

TOWN OF FORT MYERS BEACH
ORDINANCE NO. 96-19

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

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

SECTION ONE: Authority

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

SECTION TWO: Title and Citation

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

SECTION THREE: Definitions

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

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

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

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

provisions of this Ordinance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION FOUR: Disaster Advisory Council

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

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

1. overseeing the recovery and reconstruction process,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

relocate).

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

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

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

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

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

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

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

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

SECTION FIVE: Post-Disaster Recovery Task Force

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

deemed appropriate.

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

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

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

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

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

1. Disaster Recovery Coordinator.

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

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

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

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

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

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

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

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

2. Economic Recovery Coordinator.

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

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

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

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

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

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

(5) Fulfill other duties as directed by the Disaster

Advisory Council or the Town Council.

3. Hazard Mitigation Coordinator.

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

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

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

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

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

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

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

4. Tourism Recovery Coordinator.

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

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

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

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

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

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

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

SECTION SIX: Emergency Review Board

A. Emergency Review Board.

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

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

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

SECTION SEVEN. Post-Disaster Redevelopment Priorities

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

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

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

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

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

SECTION EIGHT. Essential Service and Facility Restoration Priorities

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

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

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

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

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

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

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

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

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

1. Valve off major leak areas.

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

3. Identify highly damaged areas.

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

5. Establish emergency water sites as necessary.

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

7. Re-pressurize area water systems as necessary.

8. Establish area water potability.

C. The following procedures will govern wastewater service restoration:

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

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

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

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

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

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

SECTION NINE: Post-Disaster Debris Clearance and Disposal

Strategies.

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

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

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

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

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

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

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

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

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

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

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

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

In accordance with this policy, this Ordinance provides:

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

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

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