

ORDINANCE NO. 16-____

AN ORDINANCE AMENDING AND RESTATING TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE CHAPTER 6, ARTICLE IV, PERTAINING TO FLOODPLAIN REGULATIONS; ADOPTING THE REVISED FEDERAL EMERGENCY MANAGEMENT AGENCY FLOOD INSURANCE RATE MAPS; PROVIDING FOR AMENDMENTS REQUIRED TO CONTINUE PARTICIPATION IN THE NATIONAL FLOOD INSURANCE PROGRAM; PROVIDING FOR APPLICABILITY; CODIFICATION; CONFLICTS; SEVERABILITY; AND AN EFFECTIVE DATE.

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

WHEREAS, the Federal Emergency Management Agency (FEMA) has identified special flood hazard areas within the boundaries of the Town of Fort Myers Beach and such areas may be subject to periodic inundation that may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare; and

WHEREAS, the Town of Fort Myers Beach was accepted for participation in the National Flood Insurance Program on September 19, 1984 and the Town Council desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation; and

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

WHEREAS, this ordinance was considered by the Local Planning Agency on _____, 2016 and found to be consistent with the Town of Fort Myers Beach Comprehensive Plan; and

WHEREAS, the Town Council held two public hearings and received public comments regarding the provisions of this ordinance on _____, 2016 and _____, 2016; and

WHEREAS, the Town Council, based on review of local conditions and as demonstrated by evidence has determined that there is a local need to limit new installations of manufactured homes in certain high risk flood hazard areas; and

WHEREAS, the Town of Fort Myers Beach Town Council has determined it is in the public interest to adopt the proposed floodplain management regulations that are coordinated with the Florida Building Code.

NOW, THEREFORE, BE IT ORDAINED by the Town Council of Fort Myers Beach that the following floodplain management regulations are hereby adopted.

SECTION 1. RECITALS.

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

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

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

ARTICLE IV. FLOODPLAIN REGULATIONS

DIVISION 1. GENERAL

Sec. 6-401. Title.

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

Sec. 6-402. Scope.

The provisions of this article shall 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.

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 ~~which~~ 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.

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.

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.

Sec. 6-406. Disclaimer of Liability.

This article ~~shall~~ 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.

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 ~~shall~~ will be applicable.

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

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

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

The Flood Insurance Study for Lee County Florida and Incorporated Areas dated 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 shall serve as the minimum basis for establishing flood hazard areas. ~~There are no designated or undesignated floodways within the town limits. The Flood Insurance Study and Flood Insurance Rate Maps 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. These Flood Insurance Rate Maps show the base flood elevations and coastal high hazard areas (Zone V) for the entire town and are available for inspection at Town Hall and at the Lee County Department of Community Development Office, 1500 Monroe Street, Fort Myers, Florida or can be viewed online at the FEMA Map Service Center msc.fema.gov, or can be purchased by calling 1-800-358-9616. The individual map panels are numbered as follows:~~

General Area Shown	Panel Number
Bowditch	120673-0553F
Bowditch — Lovers Lane	120673-0554F
Lovers Lane — Gulfview Avenue	120673-0058F
Gulfview Avenue — Mound Road	120673-0566F
Mound Road — Buccaneer Drive	120673-0567F
Buccaneer Drive — Big Carlos Pass	120673-0569F

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 shall 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 shall 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.

Sec. 6-415. Other laws.

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

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 shall will govern. This article shall will not impair any deed restriction, covenant or easement, but any land that is subject to such interests shall will also be governed by this article.

Sec. 6-417. Interpretation.

In the interpretation and application of this article, all provisions ~~shall~~ 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.

Secs. 6-418 – 6-420. Reserved.

DIVISION 3. DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

Sec. 6-421. Designation.

The ~~town's planning coordinator~~ Town Manager is designated as the Floodplain Administrator. The Floodplain Administrator may delegate performance of certain duties to other employees.

Sec. 6-422. General.

The Floodplain Administrator is authorized and directed to administer and enforce the provisions of this article. The Floodplain Administrator ~~shall~~ 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 ~~shall~~ will not have the effect of waiving requirements specifically provided in this ordinance without the granting of a variance pursuant to Division 7 of this article.

