

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AMENDING CHAPTER 34 OF THE CODE OF ORDINANCES ENTITLED "FLOODS" BY AMENDING SECTION 34-125 TO CLARIFY THE FACTORS USED BY THE FLOODPLAIN ADMINISTRATOR IN DETERMINING REPAIR AND IMPROVEMENT VALUE, IN LINE WITH FEMA GUIDELINES; AMENDING SECTION 34-132 BY ADDING "COASTAL A" TO THE DEFINITION OF SPECIAL FLOOD HAZARD AREA, CLARIFYING THE DEFINITION OF "SUBSTANTIAL IMPROVEMENT"; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF INCONSISTENT PROVISIONS; PROVIDING FOR AN EFFECTIVE DATE

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

WHEREAS, the Federal Emergency Management Agency has identified special flood hazard areas within the boundaries of City of Key West and such areas are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare, and

WHEREAS, the City of Key West was accepted for participation in the National Flood Insurance Program on August 5, 1974, and the City Commission desires to continue to meet the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60, necessary for such participation; and

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

WHEREAS, the City Commission finds that changes to the Floodplain Ordinance would promote the health, safety and welfare of the citizens of Key West.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF KEY WEST, FLORIDA:

Section 1: That Section 34-125 of the Code of Ordinances is hereby amended as follows*:

Sec. 34-125. - Duties and powers of the floodplain administrator.

(1) *Designation.* The FEMA Coordinator is designated as the floodplain administrator. The floodplain administrator may delegate performance of certain duties to other employees.

* * * * *

(4) *Substantial improvement and substantial damage determinations.* For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the floodplain administrator, shall:

*(Coding: Added language is underlined; deleted language is ~~struck through~~. Added language for second reading is double-underlined; deleted language is ~~double-struck through~~.)

(a) Estimate the market value, or require the applicant to submit appraisals - not older than one year - of the market value prepared by a qualified independent appraisers, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;

(b) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

(c) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; for proposed work to repair damage caused by flooding, the determination requires evaluation as specified in the definition of "substantial damage"; and

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

(e) When determining costs as described in this subsection, pursuant to FEMA desk reference P-758, the floodplain administrator shall include:

i. Materials, labor, including the estimated value of donated or discounted materials and owner or volunteer labor as explained in Secs. 4.4.4 & 4.4.5 of FEMA desk reference P-758;

ii. Site preparation related to the improvement or repair;

iii. Demolition and construction debris disposal as explained in Sec. 4.4.6 of FEMA desk reference P-758;

iv. Labor and other costs associated with demolishing, moving, or altering building components to accommodate improvements, additions, and making repairs as explained in Secs. 4.4.6 & 4.4.7 of FEMA desk reference P-758;

v. Costs associated with complying with any other regulations or code requirement that is triggered by the work, including costs to comply with the requirements of the Americans with Disabilities Act as explained in Sec. 4.4.8 of FEMA desk reference P-758;

vi. Costs associated with elevating a structure when the proposed elevation is lower than the Base Flood Elevation;

vii. Construction management supervision;

viii. Contractor's overhead and profit;

ix. Sales tax on materials;

x. Structural elements and exterior finishes;

xi. Interior finish elements;

xii. Utility and service equipment;

xiii. In the event of an owner/builder, paragraphs i through xii shall be estimated as fair market value in the City of Key West;

(5) *Modifications of the strict application of the requirements of the Florida Building Code.* The floodplain administrator shall review requests submitted to the building official that seek approval to modify the strict application of the flood load and flood-resistant construction requirements of the Florida Building Code to determine whether such requests require the granting of a variance pursuant to section 34-129 of this ordinance.

* * * * *

Section 2: That Section 34-132 of the Code of Ordinances is hereby amended as follows:

Sec. 34-132- Definitions, specific.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section:

* * * * *

Market value. The price at which a property will change hands between a willing buyer and a willing seller, neither

party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this ordinance, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser, actual cash value (replacement cost depreciated for age and quality of construction), or tax assessment value adjusted to approximate market value by a factor provided by the property appraiser.

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

Special flood hazard area (SFHA). Land in the floodplain subject to a 1% or greater chance of flooding in any given year; area delineated on the Flood Insurance Rate Map as Zone A, AE, A1-30, A99, AR, AO, AH, Coastal A, V, VO, VE, or V1-30.

Start of construction. The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The actual start of construction means either the first placement of permanent construction of a building (including a manufactured

home) on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns.

Permanent construction does not include land preparation (such as clearing, grading, or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. For a substantial improvement, the actual "start of construction" means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building. [Also defined in FBC, B Section 1612.2.]

Structure. For floodplain management purposes:

A structure with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site; or

A manufactured home (a "manufactured home," also known as a mobile home, is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or

A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community's floodplain management and building ordinances or laws.

A gas or liquid storage tank.

Substantial damage. 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. The term also includes flood-related damage sustained by a structure on two separate occasions during a ten-year period for which the cost of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damage occurred, which is known as a "repetitive loss." Accumulated deterioration or decay contributes toward substantial damage.

Substantial improvement. Any combination of repair, reconstruction, rehabilitation, addition, or other improvement or alteration of a building or structure, taking place during a five-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started. For each building or structure, the five-year period begins on the date of the first improvement or repair of that building or structure subsequent to 1986. The five-year period is extended if the improvements are not completed within this time, until all the improvements pass all final inspections. If the structure has incurred "substantial damage," any repairs are considered

substantial improvement regardless of the actual repair work performed. Structures that have been moved, or structures that have new, replaced, or substantially modified foundations are considered to be substantially improved. The term does not, however, include either:

1. Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified and cited by the building a duly authorized city official and that are the minimum necessary to assure safe living conditions, if cited prior to a Building Permit Application.

2. Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved by variance issued pursuant to section 34-129 of this ordinance, unless the building has been moved or the foundation replaced.

Variance. A grant of relief from the requirements of this ordinance, or the flood-resistant construction requirements of the Florida Building Code, which permits construction in a manner that would not otherwise be permitted by this ordinance or the Florida Building Code.

Watercourse. A river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.

Wet Floodproofing. See Floodproofing, Wet.

Section 3: If any section, provision, clause, phrase, or application of this Ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, the remaining provisions of this Ordinance shall be deemed severable therefrom and shall be construed as reasonable and necessary to achieve the lawful purposes of this Ordinance.

Section 4: All Ordinances or parts of Ordinances of said City in conflict with the provisions of this Ordinance are hereby superseded to the extent of such conflict.

Section 5: This Ordinance shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Read and passed on first reading at a regular meeting held
this _____ day of _____, 2017.

Read and passed on final reading at a regular meeting held
this _____ day of _____, 2017.

Authenticated by the presiding officer and Clerk of the
Commission on _____ day of _____, 2017.

Filed with the Clerk _____, 2017.

Mayor Craig Cates	_____
Vice Mayor Clayton Lopez	_____
Commissioner Sam Kaufman	_____
Commissioner Richard Payne	_____
Commissioner Margaret Romero	_____
Commissioner Billy Wardlow	_____
Commissioner Jimmy Weekley	_____

CRAIG CATES, MAYOR

ATTEST:

CHERYL SMITH, CITY CLERK