

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 6 MAINTENANCE CODES, BUILDING CODES, AND COASTAL REGULATIONS¹

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ARTICLE I. PROPERTY MAINTENANCE CODES

DIVISION 1. MAINTENANCE CODE

Sec. 6-1. Purpose and definitions.

(a) The purpose of this division is to protect the comfort, health, repose, safety, and general welfare of residents of the Town of Fort Myers Beach by:

- (1) establishing minimum property and building maintenance standards; and
- (2) providing for the abatement of nuisances affecting the general public.

(b) The maintenance and nuisance standards in this division are supplementary to standards that are found in other portions of this code and in other ordinances adopted by the Town of Fort Myers Beach.

(c) "Abandoned Property" means:

- (1) all tangible personal property that does not have an identifiable owner and that has been disposed of on private property in a wrecked, inoperative, or partially dismantled condition or that has no apparent intrinsic value to the rightful owner; or
- (2) property that has been mislaid on private property but that is in a substantially operable, functional condition or has an apparent intrinsic value to the rightful owner.

(d) "Trash" means:

- (1) any accumulation of animal, fruit, or vegetable waste that is subject to decomposition, decay, or putrefaction; or
- (2) debris, garbage, lumber, sawdust, or other waste materials; or
- (3) material that does not meet other definitions set forth herein and that may have some real or perceived value to the owner or occupant of private property upon which it is located but that constitutes by its existence a nuisance in that it devalues the underlying or adjacent property, creates a public nuisance, nuisance per se, or attractive nuisance as

defined by law, or threatens the public health, safety, or welfare.

(e) "Nuisance grasses and/or weeds" means grasses and/or weeds that are not regularly cared for and maintained and that exceed 12 inches in height and/or underbrush or undergrowth or other noxious vegetation.

Sec. 6-2. Exterior surfaces of buildings.

(a) All building walls and roofs shall be maintained in a secure and attractive manner. Deteriorated structural and decorative elements of any building wall or roof shall be repaired or replaced in a workmanlike manner to match as closely as possible the materials and construction of the building.

(b) All exterior surfaces other than decay-resistant wood and other weather durable finishes shall be protected from the elements by paint or other protective covering applied according to manufacturers' specifications. Loose material, including peeling paint, shall be removed and replaced.

(c) Doors and windows shall be maintained as follows:

- (1) All doors and windows shall be secured in a tight-fitting and weatherproof manner.
- (2) Sashes with rotten wood must be repaired or replaced.

(d) Ground level storefront windows facing a public right-of-way shall be maintained in an unbroken and clean state.

- (1) No window facing a public right-of-way shall be removed, enclosed, or covered, except that damaged windows may be boarded up for a reasonable temporary period while repairs are being arranged. Any building renovations approved under this code must treat such windows as an integral part of the building facade.
- (2) All awnings or canopies facing or visible from the public right-of-way shall be maintained in good condition. Torn or loose awnings shall be promptly repaired or replaced.

(e) All roofs shall be maintained in a secure and watertight condition.

(f) Any new mechanical equipment placed on a roof shall be screened from view from ground level of adjoining properties and public rights-of-way. When mechanical equipment is being replaced on a roof of a building that is not undergoing structural alterations, such equipment shall be screened to the same standard using non-structural materials such as ornamental latticework.

Sec. 6-3. Exterior storage.

(a) No temporary or permanent storage of materials or equipment will be allowed on any vacant parcel except in compliance with the regulations for the use of such property as set forth in ch. 34 of this code, or in conjunction with an active building permit.

(b) Equipment, materials, and furnishing not designed for use outdoors, such as automotive parts and tires, building materials, and interior furniture, may not be stored outdoors.

Sec. 6-4. Public rights-of-way and sidewalks.

(a) Landowners shall maintain in a clean condition adjoining sidewalks and public rights-of-way that, because of their location and character, appear or are used as if they are an extension of the parcel of land. The landowner shall, at a minimum:

- (1) keep such sidewalks and rights-of-way clear of litter, debris, and weeds;
- (2) maintain trees and shrubs to allow a horizontal clearance of at least 3 feet and a vertical clearance of at least 8 feet above any sidewalk, bike path, or street; and
- (3) regularly mow or otherwise maintain unpaved areas in a neat and attractive condition.

(b) Landowners may not plant any tree or shrub closer than 3 feet to any sidewalk or bike path or to the right-of-way of Estero Boulevard. Trees or shrubs may be planted within a right-of-way only with permission of the town.

(c) The display on public property of vehicles for sale, rent, or hire is regulated by Fort Myers Beach Ordinance No. 96-16.

(d) Parking on public rights-of way is regulated by Fort Myers Beach Ordinance No. 96-16.

Sec. 6-5. Nuisances.

(a) No person owning, leasing, operating, or having control of any premises with the town will maintain, keep, or permit any nuisance as described in this section.

(b) The existence of any of the following conditions or conduct is hereby declared to constitute a public nuisance:

- (1) A condition or use that causes a substantial diminution of value of property in the vicinity of the condition or use.
- (2) Buildings that are abandoned.
- (3) Buildings that are boarded up, except when placed for temporary hurricane protection and removed within 30 days.
- (4) Buildings that are partially destroyed and not rebuilt within a reasonable temporary period while repairs are being arranged,
- (5) Partially constructed buildings that are not completed within a customary construction period or for which building permits have expired.
- (6) Any attractive nuisance dangerous to children such as excavations, untended and unfenced swimming pools, or abandoned or broken equipment or machinery.
- (7) Overt blocking of drainage swales or pipes so as to cause flooding or adversely affect surrounding property.
- (8) Excessive or untended accumulations of trash or abandoned property, including scattered trash and litter that remains on commercial parking lots for a period longer than 24 hours.
- (9) Outdoor storage on private property of boats or motor vehicles which are not affixed with a current registration decal.
- (10) Accumulation of nuisance grasses and/or weeds.
- (11) Any other condition or use that constitutes a nuisance to the public which is continually or repeatedly maintained, the abatement of which would be in the best interest of the health, safety, and welfare of residents of the town.

Sec. 6-6. Inoperative vehicles on public property.

(a) The keeping, storing, or parking of an inoperative vehicle on any public property, including public streets and rights-of-way, is hereby declared to be a nuisance. It shall be unlawful for any person to allow any inoperative vehicle to remain on public property. The notice and removal procedures set forth in F.S. §§705.105 through 705.104 may be used by town and law enforcement personnel.

(b) If a vehicle becomes disabled while on public property, it shall be removed within 24 hours.

Sec. 6-7. Noise.

Unreasonable levels of noise are regulated by Fort Myers Beach Ordinance No. 96-24.

Sec. 6-8. Required landscaping, buffers, and native vegetation.

Any landscaping, buffers, and native vegetation planted or preserved in accordance with a development order or rezoning approval shall be maintained in at least the same condition as required for the original installation or preservation. Ch. 10 of this code describes the current plant maintenance standards.

Sec. 6-9. Lot mowing.

(a) It is the duty of every person to maintain their property so that nuisance grasses and/or weeds do not accumulate thereon. Such accumulations impair the economic welfare of property and contribute to fire hazards and/or health hazards within the town.

(b) The town will issue to the property owner of record a first notice of violation regarding the existence of nuisance grass and/or weeds on property. This will be issued via first class mail or posting the property. The property owner of record must abate the nuisance within 10 days, after which time the director may instruct employees or contractors of the town to enter the property and abate the nuisance. The cost of such abatement will be levied as an assessment against the property.

The director will prepare an assessment bill for the entire cost of abatement.

(c) Within 5 days of receipt of the first notice of violation by mail or posting, the owner of the property may make a written request to the director for a hearing on the issue of whether the condition alleged in the notice does not exist or does not constitute a nuisance. Such hearing will be scheduled and conducted before the special magistrate as set forth elsewhere in this code.