~~Sec. 6-423. Guidance Documents.~~

~~Technical guidance for meeting the requirement of this article and the flood provisions of the Florida Building Code is contained in FEMA publications, including but not limited to the following:~~

- ~~(1) Technical Bulletin 1, Openings in Foundation Walls and Walls of Enclosures~~
- ~~(2) Technical Bulletin 2, Flood Damage Resistant Materials~~
- ~~(3) Technical Bulletin 3, Non-Residential Floodproofing Requirements and Certification~~
- ~~(4) Technical Bulletin 4, Elevator Installation.~~
- ~~(5) Technical Bulletin 5, Free-of-Obstruction Requirements.~~
- ~~(6) Technical Bulletin 6, Below-Grade Parking Requirements~~
- ~~(7) Technical Bulletin 7, Wet Floodproofing Requirements~~
- ~~(8) Technical Bulletin 8, Corrosion Protection for Metal Connectors in Coastal Areas~~
- ~~(9) Technical Bulletin 9, Design and Construction Guidance for Breakaway Walls~~
- ~~(10) Technical Bulletin 10, Ensuring that Structures Built on Fill in or Near Special Flood Hazard Areas and Reasonably Safe from Flooding~~
- ~~(11) FEMA 348, Protecting Building Utilities from Flood Damage~~

Sec. 6-424 ~~423~~. Applications and permits.

The Floodplain Administrator, in coordination with other pertinent offices of the town, shall 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 shall will have the opportunity to appeal the interpretation;
- (4) Provide available flood elevation and flood hazard information;
- (5) Determine whether additional flood hazard data shall will be obtained from other sources or shall 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 ordinance.

Sec. 6-425 ~~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, shall will:

- (1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a MAI ~~certified~~ 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 shall will be the market value before the damage occurred and before any repairs are made; any appraisal used for the purposes of substantial improvement/substantial damage determinations must be current within one year of work commencing;
- (2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified

in the definition of “substantial improvement;” and for proposed work to repair damage caused by flooding, the determination requires evaluation of previous permits issued to repair flood-related damage as specified in the definition of “substantial damage;” and

- (4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood-resistant construction requirements of the *Florida Building Code* and this article is required.

Sec. ~~6-426~~ 425. Modifications of the strict application of the requirements of the Florida Building Code.

The Floodplain Administrator ~~shall~~ 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.

Sec. ~~6-427~~ 426. Notices and orders.

The Floodplain Administrator ~~shall~~ will coordinate with appropriate local agencies for the issuance of all necessary notices or orders to ensure compliance with this article.

Sec. ~~6428~~ 427. Inspections.

The Floodplain Administrator ~~shall~~ 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 ~~shall~~ will inspect flood hazard areas to determine if development is undertaken without issuance of a permit.

Sec. ~~6-429~~ 428. Other duties of the Floodplain Administrator.

The Floodplain Administrator ~~shall~~ 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 ordinance;
- (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);
- (~~2~~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 ~~shall~~ will be made within 6 months of such data becoming available;

- (34) 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;
- (45) Notify the Federal Emergency Management Agency when the corporate boundaries of the Town of Fort Myers Beach are modified; and
- (56) 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.”

Sec. 6-430-429. Floodplain management records.

Regardless of any limitation on the period required for retention of public records, the Floodplain Administrator ~~shall~~ 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 ~~shall be~~ are available for public inspection at the Town of Fort Myers Beach Town Hall.

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 ~~shall~~ must first make application to the Floodplain Administrator, and the Building Official, if applicable, and ~~shall~~ must obtain the required permit(s) and approval(s). No such permit or approval ~~shall~~ will be issued until compliance with the requirements of this article and all other applicable codes and regulations has been satisfied. ~~No person may undertake a series of any improvements, additions, and/or demolitions that connect two or more existing structures in a manner that evades the requirements of this article and the Florida Building Code.~~

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

Floodplain development permits or approvals ~~shall~~ 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.

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 ~~shall~~ 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. section 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 section 366.02, F.S., 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 ~~which~~ 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. section 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

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

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

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

The issuance of a floodplain development permit or approval pursuant to this article ~~shall~~ 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 ~~shall~~ will not prevent the Floodplain Administrator from requiring the correction of errors and omissions.

