be permitted by this ordinance or the Florida Building Code.

Watercourse. A river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.

(Ord. No. 13-06, § 2, 9-3-2013; Ord. No. 16-02, § 2, 8-8-2016; Ord. No. 17-09, § 2, 6-19-2017)

Secs. 6-495—6-500. - Reserved.

DIVISION 10. - FLOOD-RESISTANT DEVELOPMENT

Subdivision I. - Buildings and Structures

Sec. 6-501. - Design and construction of buildings, structures and facilities exempt from the Florida Building Code.

Pursuant to section 6-443, buildings, structures and facilities that are exempt from the Florida Building Code, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, must be designed and constructed in accordance with the flood load and flood-resistant construction requirements of ASCE 24. Structures exempt from the Florida Building Code that are not walled and roofed buildings must comply with the requirements of division 10, subdivision VII.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-502. - Buildings and structures seaward of the coastal construction control line.

If extending, in whole or in part, seaward of the coastal construction control line and also located, in whole or in part, in a flood hazard area:

- (1) Buildings and structures must be designed and constructed to comply with the more restrictive applicable requirements of the Florida Building Code, Building, Section 3109 and Section 1612 or Florida Building Code, Residential, Section R322.
- (2) Minor structures and non-habitable major structures as defined in F.S. § 161.54, must be designed and constructed to comply with the intent and applicable provisions of this article and ASCE 24.

(Ord. No. 16-02, § 2, 8-8-2016)

Subdivision II. - Subdivisions

Sec. 6-503. - Minimum requirements.

Subdivision proposals, including proposals for manufactured home parks and subdivisions, will be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
- (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- (3) Adequate drainage is provided to reduce exposure to flood hazards.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-504. - Subdivision plats.

Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following will be required:

- (1) Delineation of flood hazard areas, floodway boundaries and flood zones, and design flood elevations, as appropriate, must be shown on preliminary plats; and
- (2) Compliance with the site improvement and utilities requirements of division 10, subdivision III.

(Ord. No. 16-02, § 2, 8-8-2016)

Subdivision III. - Site Improvements, Utilities and Limitations

Sec. 6-505. - Minimum requirements.

All proposed new development will be reviewed to determine that:

- (1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
- (2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
- (3) Adequate drainage is provided to reduce exposure to flood hazards.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-506. - Sanitary sewage facilities.

All new and replacement sanitary sewage facilities, private sewage treatment plants (including all pumping stations and collector systems), and on-site waste disposal systems must be designed in accordance with the standards for on-site sewage treatment and disposal systems in Chapter 64E-6, F.A.C. and ASCE 24, Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into floodwaters, and impairment of the facilities and systems.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-507. - Water supply facilities.

All new and replacement water supply facilities must be designed in accordance with the water well construction standards in Chapter 62-532.500, F.A.C. and ASCE 24, Chapter 7 to minimize or eliminate infiltration of floodwaters into the systems.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-508. - Limitations on placement of fill.

Subject to the limitations of this article, fill must be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, if intended to support buildings and structures (Zone A only), fill must comply with the requirements of the Florida Building Code.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-509. - Limitations on sites in coastal high hazard areas (Zone V) and Coastal A Zones.

In coastal high hazard areas and Coastal A Zones, alteration of sand dunes and mangrove stands will be permitted only if such alteration is approved by the Florida Department of Environmental Protection and only if the engineering analysis required by subsection 6-452(1) demonstrates that the proposed alteration will not increase the potential for flood damage. Construction or restoration of dunes under or around elevated buildings and structures must comply with subsection 6-529(3).

(Ord. No. 16-02, § 2, 8-8-2016)

Subdivision IV. - Manufactured Homes

Sec. 6-510. - General.

All manufactured homes installed in flood hazard areas must be installed by an installer that is licensed pursuant to F.S. § 320.8249, and must comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this article. If located seaward of the coastal construction control line, all manufactured homes must comply with the more restrictive of the applicable requirements.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-511. - Limitations on installations in coastal high hazard areas (Zone V) and Coastal A Zones.