(d) Unless a hearing is requested and held as set forth in subsection (c), the town will send a second notice, that may contain an invoice detailing any and all costs including administrative costs incurred by the town if the town abates the nuisance, along with a request for payment of these costs, to the property owner within 30 days of the date of the first notice. In the event the amount set forth on this notice is not paid in full within 30 days, an assessment lien indicating these costs, signed by the director, will be placed against the property and recorded in the official records of Lee County, Florida. The lien will incorporate interest at the statutory rate on the unpaid balance of the assessment until the balance is paid in full.

Sec. 6-10. Building numbers.

(a) Every building in the town shall continuously display the building number assigned to it by Lee County so that the building can be readily identified from the street by emergency personnel.

(b) Posted building numbers shall be at least 3 inches high. Numbers on commercial, institutional, or multifamily buildings that are set back more than 50 feet from the street shall be at least 8 inches high. Building numbers shall be in a color that contrasts with the immediate background and must be clearly visible from the adjoining street.

Sec. 6-11. Refuse containers.

(a) Refuse containers shall not be moved to the street more than 24 hours prior to scheduled curbside collections nor remain there more than 24 hours after scheduled collections.

(b) Each refuse container that is not movable in accordance with subsection (a) shall be opaquely screened from view from streets and adjoining

properties, at the full height of such container above the adjacent grade. This screening may be achieved by landscaping or by virtue of the location of the container on the site. Screening may also be achieved by walls or opaque fencing provided the wall or fence does not exceed the maximum height permitted for the location (see §§ 34-1171 et seq. and 34-1744).

(c) Any refuse container not located within a roofed enclosure must have a lid that renders the interior of the container inaccessible to animals.

Sec. 6-12. Disposal of swimming pool water.

Prior to disposal of swimming pool water, chlorine and bromine levels must be reduced by not adding chlorine or bromine for at least five days or until levels are below 0.1 mg per liter.

- (1) The preferred method for disposing of swimming pool water is to discharge the water into roadside swales to allow percolation into the ground without any runoff to canals, beaches, wetlands, other tidal waters, or onto adjoining properties. The discharge of dechlorinated water into roadside swales is permitted by § 10-604 of this code.
- (2) Another acceptable method is to discharge the water into the sanitary sewer system operated by Lee County Utilities.
- (3) Swimming pool water may not be discharged either directly or indirectly to the beach, canals, wetlands, or any other tidal waters.

Sec. 6-13. Stormwater drainage on the beach.

Tidal waters can become polluted and beaches can be eroded when pipes or culverts discharge directly onto the beach. Point sources of discharge from private property directly onto the beach are prohibited. This prohibition includes drainage collected from parking lots or other paved surfaces and stormwater from the roofs of buildings. Point sources of discharge from private property that were in lawful existence as of April 18, 2005, must be eliminated within 36 months.

Sec. 6-14. Neighborhood flooding.

(a) Chapter 10 of this code requires stormwater management systems for new development (see § 10-321). Development that is not subject to those requirements, such as single-family and two-family dwellings on existing lots, can also flood surrounding lots and streets, especially if the lot is raised higher than adjoining properties or if rainfall is concentrated by gutters and downspouts and discharged without an opportunity for infiltration.

(b) To minimize neighborhood flooding from normal daily rainfall, a fill permit must be obtained from the town when fill material is to be placed on lots that would raise the elevation more than an average of 6 inches above adjoining lots. The fill permit application must show how normal rainfall will have an opportunity to infiltrate into the ground within the lot using one or more of the following methods or equivalent solution:

- (1) Gutters and downspouts that collect rainwater must discharge into exfiltration trenches (french drains), or into a subsurface drainfield that meets the construction standards of F.A.C. 64E-6.014(5) (the percolation, depth, location, and setback standards for drainfields need not be met), or onto substantially flat and porous surfaces such as:
 - a. Sodded lawns.
 - b. Clean (washed) gravel or sand over a well-drained base.
 - c. Porous (pervious) paving.
- (2) Roof areas not served by gutters and downspouts must not drain to impervious surfaces, and must not drain to pervious surfaces that are sloped in excess of 5%. Surfaces not meeting these requirements must be designed to detain or deflect rainfall, for instance through the use of earthen ridges, curbs, or retaining walls that prevent average rainfall from running onto adjoining lots or streets.

(c) Additions to, renovations of, and replacements for single-family and two-family dwellings that include the installation of gutters and downspouts must also obtain a fill permit showing discharge from the downspouts being directed to the same standards as for filled lots.

Sec. 6-15. Accessory structures.

All accessory structures, including detached garages, fences, walls, and seawalls, will be maintained in good repair and with structural soundness.

Sec. 6-16–6-30. Reserved.

DIVISION 2. HOUSING CODE

Sec. 6-31. Adoption; amendments.

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

Chapter 1, Administration.

Exception: Section 103.2.2(4) is deleted and replaced with new section 103.2.2(4) as follows:

4. State that, if such repairs, reconstruction, alterations, removal or demolition are not voluntarily completed within the stated time as set forth in the notice, the housing official shall institute such legal and/or administrative proceeding as may be appropriate.

Exception: Section 103.4 is deleted and replaced with new section 103.4 as follows:

An officer or employee, or member of any board, charged with the enforcement of this code, in the discharge of his duties, shall not thereby render himself liable personally, and is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties.

Exception: Section 103.5 is deleted.

Exception: Section 104 is deleted and replaced with new section 104 as follows:

104 Inspections

The housing official shall make, or cause to be made, inspections to determine the condition of residential buildings and premises in the interest of safeguarding the health and safety of the occupants of such buildings and of the general public. For the purpose of making such inspections, the housing official, or his designee, is hereby authorized to enter, examine, and survey, at all reasonable times, any residential building or premises. If the owner, agent, tenant or other person in charge thereof refuses to allow the housing official, or his designee, free access to such building or premises, the housing official may obtain a duly issued search or administrative warrant, pursuant to F.S. ch. 933, as from time to time amended, or any other applicable law which

may be in effect at the time such warrant is sought.

Exception: Sections 105, 106, and 107, relating to the housing board of adjustment and appeals, are deleted. Appeals and variances shall be processed and decided in the same manner as for variances under ch. 34 of this code. Enforcement of this code shall be in accordance with ch. 1.

Chapter 2, Definitions.

Exception: Delete the definition of “building” and “housing official” found in section 202 and replace with a new definition of “building” and “housing official” to be used when construing minimum housing provisions, as follows:

Building--Any structure built or used for shelter or enclosure of persons which has enclosing walls sheltering 50 percent or more of its perimeter. The term “building” shall be construed as if followed by the words “or part thereof” and shall include mobile homes, manufactured homes and all recreational vehicles which have been established as units for permanent living by the filing of a declaration of domicile with the clerk of the circuit court on or before October 21, 1985; provided, however, that the foregoing definition specifically excludes hotels and motels.

Housing official—the officer, or his duly authorized representative charged with the administration and enforcement of this code, which shall be the town manager or designee.

Chapter 3, Minimum Standards for Basic Equipment and Facilities.

Exception: Delete section 302.2 and replace with new section 302.2 as follows:

All required plumbing fixtures shall be located within the dwelling unit and be accessible to the occupants of same. The water closet, tub or shower, and lavatory shall be located in a room affording privacy to the user. Bathrooms shall be accessible from habitable rooms, hallways, corridors or other protected or enclosed areas.

Exception: The following language shall be added to section 302.5:

This section and its subsections shall only apply if the Standard Building Code (as published by the Southern Building Code Congress) and any local amendments thereto, required heating facilities at the time the building was constructed.

