

LEE COUNTY ORDINANCE NO. 22-30

AN ORDINANCE AMENDING THE LEE COUNTY LAND DEVELOPMENT CODE, CHAPTER 6 (BUILDINGS AND BUILDING CODE REGULATIONS); PERTAINING TO COUNTY FLOOD REGULATIONS AND 50 PERCENT BUILD BACK RULE; PERTAINING TO MODIFICATIONS THAT MAY ARISE FROM CONSIDERATION AT PUBLIC HEARING; PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

THE SPECIFIC LDC PROVISIONS THAT WILL BE AMENDED ARE: SEC. 6-119 (SUBSTANTIAL IMPROVEMENT); SEC. 6-411 (GENERAL); SEC. 6-424 (SUBSTANTIAL IMPROVEMENT AND SUBSTANTIAL DAMAGE DETERMINATIONS); SEC. 6-479 (DEFINITIONS); SEC. 6-493 (ELEVATION); SEC. 6-494 (GENERAL ELEVATION REQUIREMENT); SEC. 6-495 (ELEVATION REQUIREMENT FOR CERTAIN MANUFACTURED HOME PARKS AND SUBDIVISIONS).

WHEREAS, Florida Statutes Section 125.01(1)(h) authorizes counties to establish, coordinate, and enforce zoning regulations necessary for the protection of the public; and,

WHEREAS, the Board of County Commissioners ("Board") adopted the Lee County Comprehensive Plan (Lee Plan), as well as the Lee County Land Development Code which contains regulations applicable to the development of land in Lee County; and,

WHEREAS, Goal 4 of the Lee Plan states: Pursue or maintain land development regulations which protect the public health, safety and welfare, encourage creative site designs and balance development with service availability and protection of natural resources; and,

WHEREAS, Lee County participates in the National Flood Insurance Program and participates in the NFIP's Community Rating System, a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum program requirements, achieving a CRS rating of Class 5; and,

WHEREAS, in 2020 the NFIP Community Rating System established certain minimum prerequisites for communities to qualify for or maintain class ratings of Class 8 or better and to satisfy the prerequisite and for Lee County to maintain the current CRS rating, all manufactured homes installed or replaced in special flood hazard areas must be elevated such that the lowest floors are at or above at least the base flood elevation plus 1 foot, which necessitates modification of the existing requirements; and,

WHEREAS, the Federal Emergency Management Agency revised the Flood Insurance Study for Lee County, Florida, and Incorporated Areas and established a revised effective date for the study; and,

WHEREAS, Hurricane Ian made landfall on September 28<sup>th</sup>, 2022, causing extensive damage to many communities within Lee County, necessitating the need for immediate reconstruction activity; and,

WHEREAS, the Board has heard testimony from local building industry representatives that factors such as the inflated price of building materials and the limited availability of licensed contractors and appraisers are constraining the ability of residents to repair and rebuild their homes and businesses; and,

WHEREAS, the Board has determined that it is in the public interest for recovery from Hurricane Ian to repeal local amendments to the definition for “substantial damage” and the definition for “substantial improvement,” to restore the definitions the basic terms defined by the Florida Building Code and the National Flood Insurance Program, and to modify the definition for “market value” to facilitate recovery; and ,

WHEREAS, the Board of County Commissioners determined that it is in the public interest to amend the floodplain management regulations to better protect owners and occupants of manufactured homes and to continue participating in the Community Rating System at the current class rating; and,

WHEREAS, the Local Planning Agency reviewed the proposed amendments on November 7, 2022, and found them consistent with the Lee Plan, as indicated.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

**SECTION ONE: AMENDMENT TO LDC CHAPTER 6**

Lee County Land Development Code Chapter 6 is amended as follows with strike through identifying deleted text and underline identifying new text.

**CHAPTER 6 – BUILDINGS AND BUILDING REGULATIONS**

**ARTICLE II. – CODES AND STANDARDS**

**DIVISION 3. BUILDING CODE**

**Sec. 6-119. –~~Substantial Improvement.~~Reserved.**

~~Amend FBC, Building Section 1612.2 and Existing Building Section 202, pertaining to the definition of substantial improvement, as follows:~~

~~Substantial improvement. Any combination of repair, reconstruction, rehabilitation, addition, or other improvement 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 the building or structure subsequent to the date specified in the Local Floodplain Management Ordinance. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. 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 by the building official and that are the minimum necessary to assure safe living conditions.~~
- ~~(2) Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure.~~

~~Substantial damage. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. The term also includes buildings and structures that have experienced repetitive loss.~~

## **ARTICLE IV. – FLOOD HAZARD REDUCTION**

### **DIVISION 1. – ADMINISTRATION**

#### **Subdivision II. – Applicability**

##### **Sec. 6-411. – General.**

- (a) Where there is a conflict between a general requirement and a specific requirement, the specific requirement will be applicable.
- (b) This article applies to all flood hazard areas within Lee County, as established in section 6-411(c).
- (c) The Flood Insurance Study for Lee County, Florida and Incorporated Areas, effective ~~August 28, 2008~~ November 17, 2022, 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 article and will serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the Lee County Department of Community Development.

