

ORDINANCE NO. 05-24

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AMENDING THE LAND DEVELOPMENT REGULATIONS OF THE CITY OF DELRAY BEACH CODE OF ORDINANCES, CHAPTER 10, "FLOOD DAMAGE CONTROL DISTRICTS AND COASTAL CONSTRUCTION," ARTICLE 10.1, "ADMINISTRATION," SECTION 10.1.2, "APPLICABILITY," TO REFERENCE THE MOST RECENTLY ADOPTED FLOOD INSURANCE STUDY; AMENDING SECTION 10.1.7, "VARIANCES AND APPEALS," TO REPLACE REFERENCES TO THE BOARD OF ADJUSTMENT FOR APPEALS TO FLOODPLAIN MANAGEMENT REGULATIONS WITH THE APPROPRIATE REVIEWING BODY FOR CONSISTENCY WITH CHAPTER 2 AND UPDATING THE FLORIDA BUILDING CODE CHAPTER CITATION FOR HISTORIC STRUCTURES; AMENDING ARTICLE 10.2, "DEFINITIONS," SECTION 10.2.2, "DEFINITIONS," BY DELETING THE DEFINITIONS FOR "EXISTING MANUFACTURED HOME PARK OR SUBDIVISION," "EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION," AND "NEW MANUFACTURED HOME PARK OR SUBDIVISION," FOR CONSISTENCY WITH STATE FLOODPLAIN REQUIREMENTS FOR ALL MANUFACTURED HOMES, AND BY AMENDING THE DEFINITIONS FOR "COASTAL HIGH HAZARD AREA," "HISTORIC STRUCTURE," AND "MARKET VALUE," TO BE CONSISTENT WITH INDUSTRY STANDARDS; AND AMENDING ARTICLE 10.3, "FLOOD RESISTANT DEVELOPMENT," SECTION 10.3.4, "MANUFACTURED HOMES," TO CREATE A UNIFORM ELEVATION FOR ALL MANUFACTURED HOMES IN FLOOD HAZARD AREAS; PROVIDING A CONFLICTS CLAUSE, A SEVERABILITY CLAUSE, AUTHORITY TO CODIFY, AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Land Development Regulations (the "LDR") of the City of Delray Beach ("City") Code of Ordinances provide authority for the City Commission to amend, change, supplement, or repeal the LDR from time to time; and

WHEREAS, the United States Federal Emergency Management Agency issued a revised Flood Insurance Study for Palm Beach County, Florida and Incorporated Areas, with an effective date of December 20, 2024; and

WHEREAS, the City participates in the National Flood Insurance Program (NFIP) Community Rating System (CRS), a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum program requirements; and

WHEREAS, citizens and property owners in CRS communities can obtain discounted premium rates for flood insurance policies; and

WHEREAS, the City achieved a CRS rating of Class 6; and

WHEREAS, in 2020 the NFIP CRS established certain minimum prerequisites for communities to qualify for or maintain class ratings of Class 8 or higher; and

WHEREAS, to satisfy the prerequisites and maintain the current CRS rating, all manufactured homes installed or replaced in special flood hazard areas must be elevated such that the bottom of the lowest horizontal structural member is at or above the base flood elevation plus one (1) foot or as required by the Florida Building Code, whichever is higher, with additional freeboard elevation is allowed per Section 4.3.4(J)(2); and

WHEREAS, pursuant to Florida Statutes 163.3174(4)(c), the Planning and Zoning Board for the City of Delray Beach, sitting as the Local Planning Agency, considered this item at a public hearing on August 12, 2024, and voted 5 to 0 to recommend approval of the proposed text amendments, finding that the request and approval is consistent with the Comprehensive Plan and meets the criteria set forth in the Land Development Regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF DELRAY BEACH, FLORIDA, AS FOLLOWS:

Section 1. The recitations set forth above are incorporated herein.

Section 2. The City Commission of the City of Delray Beach finds this Ordinance is consistent with the Comprehensive Plan, meets the criteria set forth in the Land Development Regulations, and is in the best interests of the City.

Section 3. Chapter 10, “Flood Damage Control Districts and Coastal Construction,” Article 10.1, “Administration,” Section 10.1.2, “Applicability,” of the Land Development Regulations of the City of Delray Beach, is hereby amended as follows:

Sec. 10.1.2. Applicability.

- (A) ***General.*** Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.
- (B) ***Areas to which the floodplain management regulations apply.*** The Floodplain Management Regulations shall apply to all flood hazard areas within the City of Delray Beach, as established in LDR Section 10.1.2(C).
- (C) ***Basis for establishing flood hazard areas.*** The Flood Insurance Study for Palm Beach County, Florida, and Incorporated Areas dated ~~October 5, 2017~~ December 20, 2024, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are

adopted by reference as a part of ~~this ordinance~~ the Floodplain Management Regulations and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the Delray Beach Building Division, 100 NW 1st Avenue, Delray Beach, Florida.

