



PLANNING & DEVELOPMENT DEPARTMENT COMMUNITY DEVELOPMENT BOARD STAFF REPORT

MEETING DATE: September 18, 2018
AGENDA ITEM: G.1.
CASE: TA2018-07004
ORDINANCE NO.: 9189-18
REQUEST: To amend the City of Clearwater's Community Development Code to repeal and replace Chapter 51 and amend Chapter 47 to adopt new floodplain management regulations utilizing the Florida Department of Emergency Management's (FDEM) model ordinance
INITIATED BY: City of Clearwater, Planning and Development Department

BACKGROUND:

Proposed Ordinance 9189-18 represents the first significant update to the City of Clearwater's floodplain management regulations since they were adopted into the City's Code of Ordinances in 1980. The City manages and regulates activities and development in its floodplains through provisions in Chapter 51. Flood Damage Prevention, and to a lesser degree in Chapter 47. Buildings and Building Regulations, both of which were transitioned to the City's Community Development Code years ago. Since then, a few minor amendments have been made, but the majority of the regulations remain unchanged.

The primary reason for updating the floodplain management regulations is to ensure that the City's regulations are in compliance with and consistent with the *Florida Building Code* (FBC). When the 2010 edition of the FBC became effective March 15, 2012, it resulted in local floodplain management regulations and ordinances conflicting with or duplicating parts of the FBC. The Florida Department of Emergency Management (FDEM) developed a model ordinance approved by The Federal Emergency Management Agency (FEMA) which incorporates the updated FBC requirements and satisfies the requirements of the National Flood Insurance Program (NFIP). In addition to being approved by FEMA, FDEM's model ordinance was reviewed by the Building Officials Association of Florida as well as the Florida Floodplain

Managers Association. This model ordinance provided the base for Ordinance 9189-18 which proposes to repeal and replace Chapter 51. Flood Damage Prevention, and to amend portions of Chapter 47. Building and Building Regulations, of the Community Development Code. Staff modified the model ordinance to address City-specific needs.

Participation in the NFIP is based on an agreement between local communities and the federal government which states that if a community will adopt and enforce a floodplain management ordinance to reduce future flood risks to new construction in Special Flood Hazard Areas (SFHA), the federal government will make flood insurance available within the community as a financial protection against flood losses. Proposed Ordinance 9189-18 incorporates additional requirements for the purposes of participating in the Community Rating System (CRS) and to gain points and reduce flood insurance rates. These proposed amendments could save residents on insurance premiums from not only an improved CRS score, but also reduced rates based on the lower risk to a residence. Section 553.73(5), F.S., allows for local adoption of higher standards as technical amendments to the FBC without sunset every 3 years.

Staff presented several options for more stringent regulations for City Council direction at their November 13, 2017 Work Session. City Council directed staff to incorporate an increase to the design flood elevation (discussed as freeboard), but to not move forward with modifications to the City's current substantial improvement/damage and cumulative improvement/damage provisions.

Staff has included certain provisions related to the addition of Coastal A Zones on the preliminary flood maps received from FEMA this year. Coastal A Zone is that portion of the Special Flood Hazard Area that is subject to waves with heights of between 1.5 and 3 feet during a 1% annual chance storm. This area is landward of the V Zone and seaward of the line known as the Limit of Moderate Wave Action (LiMWA). The proposed changes are not required, but do yield significant points towards a lower CRS score, and are included for City Council's consideration.

ANALYSIS:

The proposed amendments to the Community Development Code include the repeal and replace of Chapter 51. The new Chapter 51 is organized into three Articles, the contents of which are further subdivided into Divisions. The Ordinance addresses many sections addressed by the current ordinance but reorganizes it and includes new requirements or sections that were not previously within the City's Ordinance, as well as revisions to processes such as the permitting process. The following outlines generally what is covered by each of the Articles. A summary of those higher standards that are proposed which would make the City eligible for additional CRS

points if adopted is provided. Proposed amendments to Chapter 47 and the FBC are also described below.

Chapter 51 Article I. Administration (Pages 2-14 of the Ordinance):

Article I establishes that the Floodplain Management Ordinance is intended to be administered and enforced in conjunction with the *Florida Building Code*, and applies to flood hazard areas. The duties and powers of the floodplain administrator, which the Ordinance proposes would be the Community Development Coordinator, are defined.

This Article also establishes the requirement of permits for any development activity within the scope of the Ordinance. In order to be consistent with state statute, permits shall include a condition that all other applicable permits, including state and federal, are obtained before the start of the permitted development. Issuance of a permit on the part of the City does not give the applicant a right to a state or federal permit, nor does it create any liability for the City should the applicant fail to obtain the necessary approvals or permits from those agencies.

Article I sets forth exemptions, application procedures, site plan requirements, rules for inspections, and the process for variances. Lastly, this Article establishes what constitutes a violation as well as the authority of the Floodplain Administrator to serve notice of violation.