Sec. 6-446. Expiration.

A floodplain development permit or approval ~~shall~~ 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 ~~shall~~ must be requested in writing and justifiable cause ~~shall~~ must be demonstrated.

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.

Sec. 6-448. Other permits required.

Floodplain development permits and building permits ~~shall~~ 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. section 373.036.
- (2) Florida Department of Health for onsite sewage treatment and disposal systems; F.S. section 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. section 161.141.
- (4) Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; F.S. section 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.

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 ~~shall~~ must be drawn to scale and ~~shall~~ must include, as applicable to the proposed development:

- (1) Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), 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, new buildings ~~shall~~ 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 ~~that are~~ 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.

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 ~~shall~~ 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. ~~At minimum this plan must identify who is~~ 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. ~~This plan must also provide a~~ Realistic estimate of the manpower, time,

and equipment required for installation.

- c. ~~This plan must also include a b~~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. ~~The plan must also include a b~~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), an engineering analysis that demonstrates ~~that~~ the proposed alteration will not increase the potential for flood damage.

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 ~~shall~~ must be prepared by a Florida licensed engineer in a format required by FEMA. Submittal requirements and processing fees ~~shall~~ will be the responsibility of the applicant.

Secs. 6-454-6-460. Reserved.

DIVISION 6. INSPECTIONS

Sec. 6-461. General.

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

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

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

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

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

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, ~~shall~~ must submit to the Floodplain Administrator the certification of elevation of the lowest floor prepared and sealed by a Florida licensed professional surveyor.

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 ~~shall~~ 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 ~~shall~~ must be prepared as specified in Section 6-464 of this ordinance.

Sec. 6-466. Manufactured homes.

The Floodplain Administrator ~~shall~~ 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 ~~shall~~ must be submitted to the Floodplain Administrator.

Secs. 6-467--6-470. Reserved.

DIVISION 7. VARIANCES AND APPEALS

Sec. 6-471. General.

The Town Council ~~shall~~ will hear and decide on requests for appeals and requests for variances from the strict application of this article. Pursuant to F.S. section 553.73(5), the Town Council ~~shall~~ 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*.

Sec. 6-472. Appeals.

The Town Council ~~shall~~ 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.

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

The Town Council ~~shall~~ will base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in Section 6-476 of this article, the conditions of issuance set forth in Section 6-477 of this article, 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.

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 44 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 ~~shall~~ will not be granted and the building and any repair, improvement, and rehabilitation ~~shall~~ will be subject to the requirements of the *Florida Building Code*.

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 this ordinance, 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.

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

In reviewing requests for variances, the Town Council ~~shall~~ 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.

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

Variances ~~shall~~ 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, ~~shall~~ 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.

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 ~~that is~~ regulated by this article, ~~that~~ which is (a) performed without an issued permit, ~~that is (b)~~ in conflict with an issued permit, or ~~that (c)~~ does not fully comply with this article, ~~shall~~ 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.

Sec. 6-482. Authority.

For development that is not within the scope of the *Florida Building Code*, but that is regulated by this article and that is 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.

Sec. 6-483. Unlawful continuance.

Any person who ~~shall~~ 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, ~~shall~~ will be subject to penalties as prescribed by law.

Secs. 6-484-6-490. Reserved.

DIVISION 9. DEFINITIONS

Sec. 6-491. Scope.

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

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

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

Sec. 6-493. Terms not defined.

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

Sec. 6-494. Definitions.

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 ~~which~~ 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. ~~A request for a variance from the terms of this article is not an appeal.~~

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) as 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 construction control line. The line established by the State of Florida pursuant to F.S. section 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 for Fort Myers Beach, including base flood elevations and coastal high hazard areas (V-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 town's planning coordinator who has been designated by the town manager to implement, administer and enforce these floodplain regulations.~~ The office or position designated and charged with the administration and enforcement of this ordinance (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 ~~that are~~ 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 ~~which~~ 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:~~

- ~~(1) Individually listed in the natural Register of Historic Places; or~~
- ~~(2) a contributing resource within a National Register of Historic Places listed district;~~
- ~~(3) Designated as historic property under an official municipal, county, special district or state designation, law, ordinance or resolution either individually or as a contributing property in a district, provided the local program making the designation is approved by the Department of Interior (the Florida State Historic Preservation Officer maintained a list of approved local programs); or~~
- ~~(4) Determined eligible by the Florida State Historic Preservation officer for listing in the National Register of Historic Places, either individually or as a contributing property in a district.~~

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 ~~which~~ that has a vehicular curb weight of 6,000 pounds or less and ~~which has~~ 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.