Exception: Delete section 302.5.3 and replace with new section 302.5.3 as follows:

Unvented fuel burning heaters shall be prohibited except for gas heaters listed for unvented use where the total input rating of the unvented heater is less than 30 BTU per hour per cubic foot of room content and provided that the gas heater is installed pursuant to the Gas Code as adopted herein at section 6-171. Notwithstanding the above, all unvented fuel-burning heaters shall be prohibited in bedrooms and sleeping areas.

Secs. 6-32--6-35. Reserved.

DIVISION 3. UNSAFE BUILDING ABATEMENT CODE

Sec. 6-36. Adoption; amendments.

The following chapters and sections of the 1985 Standard Unsafe Building Abatement Code, as published by Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206, are hereby adopted by reference and made part of this article, with the exceptions set forth as follows:

Chapter I, Administration.

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

Chapter II, Definitions.

Chapter III, Inspection and Notice of Noncompliance.

Chapter IV, Appeals.

Chapter V, Rules of Procedure for Hearing Appeals.

Chapter VI, Implementation.

Chapter VII, Recovery of Cost of Repair or Demolition.

Exception: If the building official proceeds to demolish the building or structure as set forth herein, the town council shall, by proper resolution, assess the entire cost of such demolition and removal against the real property upon which such cost was incurred, which assessment, when made, shall constitute a lien upon the property superior to all others except taxes. The lien shall be filed in the public land records of the county. The resolution of

assessment and lien must indicate the nature of the assessment and lien, the lien amount, and an accurate description of the property affected. The lien becomes effective on the date of filing such notice of lien and shall bear interest from such date at the rate of ten percent per annum. If the resulting lien is not satisfied within two years after the date it is filed, then the town may:

- (1) file suit to foreclose on the liened property as provided by law in suits to foreclose mortgages; or,
- (2) follow any other lawful process or procedure available for enforcement of the lien in accordance with any general law of the state relating to the enforcement of municipal liens.

Secs. 6-37--6-40. Reserved.

**ARTICLE II.
BUILDING CODES**

DIVISION 1. GENERALLY

Sec. 6-41. Applicability of article.

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

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

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

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

Sec. 6-43. Conflicting provisions.

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

provide an equivalent degree of lifesafety and an equivalent method of construction.

Sec. 6-44. Enforcing officers.

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

Sec. 6-45. Permit fees.

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

Secs. 6-46--6-70. Reserved.

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

Sec. 6-71. Applicability of division.

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

Sec. 6-72. Intent of division.

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

Sec. 6-73. Boards established; jurisdiction.

Lee County has established a construction board of adjustment and appeals known as the Lee County board of adjustment and appeals through chapter 6, article 2, division 2 of the Lee County Land Development Code. The purpose of that board is to hear and decide appeals from the

decision of the county’s building official and fire official or their designees on any of the various standard codes regulated and enforced by the county except the plumbing code and mechanical code. Lee County has also established separate boards of adjustment and appeals to arbitrate matters involving the plumbing code and mechanical code.

Sec. 6-74. Delegation of authority to Lee County’s boards of adjustment and appeals.

(a) The Town of Fort Myers Beach hereby delegates to each of the three Lee County boards of adjustment and appeals the authority to make decisions on appeals that may be filed in accordance with § 6-80 of this division.

(b) The town attorney will provide legal advice to each of the three Lee County boards of adjustment and appeals when warranted.

Secs. 6-75--6-79. Reserved.

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

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

(b) In the case of a building or structure which in the opinion of the building official is unsafe or dangerous, the building official may, in his order, limit the time for such appeal to a shorter period.

Sec. 6-81. Variations and modifications.

(a) Lee County’s boards of adjustment and appeals, pursuant to an appeal from a decision of the building official or fire official or their designees, may vary the application of a code to any particular case when, in its opinion and based upon sufficient evidence, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of a code or public interest, or when, in its opinion and based upon sufficient evidence to the contrary, the interpretation of the building official or fire official or their designees should be modified or reversed.

(b) Any decision of Lee County boards of adjustment and appeals to vary the application of any provision of a code or to modify an order of the building official or fire official or their designees shall specify the variation or modification made, the conditions upon which it is made, and the reasons therefor.

(c) Variances to the floodplain regulations must meet the additional criteria in article IV of this chapter.

Sec. 6-82. Decisions.

(a) Every decision of Lee County’s boards of adjustment and appeals shall be final; subject, however, to any remedy an aggrieved party might have at law or in equity. Every decision shall be in writing and shall indicate the vote upon the decision. Every decision of Lee County’s boards of adjustment and appeals shall be signed and attested to by the chairman of the board.

(b) Lee County’s boards of adjustment and appeals shall, in every case, reach a decision without unreasonable or unnecessary delay.

(c) If a decision of any of Lee County’s boards of adjustment and appeals reverses or modifies a refusal, order or disallowance of the building official or fire official or their designees, or varies the application of any provision of a code, the appropriate official shall immediately take action in accordance with such decision.

(d) Any aggrieved person may obtain judicial review of the decision of Lee County’s boards of adjustment and appeals by filing a petition for writ

of certiorari in the circuit court. Such petition must be filed within 30 calendar days after the board of adjustment and appeals' decision, but not thereafter, pursuant to the Florida Rules of Civil Procedure. The original petition for writ of certiorari must be filed with the clerk of the circuit court. Copies of the petition shall be filed with the building official for forwarding to the town attorney.

Secs. 6-83--6-110. Reserved.

DIVISION 3. BUILDING CODE

Sec. 6-111. Adoption; amendments.

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

Chapter 1, Administration.

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

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

103.2 Right of entry.

103.2.1 Whenever necessary to make an inspection to enforce any of the provisions of this code, or whenever the building official has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building, structure, premises, electrical, gas, mechanical, or plumbing systems unsafe, dangerous, or hazardous, the building official may enter such building, structure, or premises at all reasonable times to inspect the same or to perform any duty imposed upon the building official by this code. If such building or premises are occupied, he must

first present proper credentials and request entry. If such building, structure, or premises are unoccupied, he must first make a reasonable effort to locate the owner or other persons having charge or control of such and request entry. If entry is refused, the building official has recourse to every remedy provided by law to secure entry.

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

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

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

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

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

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

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

Section 104.1.4 is amended to read as follows:

104.1.4. Minor repairs.

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

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

104.1.6.1 A permit issued shall be construed to be a license to proceed with the work but shall not be construed as authority to violate, cancel, alter or set aside any of the provisions of this code, nor shall such issuance of a permit prevent the building official from thereafter requiring a correction of errors in plans or in construction or of violations of this code. Although a permit issued to an owner is transferable to another owner, actual notice of the transfer of permit shall

be given to the building official prior to the transfer. Building permits shall be issued following the approval of site and construction plans. Building permits on multifamily projects shall be issued on each individual building or structure. Multitenant occupancies, including but not limited to shopping malls, may be permitted on an individual building or structure (shell); however, individual permits shall be used separately for tenant spaces.

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

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

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

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

Chapter 33, Site Work, Demolition and Construction.

Section 3311.5 is added, to read as follows:

3311.5 Trash containers.

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

Chapter 34, Existing Buildings.

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

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

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

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

3401.2.2.1 If the occupancy classification or any occupancy subclassifications of any existing building or structure is changed to a more hazardous occupancy, the building, electrical, gas, mechanical, and plumbing systems shall be

made to conform to the intent of the technical codes as required by the building official.

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

3401.5 Special historic buildings

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

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

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

The entire incorporated area of the Town of Fort Myers Beach lies within the wind-borne debris region and the 130 mph basic wind speed zone as established by section 1606.1.6 and figure 1606 of the Florida Building Code.

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

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

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

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

Secs. 6-115--6-120. Reserved.

**DIVISION 4.
EXISTING BUILDINGS CODE**

Sec. 6-121. Purpose.

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

Sec. 6-122. Adoption; amendments.

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

Chapter 1, Administration.