Chapter 51 Article II. Definitions (Pages 14-20 of the Ordinance):

Article II includes the definitions for terms that specifically apply to this Ordinance. It should be noted here that this proposed Ordinance does not include a definition for “freeboard” which is commonly understood to be a factor of safety of additional height above the required base flood elevation. Instead, the term “design flood elevation” conveys the actual requirement for additional elevation.

- Inclusion of the following new terms in the definition section: actual cash value; adverse impact; alteration of a watercourse; ASCE 24; Coastal A Zone; coastal construction control line; compensatory excavation; critical facility; declaration of land restriction (nonconversion agreement); design flood; design flood elevation; encroachment; existing building and existing structure; Federal Emergency Management Agency (FEMA); flood damage-resistant materials; flood hazard area; floodplain; Floodplain Administrator; floodway, regulatory; floodway encroachment analysis; Florida Building Code (FBC); hazardous material; historic structure; Letter of Map Change (LOMC); light-duty truck; park trailer; special flood hazard area; watercourse.
- Deletion of the following terms in the definition section: addition (to an existing building); area of shallow flooding; area of special flood hazard; breakaway wall; elevated building; elevation; flood hazard boundary map; floor; habitable floor; mean sea

level; nonconforming structure; North American Vertical Datum (NAVD); ready for highway use.

- More substantial modifications to the following terms in the definition section: market value (expanded definition); new construction (change to earlier date); new manufactured home park or subdivision (change to earlier date); sand dunes (expanded definition); substantial improvement (expanded definition).

Chapter 51 Article III. Flood Resistant Development (Pages 20-27 of the Ordinance):

Article III establishes the requirements for flood resistant development including limitations on development specifically in floodways, isolated wetlands and preservation areas, as well as where compensatory started is required for development outside of floodways. It includes additional requirements for buildings, structures and facilities that would otherwise be exempt from the FBC, including structures seaward of the Coastal Construction Control Line, and critical facilities in the 500-year flood. Requirements for subdivisions, site improvements and utilities, manufactured homes, recreational vehicles and park trailers, the placement of underground and above-ground tanks, and hazardous materials are all governed by this Article. Lastly, it includes general requirements for other development including fences, retaining walls, sidewalks, roads and watercourse crossings, parking pads, enclosed floors landings, decks and similar nonstructural uses, nonstructural fill, in both regulatory floodways and coastal high hazard areas.

Higher CRS-Related Standards

Proposed Ordinance 9189-18 includes the following higher standards, which if adopted, would make the City eligible for additional CRS points:

- Requirement for an additional foot of design flood elevation above the requirements of FBC (Elevation requirements, throughout): Additional elevation added to the Base Flood Elevation is called freeboard and creates the Design Flood Elevation. This creates a margin of protection to account for waves and debris during flood events.
- Requirement for a nonconversion agreement for enclosure limits (Sec. 47.054): Limiting enclosures below the base flood elevation protects the structural integrity of the building from wave action and hydrostatic pressure and discourages property owners from storing valuables and hazardous items in that area.
- Increased elevation for critical facilities in the 500-year floodplain (Sec. 51.1003): Protecting critical facilities to higher levels reduces the likelihood of damage and improves the community's ability to respond to the needs of citizens during a disaster.
- Regulation of Coastal A Zone to V Zone Standards (Secs. 51.1303, 51.1605, 51.1606, 51.1607, and 51.1608; FBC technical amendments): Regulating the Coastal A Zone to Zone V standards protects buildings and infrastructure from a known breaking wave.

Chapter 47 Buildings and Building Regulations (Pages 28-31 of the Ordinance)

Amendments to Chapter 47, Buildings and Building Regulations are proposed to adopt consistent language with proposed Chapter 51, specifically regarding minimum floor elevations as well as adoption and enforcement.

Additionally, a new Section 47.054 makes administrative and technical amendments to the FBC addressing multiple disciplines (e.g., Residential, Existing Building, and Building) to be consistent with the amendments of Chapter 51. More specifically, the proposed amendments to the FBC include: requiring declaration of land restriction (nonconversion agreement) for residential (one- and two-family) buildings; revisions to substantial improvement definition to incorporate when the one-year period begins, bringing consistency throughout City codes; removing exception in ASCE 24 by disallowing stem walls in Coastal A Zone; amending elevation requirements to require elevation to or above the base flood elevation plus two feet, where one foot was previously required; and requiring open foundations in the Coastal A zone.

The latest edition of the FBC requires an additional one foot of design flood elevation. (It should be noted that freeboard is the commonly used term; however, the official regulatory term is design flood elevation.) The proposed ordinance will apply an additional one foot of “freeboard”, raising the design flood elevation by an additional one foot for a total of two feet. This can vary based on building type, zone and other factors.