- (D) ***Submission of additional data to establish flood hazard areas.*** To establish flood hazard areas and base flood elevations, pursuant to LDR Section 10.1.5 the Floodplain Administrator may require submission of additional data. Where field surveyed topography prepared by a Florida licensed professional surveyor or digital topography accepted by the community indicates that ground elevations:
 - (1) Are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as flood hazard area and subject to the requirements of the Floodplain Management Regulations and, as applicable, the requirements of the Florida Building Code.
 - (2) Are above the closest applicable base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the special flood hazard area.
- (E) ***Other laws.*** The provisions of the Floodplain Management Regulations shall not be deemed to nullify any provisions of local, state or federal law.
- (F) ***Abrogation and greater restrictions.*** The Floodplain Management Regulations supersede any LDR Section in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing ordinances including but not limited to land development regulations, zoning ordinances, stormwater management regulations, or the Florida Building Code. In the event of a conflict between the Floodplain Management Regulations and any other ordinance, the more restrictive shall govern. The Floodplain Management Regulations shall not impair any deed restriction, covenant or easement, but any land that is subject to such interests shall also be governed by the Floodplain Management Regulations.
- (G) ***Interpretation.*** In the interpretation and application of the Floodplain Management Regulations, all provisions shall be:
 - (1) Considered as minimum requirements;
 - (2) Liberally construed in favor of the governing body; and
 - (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

Section 4. Chapter 10, “Flood Damage Control Districts and Coastal Construction,” Article 10.1, “Administration,” Section 10.1.7, “Variances and Appeals,” of the Land Development Regulations of the City of Delray Beach, is hereby amended as follows:

Sec. 10.1.7. Variances and appeals.

- (A) **General.** The ~~Board of Adjustment~~ appropriate reviewing body identified in Chapter 2 shall hear and decide on requests for appeals and requests for variances from the strict application of the Floodplain Management Regulations. Pursuant to section 553.73(5), F.S., the ~~Board of Adjustment~~ reviewing body shall hear and decide on requests for appeals and requests for variances from the strict application of the flood resistant construction requirements of the Florida Building Code. This section does not apply to Section 3109 of the Florida Building Code, Building.
- (B) **Appeals.** The ~~Board of Adjustment~~ reviewing body shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the administration and enforcement of the Floodplain Management Regulations. Any person aggrieved by the decision may appeal such decision to the Circuit Court, as provided by Florida Statutes.
- (C) **Limitations on authority to grant variances.** The ~~Board of Adjustment~~ reviewing body shall base its decisions on variances on the technical justifications submitted by applicants, the considerations for issuance in LDR Section 10.1.7(G), ~~the conditions of issuance set forth~~ in LDR Section 10.1.7(H), and the comments and recommendations of the Floodplain Administrator. The ~~Board of Adjustment~~ reviewing body has the right to attach such conditions as it deems necessary to further the purposes and objectives of the Floodplain Management Regulations.
- (D) **Restrictions in floodways.** A variance shall not be issued for any proposed development in a floodway if any increase in base flood elevations would result, as evidenced by the applicable analyses and certifications required in LDR Section 10.1.5(C).
- (E) **Historic buildings.** A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood resistant construction requirements of the Florida Building Code, Existing Building, Chapter ~~44-12~~ Historic Buildings, upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance shall not be granted and the building and any repair, improvement, and rehabilitation shall be subject to the requirements of the Florida Building Code.
- (F) **Functionally dependent uses.** A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in the Floodplain Management Regulations, provided the variance meets the requirements of LDR Section 10.1.7(D), is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.

(G) ***Considerations for issuance of variances.*** In reviewing requests for variances, the ~~Board of Adjustment~~ reviewing body shall consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, the Floodplain Management Regulations, and the following:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
- (4) The importance of the services provided by the proposed development to the community;
- (5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
- (6) The compatibility of the proposed development with existing and anticipated development;
- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
- (8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;
- (9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

(H) ***Conditions for issuance of variances.*** Variances shall be issued only upon:

- (1) Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of the Floodplain Management Regulations or the required elevation standards;
- (2) Determination by the ~~Board of Adjustment~~ reviewing body that:

- (a) Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;
 - (b) The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and ordinances; and
 - (c) The variance is the minimum necessary, considering the flood hazard, to afford relief;
- (3) Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the Office of the Clerk of the Court in such a manner that it appears in the chain of title of the affected parcel of land; and
 - (4) If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the Floodplain Administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25.00 for \$100.00 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

Section 5. Chapter 10, “Flood Damage Control Districts and Coastal Construction,” Article 10.2, “Definitions,” Section 10.2.2, “Definitions,” of the Land Development Regulations of the City of Delray Beach, is hereby amended as follows:

Sec. 10.2.2. – Definitions.