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

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

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

Chapter 2, Definitions and Abbreviations.

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

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

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

Chapter 4, Means of Egress.

Chapter 5, Fire Protection.

Chapter 6, Light, Ventilation and Sanitation.

Chapter 7, Building Services.

Chapter 8, Maintenance.

Appendix A, Rehabilitation Guidelines.

Secs. 6-123--6-230. Reserved.

DIVISION 5. CONTRACTOR LICENSING

Sec. 6-231. Contractor licenses required.

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

- (1) state-certified contractors holding an active state certificate of competency;
- (2) state-registered contractors holding an active state registration and Lee County certificate

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

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

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

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

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

(a) The Town of Fort Myers Beach accepts Lee County certificates of competency in the following specialty categories:

- (1) Alarm system contractor I
- (2) Alarm system contractor II
- (3) Aluminum specialty structures contractor
- (4) Aluminum (without concrete) contractor
- (5) Aluminum (non-structural) contractor
- (6) Asphalt sealing and coating contractor
- (7) Awning contractor
- (8) Cabinet and millwork contractor
- (9) Carpentry contractor
- (10) Concrete coatings contractor
- (11) Concrete forming and placing contractor

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

(b) The Town of Fort Myers Beach also accepts certain older Lee County certificates of competency that the county has determined to be vested with respect to the scope of work allowed under the certificate category. These certificates may be in the following categories:

- (1) Air conditioning contractor – Class A
- (2) Air conditioning contractor – Class B
- (3) Air conditioning contractor – Class C
- (4) Alteration and repair (non-structural) contractor
- (5) Building contractor
- (6) Cement, concrete and masonry contractor
- (7) Cement finishing contractor
- (8) Demolition contractor

- (9) Dredging and landfilling contractor
- (10) Exposed aggregate contractor
- (11) Flooring contractor
- (12) General contractor
- (13) Glazing and window installation contractor
- (14) Mechanical contractor
- (15) Mobile home alteration and repair (including aluminum work) contractor
- (16) Paint and roof painting contractor
- (17) Paving and sealing contractor
- (18) Plastering, lathing, stucco, and drywall contractor
- (19) Plumbing contractor
- (20) Pool contractor – Class A
- (21) Pool contractor – Class C
- (22) Remodeling contractor
- (23) Residential contractor
- (24) Roofing contractor
- (25) Roof painting contractor
- (26) Roof spraying contractor
- (27) Seawall and dock contractor
- (28) Sign contractor – electrical
- (29) Sign contractor – non-electrical
- (30) Solar water heating contractor
- (31) Tile contractor
- (32) Tile, terrazo, river rock, and marble contractor
- (33) Waterproofing contractor
- (34) Underground utility contractor

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

(a) The Town of Fort Myers Beach hereby delegates to Lee County and the Lee County Construction Licensing Board the authority to make decisions regarding:

- (1) The categories of certificates of competency that Lee County may require or issue;
- (2) The requirements for obtaining and retaining Lee County certificates of competency;
- (3) The issuance, revocation, and cancellation of Lee County certificates of competency;
- (4) Disciplinary actions concerning activities within the town by holders of a Lee County certificate of competency or by state certified or registered contractors; and
- (5) Any other matter within the authority of the Lee County Construction Licensing Board.

(b) The policies, procedures, and safeguards applicable to the Lee County Construction Licensing Board according to Lee County

Ordinance No. 96-20 are hereby adopted by the Town of Fort Myers Beach for all actions of the Board regarding violations alleged to have occurred within the town.

(c) The town attorney will provide legal advice to the Lee County Construction Licensing Board when warranted.

Sec. 6-235. Owner-builder exemption.

(a) Owners of property may act as their own contractor and provide direct on-site supervision themselves of all work not performed by licensed contractors when building or improving:

- (1) One-family or two-family residences on the owner’s property for the occupancy or use of the owners and not offered for sale or lease; and
- (2) Commercial buildings on the owner’s property at a cost not to exceed \$25,000 for the occupancy or use of the owners and not offered for sale or lease.

(b) If, within one year of completion, an owner-builder sells, leases, or offers for sale or lease any building constructed or improved under an owner-builder exemption, the town can presume the construction or improvement was undertaken for the purposes of sale or lease.

(c) This section does not exempt any person the owner-builder employs, or has a contract with, to act in the capacity of a contractor. The owner cannot delegate the owner’s responsibility to directly supervise all work to any other person unless that person is duly licensed in accordance with this ordinance and the work performed is within the scope of that contractor’s license.

(d) To qualify for exemption under this section, an owner must personally appear and sign the building permit application. The owner must also execute a disclosure statement prepared by the building official acknowledging compliance with all applicable regulations.

Sec. 6-236. Other exemptions.

The licensing provisions of this article do not apply to:

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

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

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

perform the construction services under the design-build contract.

Sec. 6-237. Penalties.

Penalties for violations of this article shall be as authorized by Lee County through its Ordinance 96-20, as may be amended from time to time.

Secs. 6-238--6-330. Reserved.

ARTICLE III. COASTAL CONSTRUCTION CODE

DIVISION 1. GENERALLY

Sec. 6-331. Origin.

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

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

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

(a) **Applicability generally.** The requirements of this article will apply to the following types of construction:

- (1) New construction as defined herein;
- (2) Substantial improvements to existing structures as defined in § 6-405 of this code; and
- (3) Any construction which would change or alter the character of the shoreline, e.g., excavation, grading, or paving. This article does not apply to minor work in the nature of normal beach cleaning or debris removal, which is regulated by article I of ch. 14.

(b) **Construction seaward of mean high water.** Structures or construction extending seaward of the mean high-water line which are regulated by F.S. § 161.041, e.g. groins, jetties, moles, breakwaters, beach nourishment, inlet dredging, etc., are specifically exempt from the provisions of this article. In addition, this article does not apply to those portions of piers, pipelines, or outfalls which are located seaward of the mean high-water line and are regulated pursuant to the provisions of F.S. § 161.053.

(c) **Certification of compliance.** All plans for buildings must be signed and sealed by an architect or engineer registered in the state. Upon completion of the building and prior to the issuance of a certificate of occupancy, a statement must be filed with the director signed and sealed by an architect or engineer registered in the state in substantially the following form: "To the best of my knowledge and belief the above-described construction of all structural loadbearing components complies with the permitted documents and plans submitted to the Town of Fort Myers Beach."

Sec. 6-333. Definitions.²

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

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

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

²**Cross reference(s)**--Definitions and rules of construction generally, § 1-2.

Construction means the carrying out of any building, clearing, filling, excavation. When appropriate to the context, the term “construction” refers to the act of construction or the result of construction. Construction also includes substantial improvements to existing structures as defined in § 6-405 of this code.

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

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

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

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

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

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

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

Sec. 6-334. Variances.

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

Secs. 6-335--6-360. Reserved.

**DIVISION 2.
COASTAL CONSTRUCTION STANDARDS**

Sec. 6-361. Generally.

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

Sec. 6-362. Reserved.

Sec. 6-363. Reserved.

Sec. 6-364. Special requirements near beaches.

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

- (1) Locational criteria for major structures are found in § 6-366(b).
- (2) Structural and permitting criteria for major structures are found in ch. 31 of the Florida Building Code and in ch. 62B of the Florida Administrative Code.
- (3) All sewage treatment and public water supply systems must be floodproofed to prevent infiltration of surface water anticipated from a 100-year storm event.
- (4) Underground utilities, excluding pad transformers and vaults, must be floodproofed to prevent infiltration of surface water expected from a 100-year storm event, or must otherwise be designed to function when submerged under such storm conditions.

(b) **Minor structures.** Minor structures must be designed to produce the minimum adverse impact on the beach and dune system and adjacent properties and to reduce the potential for water and wind blown material.