CRITERIA FOR TEXT AMENDMENTS:

CDC Section 4-601 sets forth the procedures and criteria for reviewing text amendments. All text amendments must comply with the following:

1. The proposed amendment is consistent with and furthers the goals, policies and objectives of the Comprehensive Plan.

A review of the Clearwater Comprehensive Plan identified the following goals, objectives and policies which will be furthered by the proposed Code amendments:

Policy D.3.3.6 Limit development that will result in building(s) constructed within/or over stormwater retention/detention ponds, streams or channels. All wetlands, streams, channels, or other hydrologic features, whether wetlands, ponds or bodies of water having intrinsic hydrologic, biologic and zoological functions with no distinction made in regard to its status to whether it is man-made or natural shall be considered for a Preservation Land Use Plan classification to ensure protection from development.

Policy D.3.3.7 Continue active participation and cooperation with the National Flood Insurance Program and the Florida Emergency Management Agency for

the purpose of recognizing flood prone areas, and establishing abatement programs that endeavor toward a reduction in damages and losses due to flooding.

- Goal E.1. Management of Clearwater’s coastal storm area shall provide for the long-term accessibility, safety, economic viability, neighborhood stability, and environmental integrity of these unique resources.
- Objective E.1.1 Clearwater shall continue to protect beaches and dunes by use of the State Coastal Construction Control Line as the building and land alteration setback line for purposes of administering the Community Development Code. The Florida Building Code, Federal Emergency Management Agency (FEMA) regulations, and City coastal construction regulations will continue to govern the structural integrity of new buildings.
- Goal E.2 New Development, redevelopment, and investment in public facilities, utilities, and infrastructure shall be managed and regulated to reduce flood risk in the coastal areas resulting from high-tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea level rise and to reduce losses due to flooding and claims made under flood insurance policies issued in this state.
- Objective E.2.1 Development and redevelopment in the City shall be planned and managed to reduce risk and losses due to flooding resulting from high-tide events, storm surge, flash floods, stormwater runoff, and the related impacts of sea level rise.
- Policy E.2.1.1 Development and redevelopment plans and proposals in the coastal storm area shall be reviewed for compliance with the goals, objectives and policies of the Comprehensive Plan and other appropriate plans and references, including Beach by Design: A Preliminary Design for Clearwater Beach and Design Guidelines, the City’s National Flood Insurance Policy (NFIP), Community Rating System (CRS) Program, and Floodplain Management Plan.
- Policy E.2.1.2 The flood-resistant construction requirements in the Florida Building Code and applicable floodplain management regulations set forth in 44 C.F.R. part E – 6 60, or more stringent controls, shall continue to be applied to development and redevelopment in the coastal storm area.
- Policy E.2.1.5 The City shall grant building permits in compliance with the rules of FEMA.
- Policy E.2.2.1 The City shall encourage and support hazard mitigation efforts through continuation of the following activities:

- Participation in the National Flood Insurance Program’s Community Rating System;
 - Participation in the Pinellas County’s Local Mitigation Strategy;
 - Administration of building regulations consistent with City and FEMA regulations;
 - Review and implementation of appropriate policies and strategies developed by partner agencies or through interagency hazard assessment and mitigation initiatives;
 - Prohibitions of beach sand dune alterations; and
 - Restriction of development in floodways.
- Policy E.2.2.3 The City will continue to apply building code and land development code requirements to ensure noncompliant structures are brought into conformance with FEMA flood elevations standards or will be flood proofed consistent with FEMA standards.
- Objective E.2.3 Continue to educate the public on flood risks, as well as mitigation strategies and available programs to reduce flood hazards and improve the City’s Community Rating System (CRS) score, which will allow for decreased flood insurance premiums.
- Policy E.2.5.2 Identify and implement adaptation policies to increase community awareness and evaluate the impacts of requiring elevated finished floors, additional freeboard, and wet/dry flood proofing in areas outside designated flood plains but within the designated Adaptation Action Area.
- Policy E.2.6.1 The City shall continue to evaluate opportunities to protect public facilities, infrastructure, and utilities from the impacts of sea level rise.
- Objective E.4.1 Clearwater shall administer land development regulations to protect public and private property and human life from the effects of hurricane winds and flooding.
- Policy E.4.1.4 Encourage more efficient and climate resilient construction practices locally by:
- Evaluating base finish floor elevation standards with respect to projected sea level rise scenarios and flooding potential; and
 - Evaluating extending the City’s cumulative substantial improvement and substantial damage regulation from one-year to a multi-year time period; and
 - Evaluating extending the City’s substantial improvement and substantial damage regulatory threshold to less than 50%.