The following words, terms and phrases, when used in this ~~article~~ Chapter, shall have the meanings ascribed to them in this ~~section~~ Section, except where the context clearly indicates a different meaning:

Coastal high hazard area. A special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. ~~Coastal high hazard areas are also referred to as "high hazard areas subject to high velocity wave action" or "V Zones" and are designated on Flood Insurance Rate Maps (FIRM) as Zone V1-V30, VE, or V.~~

Existing manufactured home park or subdivision. ~~A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of~~

streets, and either final site grading or the pouring of concrete pads) is completed before April 9, 1971.

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

Historic structure. Any structure that is determined eligible for the exception to the flood hazard area requirements of the Florida Building Code, Existing Building, Chapter ~~44-12~~ Historic Buildings.

Letter of map change (LOMC). An official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

- (1) **Letter of map amendment (LOMA).** An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
- (2) **Letter of map revision (LOMR).** A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
- (3) **Letter of map revision based on fill (LOMR-F).** A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.
- (4) **Conditional letter of map revision (CLOMR).** A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

~~**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 the Floodplain Management Regulations, 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, is the Actual Cash Value (in-kind replacement cost depreciated for age, wear and tear, neglect, and quality of construction) as determined by a qualified independent appraiser, or tax assessment value adjusted to approximate market value by a factor provided by the County Property Appraiser.~~

~~**New manufactured home park or subdivision.** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after April 9, 1971.~~

Section 6. Chapter 10, “Flood Damage Control Districts and Coastal Construction,” Article 10.3, “Flood Resistant Development,” Section 10.3.4, “Manufactured homes,” of the Land Development Regulations of the City of Delray Beach, is hereby amended as follows:

Sec. 10.3.4. Manufactured homes.

- (A) **General.** All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to section 320.8249, F.S., and shall comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of the Floodplain Management Regulations. If located seaward of the coastal construction control line, all manufactured homes shall comply with the more restrictive of the applicable requirements.
- (B) **Foundations.** All new manufactured homes and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that:
 - (1) In flood hazard areas (Zone A) other than coastal high hazard areas, are designed in accordance with the foundation requirements of the Florida Building Code, Residential Section R322.2 and the Floodplain Management Regulations. ~~Foundations for manufactured homes subject to LDR Section 10.3.4(F) are permitted to be reinforced piers or other foundation elements of at least equivalent strength.~~
 - (2) In coastal high hazard areas (Zone V), are designed in accordance with the foundation requirements of the Florida Building Code, Residential Section R322.3 and the Floodplain Management Regulations.
- (C) **Anchoring.** All new manufactured homes and replacement manufactured homes shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.

(D) ***Elevation.*** ~~Manufactured homes that are placed, replaced, or substantially improved shall comply with LDR Section 10.3.4(E) or 10.3.4(F) as applicable. All manufactured homes that are placed, replaced, or substantially improved in flood hazard areas shall be elevated such that the bottom of the lowest horizontal structural member is at or above the base flood elevation plus one (1) foot or as required by the Florida Building Code, as amended, whichever is higher. Additional freeboard elevation is allowed per Section 4.3.4(J)(2).~~

~~(E) ***General elevation requirement.*** Unless subject to the requirements of LDR Section 10.3.4(F), all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home park or subdivision; or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A) or Section R322.3 (Zone V).~~

~~(F) ***Elevation requirement for certain existing manufactured home parks and subdivisions.*** Manufactured homes that are not subject to LDR Section 10.3.4(E) including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, shall be elevated such that either the:~~

~~(1) Bottom of the frame of the manufactured home is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (Zone A) or Section R322.3 (Zone V); or~~

~~(2) Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 36 inches in height above grade.~~

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

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

Section 7. All ordinances or parts of ordinances in conflict herewith be, and the same are, hereby repealed.

Section 8. Should any section or provision of this Ordinance or any portion thereof, any paragraph, sentence, or word be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder hereof as a whole or part thereof other than the part declared to be invalid.

Section 9. Specific authority is hereby given to the City Clerk to codify this Ordinance.

Section 10. This Ordinance shall become effective immediately upon its passage on second and final reading.

PASSED AND ADOPTED in regular session on second and final reading on this _____ day of _____, 2024.

ATTEST:

Alexis Givings, Interim City Clerk

Thomas F. Carney, Jr., Mayor

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

First Reading _____

Second Reading _____