New installations of manufactured homes shall not be permitted in coastal high hazard areas (Zone V) and Coastal A Zones.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-512. - Foundations.

All new manufactured homes and replacement manufactured homes installed in flood hazard areas must be installed on permanent, reinforced foundations that:

- (1) In flood hazard areas (Zone A) other than coastal high hazard areas and Coastal A Zones, are designed in accordance with the foundation requirements of the Florida Building Code, Residential, Section R322.2 and this article. ~~Foundations for manufactured homes subject to section 6-516 are permitted to be reinforced piers or other foundation elements of at least equivalent strength.~~
- (2) In coastal high hazard areas (Zone V) and Coastal A Zones, are designed in accordance with the foundation requirements of the Florida Building Code, Residential, Section R322.3 and this article.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-513. - Anchoring.

All new manufactured homes and replacement manufactured homes must be installed using methods and practices that minimize flood damage and must be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-514. - Elevation.

All manufactured homes that are placed, replaced, or substantially improved in flood hazard areas shall be elevated such that the bottom of the frame is at or above the base flood elevation plus one foot. ~~Manufactured homes that are placed, replaced or substantially improved must comply with sections 6-515 or 6-516, as applicable.~~

(Ord. No. 16-02, § 2, 8-8-2016)

~~Sec. 6-515. — General elevation requirement.~~

~~Unless subject to the requirements of section 6-516, all manufactured homes that are placed, replaced or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; or (b) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, must be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential, Section R322.2 (Zone A) or Section R322.3 (Zone V).~~

(Ord. No. 16-02, § 2, 8-8-2016)

~~Sec. 6-516. — Elevation requirement for certain existing manufactured home parks and subdivisions.~~

~~Manufactured homes that are not subject to section 6-515, including manufactured homes that are placed, replaced or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, must be elevated such that either the:~~

- ~~(1) Bottom of the frame of the manufactured home is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential, Section R322.2 (Zone A) or Section R322.3 (Zone V); or~~
- ~~(2) Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 36 inches in height above grade.~~

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-515. Sec. 6-517. - Enclosures.

Enclosed areas below elevated manufactured homes must comply with the requirements of the Florida Building Code, Residential, Sections R322.2 or R322.3 for such enclosed areas, as applicable to the flood hazard area.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-516. Sec. 6-518. - Utility equipment.

Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing and air conditioning equipment and other service facilities, must comply with the requirements of the Florida Building Code, Residential, Section R322, as applicable to the flood hazard area.

(Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-517—6-518. - Reserved.

Subdivision V. - Recreational Vehicles and Park Trailers

Sec. 6-519. - Temporary placement.

Recreational vehicles and park trailers placed temporarily in flood hazard areas must:

- (1) Be on the site for fewer than 180 consecutive days; or
- (2) Be fully licensed and ready for highway use, which means the recreational vehicle or park model is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanent attachments such as additions, rooms, stairs, decks and porches.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-520. - Permanent placement.

Recreational vehicles and park trailers that do not meet the limitations in section 6-519 for temporary placement must meet the requirements of division 10, subdivision IV for manufactured homes.

(Ord. No. 16-02, § 2, 8-8-2016)

Subdivision VI. - Tanks

Sec. 6-521. - Underground tanks.

Underground tanks in flood hazard areas must be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-522. - Above-ground tanks, not elevated.

Above-ground tanks that do not meet the elevation requirements of section 6-523 must:

- (1) Be permitted in flood hazard areas (Zone A) other than coastal high hazard areas and Coastal A Zones, provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.
- (2) Not be permitted in coastal high hazard areas (Zone V) and Coastal A Zones.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-523. - Above-ground tanks, elevated.

Above-ground tanks in flood hazard areas must be attached to and elevated to or above the design flood elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures must meet the foundation requirements of the applicable flood hazard area.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-524. - Tank inlets and vents.

Tank inlets, fill openings, outlets and vents must be:

- (1) At or above the design flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
- (2) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

(Ord. No. 16-02, § 2, 8-8-2016)

Subdivision VII. - Other Development

Sec. 6-525. - General requirements for other development.

