

ANSWERS TO QUESTIONS: January 20, 2012

ABOUT THE NEW MODEL ORDINANCE AND CODE AMENDMENTS

1. Are we required do anything at all?

Yes. By law, the Florida Building Code (FBC) contains all laws and rules that pertain to and govern the design and construction of buildings (see section 553.73(1)(a), below). This means the flood provisions of the 2010 FBC that govern the flood-resistant design of buildings in mapped flood hazard areas supersede local regulations that are not consistent with the FBC. Most of the differences between the flood provisions of the FBC and local regulations are relatively minor for most buildings. However, that does not alter the fact that the code governs the design of buildings.

The 2010 FBC goes into effect March 15, 2012, which makes it important that coordination is done as quickly as possible. Inconsistencies and possible conflicts occur if local floodplain management regulations are not coordinated. The model ordinance, which also includes language for local administrative and local technical code amendments, is specifically designed to repeal and replace existing regulations, to satisfy the NFIP, to coordinate with the FBC, and to meet the requirements of section 553.73(5), F.S. (next page).

553.73 Florida Building Code.—

(1)(a) The commission shall adopt, by rule pursuant to ss. 120.536(1) and 120.54, the Florida Building Code which shall contain or incorporate by reference all laws and rules which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and enforcement of such laws and rules, except as otherwise provided in this section.

2. Are we required to use the new model?

No, but the model ordinance and code amendments are carefully crafted to meet NFIP requirements and to explicitly coordinate with the 2010 FBC. While the model that DEM prepared is not the only way a community could conceivably achieve NFIP compliance and coordinate with the FBC, technical support will be allocated on a priority basis for the communities that choose to use the model. DEM is not preparing guidance to modify local FPM regulations that were based on a model used by most Florida communities several years ago. At a minimum, the work involves: removing provisions that govern the design of buildings while also recapturing buildings exempt from the building code (required for NFIP compliance); adopting community-specific, building-related higher standards as local technical amendments to the code; adopting variance provisions as local administrative amendments to the code; assigning Building Official duties preferred to be performed by the Floodplain Administrator; and ensuring that every other applicable provision of the NFIP regulations is correctly codified in the local regulations (see 44 CFR Parts 59 and 60).

We believe using the new code-coordinated model is the best way to satisfy all requirements while also improving the rules used to regulate all development in special flood hazard areas. Note that the section 553.73(5), F.S., (next page) was specifically changed to allow local adoption of standards higher than those in the building codes and under most circumstances the local code amendments will not sunset. DEM has prepared language for additional elevation (freeboard) and for cumulative substantial improvement. Please see the Instructions and Notes where other higher standards are listed. Technical support will be provided to draft or review language for higher standards.

3. We recently revised our floodplain ordinance. Why do we have to do it again?

A number of communities revised their floodplain management ordinances in the past few years, either because of revision of the FIRM or because problems were identified during a Community Assistance Visit. Those revisions were driven by FEMA requirements and not related to the need to coordinate with the 2010 FBC. Because of FEMA’s requirements and deadlines, DEM was not able to allow communities to put off those revisions until this new code-coordinated model was available. We appreciate that having to go through the process again not only takes more of your time, but may be difficult to explain to your management and elected officials.

The new model not only is coordinated with the 2010 FBC, it is improved in several respects. Notably, it incorporates floodplain management provisions that are clearer and more detailed, including administrative provisions and requirements for development other than buildings. These provisions are based largely on various FEMA guidance documents which makes it easier for both communities and applicants to apply NFIP-consistent requirements.

4. Our adoption process is lengthy. Can we adopt the ordinance provisions in sections based on our priorities? What about provisions that get CRS credit?

The new model is a package that will repeal and replace existing floodplain management regulations and also adopt local administrative code amendments and local technical code amendments. Because of how all parts are coordinated, we do not believe it could be separated into sections. We understand that local adoption process requirements will control how quickly your community can act. However, it is important to move as quickly as possible to minimize confusion and the likelihood that problematic conflicts would continue to exist between your current regulations (which have requirements for buildings) and the 2010 FBC.

Section 553.73, F.S., was amended in 2010 explicitly to allow communities to retain higher standards, including those adopted for the CRS. Higher standards that are adopted as local technical amendments to the FBC and that satisfy that language do not sunset every three years, as do other local amendments to the FBC.

553.73 Florida Building Code.—

(5) Notwithstanding subsection (4), counties and municipalities may adopt by ordinance an administrative or technical amendment to the Florida Building Code relating to flood resistance in order to implement the National Flood Insurance Program or incentives. Specifically, an administrative amendment may assign the duty to enforce all or portions of flood-related code provisions to the appropriate agencies of the local government and adopt procedures for variances and exceptions from flood-related code provisions other than provisions for structures seaward of the coastal construction control line consistent with the requirements in 44 C.F.R. s. 60.6. A technical amendment is authorized to the extent it is more stringent than the code. A technical amendment is not subject to the requirements of subsection (4) and may not be rendered void when the code is updated if the amendment is adopted for the purpose of participating in the Community Rating System promulgated pursuant to 42 U.S.C. s. 4022, the amendment had already been adopted by local ordinance prior to July 1, 2010, or the amendment requires a design flood elevation above the base flood elevation. Any amendment adopted pursuant to this subsection shall be transmitted to the commission within 30 days after being adopted.