- Goal E.5 The city shall accomplish post-disaster redevelopment in a manner that shall minimize public and private vulnerability to future disasters.
- Policy E.5.1.3 Immediate repair and clean-up actions after a storm shall be limited to removal of debris, and repair of existing primary structures to allow re-occupancy (repairs to allow re-occupancy shall be considered when damage is limited to less than fifty percent (50%) of the value of the structure prior to damage). Long-term repair and redevelopment shall consist of upgrading structures and accessory facilities to expand habitable space or repair of greater than fifty percent (50%) of the value of the structure prior to damage. Post-disaster redevelopment and long-term repair can only be permitted consistent with the requirements of FEMA and the Florida Statutes.
- Policy E.5.1.6 Repair and rebuilding of critical facilities such as water facilities, sewage treatment plants and lift stations, and other utilities damaged in future storms shall be reconstructed to minimize hurricane and flooding vulnerability.
- Objective F.1. The City shall continue to protect floodplains, drainage ways, and all other natural areas having functional hydrological characteristics.
- Policy F.1.2.1 Any construction in the one hundred (100) year floodplain shall comply with all requirements and standards of the Federal Emergency Management Agency of the Federal Flood Insurance Administration, and the City's building codes.

The City's Comprehensive Plan has always incorporated policies related to limiting development in and the protection of floodplains. As a coastal community, reducing risk and losses due to flooding is imperative to the safety of the City's residents, as well as to the city's long-term economic viability neighborhood stability as stated in Goal E.1. The Comprehensive Plan contains a wide variety of other goals, objectives and policies that reinforce this, as well as the need to continue to comply with the requirements of FEMA and building codes, and to continue to participate in the NFIP. Proposed Ordinance 9189-18 directly implements these goals, objectives and policies by establishing the regulations for all development in the flood hazard areas, consistent with FEMA, FBC and NFIP requirements. As stated in Section 51.003, the intent of the Floodplain Management Ordinance "... and the flood load and flood resistant construction requirements of the Florida Building Code are to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas ..."

In 2017, the City amended its Comprehensive Plan to address the statutory requirements for the 2015 Florida Senate Bill 1094 “Peril of Flood”, many of which were incorporated under a new Goal E.2. Also at that time, Policy E.4.1.4 was added, encouraging more efficient and climate resilient construction practices locally through several means, including *evaluating* base finish floor elevation (i.e. freeboard) standards with respect to sea level rise scenarios and flooding potential, *evaluating* the City’s cumulative substantial improvement and substantial damage regulation from one-year to a multi-year time period, and *evaluating* extending the City’s substantial improvement and substantial damage regulatory threshold to less than 50% [emphasis added]. As part of the analysis for this Ordinance, staff presented information related to the three options for higher regulations referenced in Policy E.4.1.4. City Council provided direction to proceed with an increase to base finish floor elevation but did not want to proceed at this time with changes to the City’s cumulative substantial improvement and substantial damage regulations or to extend the City’s substantial improvement and substantial damage regulatory threshold.

The above referenced goals, objectives and policies of the Comprehensive Plan will be furthered by Ordinance 9189-18.

2. The proposed amendment furthers the purposes of the Community Development Code and other City ordinances and actions designed to implement the Plan.

The proposed text amendment will further the purposes of the CDC in that it will be consistent with the following purposes set forth in CDC Section 1-103:

- Sec. 1-103.A. It is the purpose of this Development Code to implement the Comprehensive Plan of the city; to promote the health, safety, general welfare and quality of life in the city; to guide the orderly growth and development of the city; to establish rules of procedure for land development approvals; to enhance the character of the city and the preservation of neighborhoods; and to enhance the quality of life of all residents and property owners of the city.
- Sec. 1-103.E.2. Protect the character and the social and economic stability of all parts of the city through the establishment of reasonable standards which encourage the orderly and beneficial development of land within the city.
- Sec. 1-103.E.3. Protect and conserve the value of land throughout the city and the value of buildings and improvements upon the land, and minimize the conflicts among the uses of land and buildings.

The amendments proposed by this ordinance will further the above referenced purposes of the Community Development Code by implementing the aforementioned goals, objectives

and policies of the Comprehensive Plan; by establishing reasonable standards which encourage orderly development; and by protecting and conserving the values of land and value of buildings and improvements upon the land in the city. As previously stated, the intent of the Floodplain Management Ordinance "... and the flood load and flood resistant construction requirements of the Florida Building Code are to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas ..." As such, proposed Ordinance 9189-18 furthers the purposes in the CDC.

SUMMARY AND RECOMMENDATION:

The proposed amendment to the Community Development Code is consistent with and will further the goals of the Clearwater Comprehensive Plan and the purposes of the Community Development Code. Based upon the above, the Planning and Development Department recommends **APPROVAL** of Ordinance No. 9189-18 that amends the Community Development Code.

Prepared by Planning and Development Department Staff:



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ATTACHMENTS: Ordinance No. 9189-18
Resume