- (1) Locational criteria for minor structures are found in § 6-366(b).
- (2) Construction of a rigid coastal or shore protection structure designed primarily to protect a minor structure is not permitted; see article II of ch. 26 for detailed regulations.

Sec. 6-365. Reserved.

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

(a) Except for beach renourishment and for minor structures such as lifeguard support stands and beach access ramps, all construction must be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability. In addition to complying with all other provisions of this code, major structures must be built landward of the 1978 coastal construction control line except where a major structure may be specifically allowed by this code to extend across this line. The 1978 coastal construction control line is depicted on the Future Land Use Map as the seaward edge of land-use categories allowing urban development and as the landward edge of the Recreation land-use category. This line is also the landward edge of the EC (Environmentally Critical) zoning district.

(b) Occasional minor structures are permitted by right in the EC zoning district if they are placed on private property and do not alter the natural landscape or obstruct pedestrian traffic (examples are mono-post shade structures, movable picnic tables, beach volleyball courts, and similar recreational equipment, see § 34-652). Artificial lighting and signs may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process or unless explicitly permitted by §§ 14-5 or 27-51.

- (1) Other provisions of this code provide for certain other minor structures in the EC zoning district:
 - a. Perpendicular dune walkovers are permitted by right in accordance with § 10-415(b) and subsection (d) below.
 - b. Some temporary structures such as tents may be permitted through a temporary use permit for special events held on the beach, in accordance with § 14-11.

- c. Licensed beach vendors may place rental equipment and/or a temporary movable structure in accordance with § 14-5, ch. 27, and § 34-3151 of this code.
- (2) Minor structures that are not permitted by right may be approved in the EC zoning district through the special exception process or as deviations in the planned development rezoning process. Such minor structures may include stairways, walkways, ramps, fences, walls, decks, bathhouses, viewing platforms, gazebos, chickees, patios, and other paved areas. These structures should be located as close to the landward edge of the EC zoning district as possible and must minimize adverse effects on the beach and dune system. See §§ 34-88, 34-932(b), and 34-652 for details.
- (3) Minor structures not qualifying by right, by special exception, or through another provision of this code are not permitted in the EC zoning district. See § 34-652 for details.

(c) When existing major structures that were built partially or fully seaward of the 1978 coastal construction control line are reconstructed, they shall be rebuilt landward of this line. Exceptions to this rule may be permitted through the planned development zoning process only where it can be scientifically demonstrated that the 1978 coastal construction control line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions. Exceptions must also comply all state laws and regulations regarding coastal construction.

(d) New and expanded beachfront development must construct state-approved dune walkover structures at appropriate crossing points (see § 10-415(b)). All walkovers must meet these criteria in addition to state approval:

- (1) Walkovers must be placed perpendicular to the dune or no more than 30 degrees from perpendicular. New walkovers cannot be placed closer than 150 feet to the nearest walkover.
- (2) Walkovers must be supported on posts embedded to a sufficient depth to provide structural stability. These posts may not be encased in concrete.

- (3) Walkovers cannot exceed 4 feet in width when serving single-family homes or 6 feet in width otherwise.
- (4) Walkovers must be elevated at least 2 feet above the highest point of the dune and dune vegetation and must extend to the seaward toe of any existing dune and dune vegetation.
- (5) Walkovers must be constructed in a manner that minimizes short-term disturbance of the dune system. Any dune vegetation destroyed during construction must be replaced with similar native vegetation that is suitable for beach and dune stabilization.
- (6) Walkovers may not be constructed during the sea turtle nesting season (May 1 through October 31).

(e) For newly created lots and parcels, a 50-foot separation between structures and dunes is required by § 10-415(b).

Sec. 6-367. Public access.

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

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

Secs. 6-368--6-400. Reserved.

**ARTICLE IV.
FLOODPLAIN REGULATIONS**

DIVISION 1. GENERALLY

Sec. 6-401. Reserved.

Sec. 6-402. Findings of fact.

(a) The Town of Fort Myers Beach is subject to periodic inundation which may result in the loss of life and property, as well as 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.

(b) These flood losses are caused by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated or floodproofed or otherwise unprotected from flood damages.

Sec. 6-403. Purpose of article.

It is the purpose of this article to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion; and
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.

Sec. 6-404. Objectives of article.

The objectives of this article are to:

- (1) Protect human life and health;
- (2) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (3) Minimize prolonged business interruptions;

- (4) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in floodplains; and
- (5) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas.

Sec. 6-405. Definitions.³

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Unless specifically defined in this section, words or phrases used in this article shall be interpreted so as to give them the meanings they have in common usage and to give this article its most reasonable application.

Accessory structure means a building or structure which is customarily incidental and subordinate to a principal building or to the principal use of the premises, and located on the same premises.

Addition means any walled and roofed expansion that increases the floor space of an existing building in which the addition is connected by a common loadbearing wall other than a firewall. Any walled and roofed addition which is connected by a firewall or is separated by independent perimeter loadbearing walls is considered new construction.

Appeal means a request for a review of the coordinator's interpretation of any provision of this article. A request for a variance from the precise terms of this article is not an appeal.

Area of special flood hazard means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The entire Town of Fort Myers Beach has been designated an area of special flood hazard by the Federal Emergency Management Agency (see § 6-408).

³*Cross reference(s)--Definitions and rules of construction generally, § 1-2.*

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year, as determined by the maps described in § 6-408.

Breakaway walls means any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic, or any other suitable building materials, which are not part of the structural support of the building and which are designed and constructed to collapse under specific lateral loading forces without causing damage to the elevated portion of the buildings or the supporting foundation system on which they are used.

Building means any structure built for support, shelter, or enclosure for any occupancy or storage.

Coastal high-hazard area means the area subject to high-velocity wave action from storms or seismic sources. The coastal high-hazard area is identified as Zone V on the flood insurance rate map

Coordinator means the town's flood insurance coordinator, who has been designated by the town manager to implement, administer, and enforce these floodplain regulations.

Cost of improvements means the total of all costs for the repair, reconstruction, rehabilitation, additions, or other improvements to a structure. These costs include materials, labor, profit, and overhead, and include the costs of demolition and built-in appliances, but do not include the costs of plans, surveys, permits, or outdoor improvements such as landscaping. These costs may be substantiated by a contractor licensed in accordance with §§ 6-231–330 through submission of actual construction contracts, accompanied by the contractor's affidavit attesting to their accuracy and completeness. The coordinator may also accept other reliable methods for substantiating costs, such as building valuation tables published by the International Code Council, provided the type of construction and extent of improvement is accurately reflected.

Development means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, dredging, filling, grading, paving, excavating,

drilling operations, or storage of materials or equipment.

Elevated building means a building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), or shear walls.

Existing, when referring to a building or structure, means that construction had commenced on the building or structure, or portion thereof, prior to August 31, 1984.

Existing manufactured home park or manufactured home subdivision means a parcel or contiguous parcels of land divided into two or more manufactured home lots or sites for rent or sale for which the construction of facilities for servicing the lot or site on which the manufactured home is to be affixed, including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets, was completed prior to August 31, 1984.

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

Flood and **flooding** mean a general and temporary condition of partial or complete inundation of normally dry land areas from:

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

Flood insurance rate map (FIRM) means the official map of Fort Myers Beach on file with the coordinator, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones for Fort Myers Beach, including base flood elevations and coastal high hazard areas (V zones).

Floodproofing means any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures,

and/or their contents. There are three major kinds of floodproofing in coastal areas:

- (1) Elevation of the lowest floor is the most common and economical method for floodproofing structures and is the only acceptable method under this code for floodproofing new or substantially improved residential structures.
- (2) For dry floodproofing, a commercial building is made watertight up to the base flood elevation and strengthened to resist all hydrostatic and hydrodynamic loads and to counter the effects of buoyancy. See § 6-472(4).
- (3) For wet floodproofing, damage to a building is avoided by allowing flood waters to temporarily fill the building to equalize loads and prevent buoyancy. See §§ 6-446(e) and 6-472(5)b.