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 ~~either:~~ the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser, Actual Cash Value (replacement cost depreciated for age and quality of construction), or tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser.

- ~~(1) — The value of the structure prior to the start of the improvement; or~~
- ~~(2) — in the case of damage, the value of the structure prior to the damage occurring.~~

~~Value of the structure will be determined (for the structure only) by the Lee County Property Appraiser, by a private appraisal acceptable to the floodplain administrator, or by an independent appraisal commissioned by the floodplain administrator. This value shall not include the value of the land on which the structure is located, nor the value of other structures or site improvements on the site, nor the value of the structure after the proposed improvements or repairs are completed. Any proposed value submitted via a private appraisal that exceeds~~

~~the property appraiser's valuation by more than 35 percent shall be subject to peer review by a qualified local appraiser or a new independent appraisal, to be commissioned by the floodplain administrator, with the full cost of the review or new appraisal paid by the applicant to the town prior to initiation of the process. In lieu of submitting a private appraisal, an applicant may obtain an independent appraisal through the floodplain administrator, with the full cost paid to the town prior to initiation of the process.~~

~~*National Geodetic Vertical Datum (NGVD).* Corrected in 1929, NGVD is a vertical control that was previously used as a reference for establishing varying elevations within the floodplain. The use of NGVD 29 on FEMA maps and in the floodplain regulations was discontinued as of August 28, 2008. To convert a known elevation in Fort Myers Beach that had been measured relative to NGVD 29, subtract 1.18 feet to determine its elevation relative to NAVD 88 (NGVD - 1.18 feet = NAVD 88).~~

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.

~~*North American Vertical Datum of 1988 (NAVD 88).* A vertical control datum used as a reference for establishing varying elevations within the floodplain. For purposes of this chapter, NAVD 88 replaced NGVD 29 on August 28, 2008. To convert a known elevation in Fort Myers beach that has been measured relative to NGVD 29, subtract 1.18 feet to determine its elevation relative to NAVD 88 (NGVD - 1.18 feet = NAVD 88).~~

Park trailer. A transportable unit ~~which~~ 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 section 320.01, F.S.]

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

- (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.

~~*Registered architect.* An architect registered or licensed by the State of Florida to practice architecture, or who is authorized to practice architecture in Florida under a reciprocal registration or licensing agreement with another state.~~

~~*Registered land surveyor.* A land surveyor registered or licensed by the State of Florida to practice land surveying, or who is authorized to practice surveying in Florida under a reciprocal registration or licensing agreement with another state. This term includes professional surveyors and mappers registered by the State of Florida.~~

~~*Registered professional engineer.* An engineer registered or licensed by the State of Florida to practice engineering, or who is authorized to practice engineering in Florida under a reciprocal registration or licensing agreement with another state.~~

~~*Rehabilitation.* Any work, as described by the categories of work defined herein, undertaken in an existing building.~~

~~*Reinforced pier.* A system designed and sealed by a state-registered architect or engineer which is an integral part of a foundation and anchoring system for the permanent installation of a manufactured home or recreational vehicle, as applicable, so as to prevent flotation, collapse or lateral movement of the manufactured home or recreational vehicle due to flood forces. At a minimum, a reinforced pier would have a footing adequate to support the weight of the manufactured home or recreational vehicle under saturated soil conditions such as occur during a flood. In areas subject to high-velocity floodwaters and debris impact, cast-in-place reinforced piers may be appropriate. Nothing in this division shall prevent a design which uses pilings, compacted fill or any other method, as long as the minimum flood standards are met.~~

~~*Repair.* The patching, restoration and/or minor replacement of materials, elements, components, equipment and/or fixtures for the purposes of maintaining such materials, elements, components, equipment and/or fixtures in good or sound condition.~~

~~*Repetitive loss structure.* Buildings and structures that have sustained flood-related damage on two or more separate occasions during any five-year period, for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damages occurred.~~

~~*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 ~~to existing structures~~, 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 10-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 combination of repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure taking place during a five-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started, ~~or if the structure has been damaged, and is being restored, before the damage occurred.~~ The term "substantial damage", regardless of the actual repair work performed. For each building or structure, the five-year period begins on the date of the first permit issued for improvement or repair of that building or structure subsequent to February 4, 2002. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either: [Also defined in FBC, B, Section 202.]