All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in this article or the Florida Building Code, must:

- (1) Be located and constructed to minimize flood damage;
- (2) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;
- (3) Be constructed of flood damage-resistant materials; and
- (4) Have mechanical, plumbing and electrical systems above the design flood elevation or meet the requirements of ASCE 24, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.

(Ord. No. 16-02, § 2, 8-8-2016)

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

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

- (1) Structurally independent of the foundation system of the building or structure;
- (2) Frangible and not reinforced, so as to minimize debris during flooding that is capable of causing significant damage to any structure; and
- (3) Have a maximum slab thickness of not more than four inches without turned-down edges, have isolation joints at pilings and columns, and have control or construction joints in both directions spaced no more than four feet apart.

(Ord. No. 16-02, § 2, 8-8-2016; Ord. No. 17-09, § 2, 6-19-2017)

Sec. 6-527. - Decks and patios in coastal high hazard areas (Zone V) and Coastal A Zones.

In addition to the requirements of the Florida Building Code, in coastal high hazard areas and Coastal A Zones decks and patios must be located, designed and constructed in compliance with the following:

- (1) A deck that is structurally attached to a building or structure must have the bottom of the lowest horizontal structural member at or above the design flood elevation and any supporting members that extend below the design flood elevation must comply with the foundation requirements that apply to the building or structure, which must be designed to accommodate any increased loads resulting from the attached deck.

- (2) A deck or patio that is located below the design flood elevation must be structurally independent from buildings or structures and their foundation systems, and must be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.
- (3) A deck or patio that has a vertical thickness of more than 12 inches or that is constructed with more than the minimum amount of fill necessary for site drainage must not be approved unless an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to the building or structure or to adjacent buildings and structures.
- (4) A deck or patio that has a vertical thickness of 12 inches or less and that is at natural grade or on nonstructural fill material that is similar to and compatible with local soils and is the minimum amount necessary for site drainage may be approved without requiring analysis of the impact on diversion of floodwaters or wave runup and wave reflection.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-528. - Other development in coastal high hazard areas (Zone V) and Coastal A Zones.

In coastal high hazard areas and Coastal A Zones, development activities other than buildings and structures may be permitted only if also authorized by the appropriate federal, state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and, if analyses prepared by qualified registered design professionals demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

- (1) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;
- (2) Solid fences and privacy walls and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters; and
- (3) On-site sewage treatment and disposal systems defined in 64E-6.002, F.A.C., as filled systems or mound systems.

(Ord. No. 16-02, § 2, 8-8-2016)

Sec. 6-529. - Nonstructural fill in coastal high hazard areas (Zone V) and Coastal A Zones.

In coastal high hazard areas and Coastal A Zones:

- (1) Minor grading and the placement of minor quantities of nonstructural fill may be permitted for landscaping and for drainage purposes under and around buildings.
- (2) Nonstructural fill with finished slopes that are steeper than one unit vertical to five units horizontal may be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures.

- (3) Where authorized by the Florida Department of Environmental Protection or applicable local approval, sand dune construction and restoration of sand dunes under or around elevated buildings are permitted without additional engineering analysis or certification of the diversion of floodwater or wave runup and wave reflection, if the scale and location of the dune work is consistent with local beach-dune morphology and the vertical clearance is maintained between the top of the sand dune and the lowest horizontal structural member of the building.

Sec. 6-530. - Non-elevated accessory structures.

Accessory structures are permitted below elevations required by the Florida Building Code provided the accessory structures are used only for parking or storage and:

- (1) If located in special flood hazard areas (Zone A/AE) other than coastal high hazard areas and Coastal A Zones, are one-story and not larger than 600 sq. ft. and have flood openings in accordance with Section R322.2 of the Florida Building Code, Residential.
- (2) If located in coastal high hazard areas (Zone V/VE) and Coastal A Zones, are not located below elevated buildings and are not larger than 100 sq. ft.
- (3) Are anchored to resist flotation, collapse or lateral movement resulting from flood loads.
- (4) Have flood damage-resistant materials used below the base flood elevation plus one (1) foot.
- (5) Have mechanical, plumbing and electrical systems, including plumbing fixtures, elevated to or above the base flood elevation plus one (1) foot.