Floor means the top surface of an enclosed space in a building, i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used for parking vehicles.

Functionally dependent facility means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of passengers. The term does not include longterm storage, manufacture, sales, or entertainment facilities.

Highest adjacent grade means the highest elevation of the ground surface, either prior to or after construction whichever is higher, next to the proposed walls of a structure.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register of Historic Places; or
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district; or
- (3) Individually listed on a state inventory of historic places in states with historic

preservation programs which have been approved by the Secretary of the Interior and also listed on a local inventory of historic places, either individually or as a contributing structure in a historic district, pursuant to ch. 22 of this code.

Lowest floor means the lowest floor of the lowest enclosed space, including any floors below grade. An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the non-elevation design requirements of this article.

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

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. This definition includes mobile homes and most park trailers (those larger than 400 square feet and/or not towable by a light duty truck), as defined in F.S. § 320.01(2), but does not include other types of recreational vehicles, as defined in F.S. § 320.01(1). However, a manufactured building as defined in F.S. ch. 553, pt. IV is not considered a manufactured home.

Market value of the structure, depending on the context, means either:

- (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 will be as determined (for the structure only) by the Lee County Property Appraiser, by a private appraisal acceptable to the coordinator, or by an independent appraisal commissioned by the coordinator. 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 are completed. Any proposed value submitted via 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 coordinator, 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 coordinator, with the full cost paid to the town prior to initiation of the process.

Mean sea level means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this article, the term is synonymous with North American Vertical Datum of 1988 (NAVD 88), to which base flood elevations shown on the flood insurance rate map are referenced.

North American Vertical Datum of 1988 (NAVD 88) is 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 Lee County 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).

National Geodetic Vertical Datum (NGVD), as corrected in 1929, 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 these floodplain regulations was discontinued as of August 28, 2008. To convert a known elevation in Lee County 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 means structures for which the start of construction commenced on or after May 1, 1990, and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means 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.

Primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

Reconstruction means an improvement to an existing building that substantially replaces all or a portion of an existing building with a new building, or physically moves an existing building to a different location.

Recreational vehicle means, for floodplain management purposes, a vehicle which is:

- (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 means 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 professional engineer means 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.

Registered land surveyor means 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.

Rehabilitation means an improvement to an existing building that does not expand its external dimensions.

Repair means the replacement or renewal of nonstructural elements of an existing building.

Reinforced pier means 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 concrete 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 and wind standards are met.

Repetitive loss means flood-related damages sustained by a structure on two or more separate occasions during any ten-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. For the purposes of computing this 25 percent cost only, the cost of nonstructural interior finishings may be deducted from the cost of repairs, including, but not limited to, the cost of finish flooring and floor coverings, base molding, nonstructural substrates, drywall, plaster, paneling, wall covering, tapestries, window treatments, decorative masonry, paint, interior doors, tile, cabinets, moldings and millwork, decorative metal work, vanities, electrical receptacles, electrical switches, electrical fixtures, intercoms, communications and sound systems, security systems, HVAC grills and decorative trim, freestanding metal fireplaces, appliances, water closets, tubs and shower enclosures, lavatories, and water heaters.

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

Start of construction, for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Public Law 97-348), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. 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.

Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure, whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Actual repair work need not have been performed on flood-related damage.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cumulative cost of which equals or exceeds, over any five-year period, 50 percent of the market value of the structure either before the start of construction of the improvement or, if the structure has been damaged

and is being restored, before the damage occurred. The term “substantial improvement” includes structures that have incurred “substantial damage” or “repetitive loss,” regardless of the actual repair work performed. The term “substantial improvement” does not, however, include either:

- (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to ensure safe living conditions; or
- (2) costs of alterations or improvements whose express purpose is the mitigation of future storm damage, provided they 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 shatterproof glass, strengthening of roof attachments, floors, or walls, and minor floodproofing.
 - 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 to any costs associated with a lateral or vertical addition to an existing structure or to the complete replacement of an existing structure; or
- (3) any alteration of a “historic structure” provided that the alteration would not preclude the structure’s continued designation as a “historic structure.”

Variance means a grant of relief to a person from the requirements of this article which permits construction in a manner otherwise prohibited by this article where specific enforcement would result in unnecessary hardship.

Sec. 6-406. Penalty for violation of article.

The director and the coordinator are authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this article.

Sec. 6-407. Applicability of article.

This article shall apply to the entire Town of Fort Myers Beach. No structure or land shall be located, extended, converted, or structurally altered without full compliance with the terms of this article.

Sec. 6-408. Basis for establishing flood regulations.

The entire Town of Fort Myers Beach has been designated an area of special flood hazard by the Federal Emergency Management Agency (FEMA). FEMA maps illustrating the minimum federal floodplain regulations as adopted on August 28, 2008, and all revisions thereto, are adopted by reference and declared to be a part of this article. These flood insurance rate maps show base flood elevations and coastal high-hazard areas (V zones) for the entire town and are available for inspection at town hall and at the Lee County Department of Community Development Building, 1500 Monroe Street, Fort Myers, or can be viewed at www.fema.gov, or can be purchased by calling 1-800-358-9616. The individual map panels are numbered as follows:

<i>General area shown</i>	<i>Panel number</i>	<i>Latest</i>
Bowditch	120673 0553F	8/28/08
Bowditch – Lovers Ln.	120673 0554F	8/28/08
Lovers Ln. – Gulfview	120673 0558F	8/28/08
Gulfview – Mound Rd.	120673 0566F	8/28/08
Mound Rd. – Buccaneer	120673 0567F	8/28/08
Buccaneer – Big Carlos	120673 0569F	8/28/08

Sec. 6-409. Reserved.

Sec. 6-410. Conflicting provisions.

Where this article and any other part of this code conflict or overlap, whichever imposes the more stringent restriction shall prevail.

Sec. 6-411. Reserved.

Sec. 6-412. Warning and disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This article shall not create liability on the part of the town council, or by any officer or employee thereof, for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

Secs. 6-413--6-440. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 6-441. Designation of administrator.

The town manager shall designate a flood insurance coordinator (“coordinator”) to administer and implement the provisions of this article on behalf of the Town of Fort Myers Beach.

Sec. 6-442. Reserved.

Sec. 6-443. Permit required.

All land-disturbing activities and improvements to land that are defined in this article as “development” must comply with all provisions of this article and must obtain permits in accordance with the procedures in this division.

Sec. 6-444. Applications and certifications.

(a) The provisions of this article will be enforced concurrently with review of proposed building permits and development orders. No separate application is required. However, the following information is required on the plans submitted for review:

- (1) Elevation, in relation to mean sea level, of the proposed lowest floor of all structures;
- (2) Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed;
- (3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure meets the floodproofing criteria in § 6-472, when dry or wet floodproofing is proposed; and
- (4) An operation and maintenance plan when dry floodproofing is proposed:
 - a. At a minimum this plan must identify who is 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 binding requirement for present and future owners to conduct a test installation before May 31 of each year of all flood

barriers, with 10 days' advance written notice provided to the town manager to allow the manager or coordinator to witness this test.

- d. The plan must also include a binding requirement that upon completion of each annual test, a written report will be submitted by the owners to the coordinator 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.