- (1) Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- (2) Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure.
- (3) Costs of alterations or improvements whose express purpose is the mitigation of future storm damage, provided the costs of such measures, plus the costs of any other improvements, do not exceed 50 percent of the market value of the structure over any one-year period; examples of such mitigation include the installation of storm shutters or impact resistant glass, strengthening of roof attachments, floors, or walls, and minor measures to reduce flood damage.
 - a. Storm mitigation improvements may be made during the same year as other improvements, but the total cost of improvements of both types that are made over any one-year period may not exceed 50% of the market value of the structure.
 - b. The annual allowance for storm mitigation improvements is not applicable towards any costs associated with a lateral or vertical addition to an existing structure or to the complete replacement of an existing structure.

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.

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 of this article, 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, ~~shall~~ 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 ~~shall~~ must comply with the requirements of division 10, subdivision VII of this division.

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 ~~shall~~ 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. section 161.54, ~~shall~~ must be designed and constructed to comply with the intent and applicable provisions of this ordinance and ASCE 24.

Subdivision II. Subdivisions

Sec. 6-503. Minimum requirements.

Subdivision proposals, including proposals for manufactured home parks and subdivisions, ~~shall~~ 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.

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 ~~shall~~ will be required:

- (1) Delineation of flood hazard areas, floodway boundaries and flood zones, and design flood elevations, as appropriate, ~~shall~~ must be shown on preliminary plats; and

- (2) Compliance with the site improvement and utilities requirements of division 10, subdivision III of this division.

Subdivision III. Site Improvements, Utilities and Limitations

Sec. 6-505. Minimum requirements.

All proposed new development ~~shall~~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.

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 ~~shall~~ must be designed in accordance with the standards for onsite 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.

Sec. 6-507. Water supply facilities.

All new and replacement water supply facilities ~~shall~~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.

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

Subject to the limitations of this article, fill ~~shall~~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 ~~shall~~must comply with the requirements of the Florida Building Code.

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

In coastal high hazard areas, alteration of sand dunes and mangrove stands ~~shall~~ will be permitted only if such alteration is approved by the Florida Department of Environmental Protection and only if the engineering analysis required by Section 6-452(1) ~~of this article~~ 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 ~~shall~~ must comply with Section 6-529(3) ~~of this article~~.

Subdivision IV. Manufactured Homes

Sec. 6-510. General.

All manufactured homes installed in flood hazard areas shall must be installed by an installer that is licensed pursuant to F.S. section 320.8249, and shall must comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of this article. ~~(1) If located seaward of the Coastal Construction Control Line, all manufactured homes shall must comply with the more restrictive of the applicable requirements. (2) New installations of manufactured homes shall not be permitted in coastal high hazard areas (Zone V).~~

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

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

Sec. 6-511 512. Foundations.

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

- (1) In flood hazard areas (Zone A) other than coastal high hazard areas, 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), are designed in accordance with the foundation requirements of the *Florida Building Code, Residential* Section R322.3 and this article.

Sec. 6-512 513. Anchoring.

All new manufactured homes and replacement manufactured homes shall must be installed using methods and practices ~~which~~ that minimize flood damage and shall 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.

Sec. 6-513 514. Elevation.

Manufactured homes that are placed, replaced, or substantially improved shall must comply with Section 6-515 or 6-516 ~~of this article,~~ as applicable.

Sec. 6-514 515. General elevation requirement.

Unless subject to the requirements of Section 6-516 ~~of this article,~~ all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; ~~(b) in a new manufactured home park or subdivision;~~ ~~(c) in an expansion to an existing manufactured home park or subdivision;~~ or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall 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).