(Ord. No. 16-02, § 2, 8-8-2016)

Secs. 6-530—6-600. - Reserved.

**Town of Fort Myers Beach
Agenda Item Summary**

Yellow Sheet Number: **2022-871**

1. Requested Motion:

Meeting Date: December 21, 2022

Provide feedback on potential list of LPA priorities for 2023

Why the action is necessary:

This will assist staff in providing LPA with agenda items they feel are important to address.

What the action accomplishes:

This will assist staff in addressing the priorities of the LPA.

2. Agenda:

COMMUNITY DEVELOPMENT
ITEMS/REPORTS

3. Requirement/Purpose:

N/A

5. Background:

There are a variety of code and policy issues that the LPA may choose to address in the coming year. Staff has provided a short list of potential items that could be discussed at future meetings. Feedback on the list of potential LPA priority items is requested.

Attachments:

1. LPA Priorities 2023

Financial Impact:

unknown

6. Alternative Action

The LPA may provide additional items for discussion and eliminate some of the proposed priorities from the list.

7. Staff Recommendations:

Provide input on the list.

8. Recommended Approval:

Jason Green, Community Development Services

Date: December 15, 2022

John R Herin Jr, Town Attorney

Date: December 15, 2022

Amy Baker, Town Clerk

Date: December 15, 2022



**Town of Fort Myers Beach
COMMUNITY DEVELOPMENT DEPARTMENT**

To: LPA
From: Sarah Propst, Community Development
Date: December 21, 2022
Re: Potential LPA Priorities for 2023

BACKGROUND

As we move into the new year there are many items that will need to be addressed by the LPA. To assist the LPA in determining some potential priorities, staff is providing this list of items that may be included on future agendas. The following list includes items that staff feels may be appropriate to examine further in the following year.

- **Establishing minimum seawall heights.** As lots are redeveloped and damaged seawalls are replaced, the Town may want to establish a height that all new seawalls should be designed too. Many communities along the coast have established a height based on sea level projections, that will ensure properties are protected from flooding during high tide events.
- **Dock regulations need to be evaluated.** The requirements for docks and dock permitting lack clarity and may benefit from design standards based on lot type and waterway frontage.
- **Shorten approval times for certain processes.** The town is able to amend the meeting requirements for variances and special exceptions. Currently these processes require a recommendation hearing from the LPA and a decision hearing from the Town Council. The hearing requirements could be amended to require only a decision hearing by the LPA and the applicant would have the right to appeal the LPA's decision to the Town Council.
- **Evaluation of Single-family home setbacks in non-residential zoning districts.** Single-Family Homes in certain zones –like Downtown—have commercial setbacks, including build-to lines. At present the zoning districts have setbacks that apply to every use type in the district. The town may choose to examine whether single family residences should have additional setbacks or if minimal setbacks in the downtown district are appropriate for every use.

FORT MYERS BEACH ESTERO ISLAND

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- **Remove stormwater requirements on residential lots and limit fill on property.**
Currently single-family residences must retain stormwater on their property. These stormwater retention designs often result in swales along each property line which can impact the use of the yard and may be difficult to maintain over the life of the house. Another option would be to limit the amount of fill that can be brought onto a lot and reduce the requirements to maintain stormwater on the individual property.
- **Redevelopment on the beach should consider increased heights** and encourage larger breaks in the building-line to create beach viewsheds. Currently building heights are restricted to 2 stories above flood. As many structures are rebuilt and required to be taller to meet flood elevations, these height restrictions may feel less effective. Per the Town's Comprehensive Plan and previous discussions with Council and LPA, views of the water, are considered a very important aspect of the Town's design. To allow for viewsheds, other options may need to be examined, including providing more space between structures.

Summary

The above list is only a snapshot of the potential items that the LPA may want to discuss in the coming year. Please provide input on the list and on any other items that the LPA believes will be important to consider.