(b) Prior to issuance of approvals, applicants must supply evidence that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

(c) A permit holder must submit to the coordinator a floor elevation or floodproofing certification after the lowest floor is completed, or, in instances where the structure is subject to the regulations applicable to coastal high-hazard areas, after placement of the horizontal structural members of the lowest floor:

- (1) Within 21 calendar days of establishment of the lowest floor elevation, or floodproofing by whatever construction means, or upon placement of the horizontal structural members of the lowest floor, whichever is applicable, it shall be the duty of the permit holder to submit to the coordinator a certification of the elevation of the lowest floor, floodproofed elevation, or the elevation of the lowest portion of the horizontal structural members of the lowest floor, whichever is applicable, as built, in relation to mean sea level. Such certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by a registered land surveyor or professional engineer.
- (2) When floodproofing is utilized for a particular building, the certification shall be prepared by or under the direct supervision of a registered professional engineer or architect

and certified by a registered professional engineer or architect.

- (3) Any work done within the 21-day calendar period and prior to submission of the certification shall be at the permit holder's risk.

(d) The coordinator shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make the corrections required by this section shall be cause to issue a stop work order for the project.

Sec. 6-445. Appeals.

Any affected person may file an appeal alleging that there has been an error in any requirement, decision or determination made by the coordinator in the enforcement or administration of this article. Such appeals shall be processed and decided in the same manner as for appeals under ch. 34 of this code.

Sec. 6-446. Variances.

(a) Variances from base flood elevation requirements may only be granted upon a clear showing by the applicant that an exceptional hardship would result from compliance with the requirements. If a variance is granted, the coordinator shall notify the applicant, in writing, that:

- (1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage; and
- (2) Such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with a record of all variance actions.

(b) Variances shall only be granted upon a determination, based upon competent substantial evidence presented by the applicant, that:

- (1) It will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of

- the public, or conflict with existing regulations or ordinances; and
- (2) The lot or parcel in question is so small or has such unusual characteristics that the prescribed standards cannot be met without some relief so as to allow a reasonable use of the property.

(c) Variances shall only be issued upon a determination that the variance being granted is the minimum necessary, considering the flood hazard, to afford relief.

(d) Variances may be issued for repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(e) Variances may be issued to allow non-residential buildings other than those already identified in § 6-472(5) to contain wet-floodproofed space below the base flood elevation, provided:

- (1) the building is not in the coastal high-hazard areas; and
- (2) such action is determined to be in the public interest.

Any such buildings must meet the technical standards for wet floodproofing found in § 6-472(5)b.

(f) A variance is a deviation from the exact terms and conditions of this article. Requests for variances shall be processed and decided in the same manner as for variances under ch. 34 of this code following public hearings before the local planning agency and town council.

(g) In passing upon variance applications, the town council shall consider all technical evaluations, all relevant factors including local and federal policies on flood protection, all standards specified in this article, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage, and the effect of such damage on the individual owner;

- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, in the case of a functionally dependent facility;
- (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters, and the effects of wave action, if applicable, expected at the site; and
- (11) 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, and streets and bridges.

(h) Upon consideration of the factors listed in subsection (g) of this section and purposes of this article, the town council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.

Secs. 6-447--6-470. Reserved.

DIVISION 3. STANDARDS

Sec. 6-471. General standards.

The following general standards must be followed within the Town of Fort Myers Beach:

- (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure;
- (2) Manufactured homes shall be securely anchored to an adequately anchored foundation system to prevent flotation, collapse, or lateral movement. Methods of anchoring may include but are not limited to use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces;
- (3) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- (4) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (5) Electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities shall be designed and located so as to prevent water from entering or accumulating within the components during conditions of flooding. Utility equipment shall be exempt from this requirement as long as the utility company which owns the equipment accepts the sole responsibility for any flood damage to the equipment by filing written acceptance of such responsibility with the local building director prior to claiming the exemption;
- (6) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters; and
- (8) Any alteration, repair, reconstruction, or improvement to a structure which is in compliance with the provisions of this article

shall meet the requirements of new construction as contained in this article.

Sec. 6-472. Specific standards.

The following specific standards must be followed within the Town of Fort Myers Beach:

- (1) ***Conventional residential construction.*** New construction or substantial improvement of any residential structure shall have the lowest floor elevated to or above the base flood elevation. Space below the base flood elevation in A zones is regulated in accordance with standards of subsection (5) of this section. (See subsection (7) for additional restrictions in V zones.)
 - a. When an improvement to an existing residential structure involves reconstruction or includes an addition, and the improvement's cost exceeds the 50 percent threshold in this article's definition of "substantial improvement," then the reconstruction or addition shall be elevated the same as new construction, with its lowest floor elevated to or above the base flood elevation.
 - b. When such an improvement does not exceed the 50 percent threshold, any additional enclosed floor space must be elevated to or above the structure's existing lowest floor.
- (2) ***Manufactured homes.*** New or expanded parks or subdivisions for manufactured homes are not allowed in the Town of Fort Myers Beach. Where zoning allows existing manufactured homes to be replaced or substantially improved:
 - a. on individual subdivision lots, replacement or substantially improved manufactured homes must be elevated so that the lowest floor of the manufactured home is at or above the base flood elevation and in compliance with the anchoring requirements of § 6-471(2), or
 - b. on an existing site in a mobile home park, the manufactured home chassis must be supported by reinforced piers, or other foundation elements of at least equivalent strength, that are no less than 36 inches in height above highest adjacent grade, and the manufactured

home shall comply with the anchoring requirements of § 6-471(2). However, this 36-inch alternative may not be used if a manufactured home on that specific site has incurred “substantial damage” from flooding, as defined in this article; if “substantial damage” has occurred, the manufactured home or a replacement manufactured home on that site must be elevated so that the lowest floor is at or above the base flood elevation and in compliance with the anchoring requirements of § 6-471(2).

- (3) **Recreational vehicles.** New parks or subdivisions for recreational vehicles are not allowed in the Town of Fort Myers Beach. Where zoning allows recreational vehicles to be placed or substantially improved on a site located in an existing recreational vehicle park, they must be either:
- a. placed on the site for fewer than 180 consecutive days and fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions); or
 - b. elevated so that the lowest floor of the recreational vehicle is at or above the base flood elevation and in compliance with the anchoring requirements of § 6-471(2).
- (4) **Nonresidential construction.** New construction or substantial improvement of any commercial or other nonresidential structure shall either:
- a. have the lowest floor elevated to or above the base flood elevation, or,
 - b. together with attendant utility and sanitary facilities, be dry-floodproofed so that below the base flood level the structure is watertight, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

1. Dry-floodproofing up to the base flood elevation is the preferred alternative for providing sidewalk-level commercial space in the Future Land Use Map’s Pedestrian Commercial category, except in V zones where dry-floodproofing is not permitted (see § 6-472(7)).
2. A registered professional engineer or architect shall develop and/or review the structural design, specifications, and plans and shall certify that they meet the dry-floodproofing standards of this subsection and the accepted standards of practice for meeting the applicable provisions of 44 CFR 60.3(c)(3)ii. Such certification shall be provided to the coordinator, who will maintain a public record at town hall of all such certifications.
3. An operation and maintenance plan must be submitted in accordance with § 6-444(a)(4). Failure to conduct the annual test installation or submit the annual report required by this plan shall subject the owner to the code enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) after 30 days’ prior written notice sent via certified mail, return receipt requested.
- c. No person may undertake a series of improvements, additions, and/or demolitions that connects two or more existing structures in a manner that evades the requirement to either elevate or dry-floodproof new construction or substantial improvements to nonresidential structures.

(5) ***Space below elevated buildings (A zones).***

New construction or substantial improvements of elevated buildings, both residential and non-residential, may contain enclosed or unenclosed space below the base flood elevation provided it is usable solely for parking, building access, or storage (additional restrictions for coastal high-hazard areas are provided in subsection (7) below).