Sec. 6-515-516. Elevation requirement for certain existing manufactured home parks and subdivisions.

Manufactured homes that are not subject to Section 6-515 of this article, 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, ~~shall~~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.

Sec. 6-516-517. Enclosures.

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

Sec. 6-517-518. Utility equipment.

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

Subdivision V. Recreational Vehicles and Park Trailers

Sec. 6-518-519. Temporary placement.

Recreational vehicles and park trailers placed temporarily in flood hazard areas ~~shall~~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.

Sec. 6-519-520. Permanent placement.

Recreational vehicles and park trailers that do not meet the limitations in Section 6-519 of this article for temporary placement ~~shall~~must meet the requirements of Division 10, subdivision IV of this article for manufactured homes.

Subdivision VI. Tanks

Sec. 6-520-521. Underground tanks.

Underground tanks in flood hazard areas ~~shall~~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.

Sec. 6-521-522. Above-ground tanks, not elevated.

Above-ground tanks that do not meet the elevation requirements of Section 6-523 of ~~this article~~ shall must:

- (1) Be permitted in flood hazard areas (Zone A) other than coastal high hazard areas, 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).

Sec. 6-522-523. Above-ground tanks, elevated.

Above-ground tanks in flood hazard areas ~~shall~~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 shall must meet the foundation requirements of the applicable flood hazard area.

Sec. 6-523-524. Tank inlets and vents.

Tank inlets, fill openings, outlets and vents ~~shall~~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.

Subdivision VII. Other Development

Sec. 6-524-525. 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*, shall 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.

Sec. 6-525~~526~~. Concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses in coastal high hazard areas (Zone V).

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

- (1) Structurally independent of the foundation system of the building or structure;
- (2) Frangible and not reinforced, so as to minimize debris during flooding that is capable of causing significant damage to any structure; and
- (3) Have a maximum slab thickness of not more than four inches.

Sec. 6-526~~527~~. Decks and patios in coastal high hazard areas (Zone V).

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

- (1) A deck that is structurally attached to a building or structure ~~shall~~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 ~~shall~~must comply with the foundation requirements that apply to the building or structure, which ~~shall~~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 ~~shall~~must be structurally independent from buildings or structures and their foundation systems, and ~~shall~~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 ~~shall~~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.

Sec. 6-527~~528~~. Other development in coastal high hazard areas (Zone V).

In coastal high hazard areas, development activities other than buildings and structures ~~shall~~ 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.

Sec. 6-528-529. Nonstructural fill in coastal high hazard areas (Zone V).

In coastal high hazard areas:

- (1) Minor grading and the placement of minor quantities of nonstructural fill ~~shall~~ 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 ~~shall~~ 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.

Secs. 6-530-6-599. Reserved.

SECTION 3. APPLICABILITY.

This ordinance applies within the jurisdiction of the Town of Fort Myers Beach. This ordinance applies to all applications for development, including building permit applications and subdivision proposals, submitted on or after the effective date of this ordinance.

SECTION 4. INCLUSION INTO THE CODE OF ORDINANCES.

The Town Council intends that the provisions of this ordinance will be made a part of the Fort Myers Beach Code of Ordinances, and that sections of this ordinance may be renumbered or relettered and the word "ordinance" may be changed to "section," "article," "regulation," or such other appropriate word or phrase in order to accomplish codification; and, regardless of

whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the Town manager or designee without the need for a public hearing.

SECTION 5. SEVERABILITY.

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

SECTION 6. CONFLICTS.

Whenever the requirements or provisions of this ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

SECTION 7. EFFECTIVE DATE.

This ordinance becomes effective immediately upon adoption.

PASSED on first reading on _____, 2016.

The foregoing ordinance was enacted by the Town Council upon a motion by Councilmember _____ and seconded by Councilmember _____, and upon being put to a vote, the results was as follows:

Dennis Boback
Summer Stockton
Tracey Gore
Rexann Hosafros
Anita Cereceda

TOWN COUNCIL OF FORT MYERS BEACH

Dennis Boback, Mayor

ATTEST:

Michelle Mayher, Town Clerk

APPROVED AS TO FORM:

Dawn E. Perry-Lehnert,
Town Attorney