- a. Enclosed space below the base flood elevation can include up to 100 percent of the space below an elevated building but cannot extend beyond the perimeter of the elevated structure.
- b. Partially or fully enclosed space below the base flood elevation, including garages, must be wet-floodproofed, designed to preclude finished living space below the base flood elevation, and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls below the base flood elevation.
- c. The following requirements apply to all new construction and substantial improvements below elevated buildings in A zones:
 1. Designs for complying with these requirements must meet the following minimum criteria or be certified by a registered professional engineer or architect as providing equivalent automatic equalization of hydrostatic flood forces:
 - a- A minimum of two openings shall be provided for any enclosed space having a total net area of not less than one square inch for every square foot of enclosed space subject to flooding;
 - b- The bottom of all openings shall be no higher than one foot above highest adjacent grade; and
 - c- Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

Technical guidance in meeting these requirements may be found in FEMA's *Technical Bulletin 1-93*.

2. Electrical, plumbing, and other utility connections below the base flood elevation must be designed and constructed so that floodwaters cannot infiltrate or accumulate within the component or group of components. Technical guidance in meeting these requirements may be found in *Protecting Building Utilities From Flood Damage*, FEMA Publication 348.
3. Access to the enclosed space below elevated buildings shall be the minimum necessary to allow for:
 - a- Parking of vehicles (garage or other overhead doors), and
 - b- External entries including access for storage (no more than one standard exterior door with no more than a single door opening of up to 36 inches in each of the four exterior walls, or windowless double exterior doors with no more than 72 inches of opening in each exterior wall), and
 - c- Internal entry doors to the living space (access to stairway or elevator from parking and/or storage space).
4. The interior portion of any enclosed space below elevated buildings may not be temperature-controlled and must be constructed and finished only with wall, floor, and ceiling materials that comply with all provisions of § 6-472(5). Interior partitions are limited to separating parking spaces from building access or storage spaces.
5. All structural and non-structural components must be constructed of materials that are durable, resistant to flood forces, and resistant to deterioration caused by repeated inundation by flood water. Technical guidance in meeting this requirement may be found in FEMA's *Technical Bulletin 2-93*. Technical guidance in meeting this requirement for elevators may be found in FEMA's *Technical Bulletin 4-93*.

6. These provisions apply to space below the base flood elevation to be used for parking, building access, or storage. Other uses proposed for wet-floodproofed space may be approved by variance as provided in § 6-446(e). Examples could include functionally dependent facilities, historic buildings, and utility structures.
7. Any application for a garage or other fully enclosed space formed by exterior walls below the base flood elevation must be accompanied by a signed and notarized acknowledgment of the limitations on allowable uses of the enclosed space that applied when building permits were obtained, using a form provided by the coordinator. This agreement shall be recorded in the official record books in the office of the clerk of the circuit court to provide additional notice of these limitations to future purchasers.
- d. All electrical, air conditioning, or heating equipment is elevated above the base flood elevation or floodproofed in accordance with § 6-472(5)c.2); and
- e. Openings to equalize hydrostatic pressure during a flood are provided in conformance with § 6-472(5)b.1; and
- f. All structural and non-structural components below base flood elevation are constructed of materials that are durable, resistant to flood forces, and resistant to deterioration caused by repeated inundation by flood water. Technical guidance in meeting this requirement may be found in FEMA's *Technical Bulletin 2-93*.
- g. For accessory structures located in coastal high-hazard zones (V zones), the following additional requirements also apply:
 1. Only breakaway walls may be used below the base flood elevation.
 2. The structure must be constructed with a piling or column foundation system that is adequately embedded to resist scour and lateral deflection.
 3. Floor slabs may not be structurally attached to pilings or columns and must be located at existing grade.
 4. The lowest horizontal structural member of roof systems, including plates and beams connecting the pilings or columns, must be placed at or above the base flood elevation.

(6) **Accessory structures.** Accessory structures may be exempted from meeting the elevation requirements only if:

- a. The structure is securely anchored to resist flotation or lateral movement and offers the minimum resistance to the flow of floodwaters; and
- b. The total cost of the structure does not exceed 10% of the market value of the principal building, or the following amounts, whichever is greater:
 1. \$16,000 for a single-family dwelling unit or other single unit.
 2. \$32,000 for a two-family dwelling unit.
 3. \$50,000 for a multiple-family building, hotel/motel, or commercial establishment.

These dollar amounts may be increased each year beginning January 1, 2008 by the percentage increase of the Consumer Price Index–All Urban Consumers (CUP-U), All Items, U.S. City Average (maintained by the Bureau of Labor Statistics); and

- c. The structure is used exclusively for nonhabitable recreational, security, or storage purposes and not used as offices, kitchens, or living space; and

(7) **Coastal high-hazard areas (V zones).**

Certain areas of the town are designated as coastal high-hazard areas (V zones) because they have special flood hazards associated with wave wash. In V zones, the following additional provisions shall apply to all construction including both residential and commercial buildings:

- a. All new construction shall be located landward of the reach of the mean high tide line and landward of the 1978 coastal construction control line except as provided in § 6-366.
- b. All new construction and substantial improvements shall be elevated so that the lowest supporting horizontal member, excluding pilings or columns, is located at or above the base flood elevation level, with all space below the lowest supporting member open so as not to impede the flow of water. Breakaway walls may be permitted and must be designed to wash away in the event of abnormal wave action in accordance with the remainder of this subsection.
- c. Improvements that do not exceed the 50 percent threshold for being classified as a substantial improvement must have any additional enclosed floor space elevated to or above the structure's existing lowest floor.
- d. All new construction and substantial improvements shall be securely anchored on pilings or columns.
- e. All pilings and columns and the attached structures shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components. The anchoring and support system shall be designed with wind and water loading values as required by the Florida Building Code and the base flood event respectively.
- f. Compliance with the provisions contained in subsections (7)b, d, and e of this section shall be certified by a registered professional engineer or architect.
- g. The use of fill as structural support is prohibited.
- h. Man-made alterations to sand dunes and mangrove stands that would increase potential flood damage are prohibited.
- i. Nonsupporting breakaway walls, latticework or decorative screening shall be allowed below the base flood elevation provided it is not part of the structural support of the building and is designed so as to break away, under abnormally high tides or wave action, without damage to the structural integrity of the building on which it is to be used, and provided the following design specifications are met:
 1. Design safe loading resistance of each wall shall be not less than ten and not more than 20 pounds per square foot; or
 2. If more than 20 pounds per square foot, a registered professional engineer or architect shall certify that the design wall collapse would result from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Water loading values shall be those associated with the base flood. Wind loading values shall be those required by the Florida Building Code.
- j. If breakaway walls are utilized, such enclosed space must not be used for human habitation and must be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Space enclosed by latticework and breakaway walls in a V zone is subject to the same limitations as to size, usage, and formal acknowledgments that apply below base flood elevation in an A zone, as provided in subsection (5) above.
- k. Prior to construction, plans for any structure that will have breakaway walls must be submitted to the coordinator for approval.
 1. Any alteration, repair, reconstruction, or improvement to a structure shall not enclose the space below the lowest floor

except with breakaway walls, and except as provided for in the remainder of this subsection.

- m. The placement of manufactured homes is prohibited. A replacement recreational vehicle may be placed in an existing recreational vehicle park, provided the mobility standards of § 6-472(3)a. are met.
- n. Electrical, plumbing, and other utility connections are prohibited below the base flood elevation except where components must be extended below the base flood elevation for service connections or code compliance (such components must be designed and constructed so that floodwaters cannot infiltrate or accumulate within the components). Technical guidance in meeting these requirements may be found in *Protecting Building Utilities From Flood Damage*, FEMA Publication 348.

Sec. 6-473. Reserved.

Sec. 6-474. Standards for subdivision proposals.

(a) All subdivision proposals shall be consistent with the need to minimize flood damage.

(b) All subdivision proposals shall have public utilities and facilities such as sewers, electrical and water systems located and constructed to minimize flood damage.

(c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(d) Base flood elevation data shall be provided for all subdivision and development proposals.

CHAPTERS 7--9 RESERVED