### **Subdivision III. – Duties and Powers of the Floodplain Administrator**

#### **Sec. 6-424. – 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 will:

- (1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, 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 will be the market value before the damage occurred and before any repairs are made;
- (2) 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;
- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; ~~the determination requires evaluation of previous permits issued for improvements and repairs as specified in the definition of "substantial improvement" and previous permits issued for repair of flood-related damage;~~ and
- (4) 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 article is required.

### **DIVISION 2. – DEFINITIONS**

#### **Subdivision I. – General**

#### **Sec. 6-479. – Definitions**

*["Alteration of a watercourse" thru "Existing manufactured home park or subdivision" remain unchanged]*

~~*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).*~~

*["Federal Emergency Management Agency (FEMA)" thru "Manufactured home park or subdivision" remain unchanged]*

~~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 article, 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 (like-kind replacement cost depreciated for age, wear and tear, neglect, and quality of construction) determined by a qualified independent appraiser, or tax assessment value adjusted to approximate market value by a factor provided by the Property Appraiser, whichever is higher.~~

*[“New construction” thru “Recreational vehicle” remain unchanged]*

~~Repetitive loss property. 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 flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred. A property for which two or more National Flood Insurance Program losses of at least \$1000.00 each have been paid out within any 10-year period.~~

*[“Sand dunes” thru “Start of construction” remain unchanged]*

~~Substantial damage. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. The term also includes buildings and structures that have experienced repetitive loss.~~

~~Substantial improvement. Any combination of repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure for all but repetitive loss properties as defined by FEMA, 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. If a building or structure is identified as part of a repetitive loss property by FEMA, the costs of any repair, reconstruction, rehabilitation, addition or other improvement of a building or structure will be considered cumulatively over the prior twelve-month period. For each building or structure, the five-year period begins on the date of the first improvement or repair of the building or structure subsequent to November 18, 1992. If the structure has incurred "substantial damage," any repairs are considered substantial improvement regardless of the actual repair work performed. 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 by the building official and that are the minimum necessary to assure safe living conditions.~~
- ~~(2) Any alteration of a historic structure provided the alteration will not preclude the structure's continued designation as a historic structure.~~

*[Remainder of Section is unchanged]*

## DIVISION 3. – FLOOD RESISTANT DEVELOPMENT

### Subdivision IV. – Manufactured Homes

#### Sec. 6-493. – Elevation.

~~Manufactured homes that are placed, replaced, or substantially improved must comply with section 6-494 or 6-495, as applicable. All manufactured homes that are placed, replaced, or substantially improved in flood hazard areas shall be elevated such that:~~

- ~~(1) The lowest floor is at or above the base flood elevation plus one foot in flood hazard areas other than coastal high hazard areas, as defined by FEMA.~~
- ~~(2) The bottom of frame is at or above the base flood elevation plus one foot in coastal high hazard areas, as defined by FEMA.~~

#### Sec. 6-494. – General elevation requirement. Reserved.

~~Unless subject to the requirements of section 6-495, 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, must be elevated such that the top or the lowest floor 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).~~

#### Sec. 6-495. – Elevation requirement for certain manufactured home parks and subdivisions. Reserved.

~~Manufactured homes that are not subject to section 6-494, 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, must be elevated such that either the:~~

- ~~(1) Top or the lowest floor 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.~~

## **SECTION TWO: CONFLICTS OF LAW**

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

## **SECTION THREE: SEVERABILITY**

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will become a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such unconstitutional provision was not included.

## **SECTION FOUR: CODIFICATION AND SCRIVENER'S ERRORS**

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code. Sections of this ordinance can be renumbered or relettered and the word "ordinance" can be changed to "section", "article," or other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Administrator, County Manager or his designee, without the need for a public hearing.

## **SECTION FIVE: MODIFICATION**

It is the intent of the Board of County Commissioners that the provisions of this Ordinance may be modified as a result of consideration that may arise during Public Hearing(s). Such modifications shall be incorporated into the final version.

## **SECTION SIX: EFFECTIVE DATE**

This ordinance will take effect upon its filing with the Office of the Secretary of the Florida Department of State. The provisions of this ordinance will apply to all projects or applications subject to the LDC unless the development order application for such project is complete or the zoning request is found sufficient before the effective date.

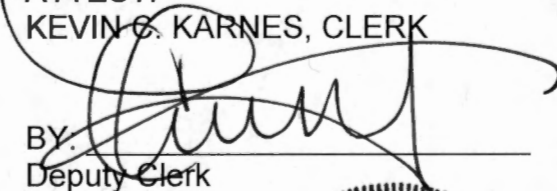
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Commissioner Hamman made a motion to adopt the foregoing ordinance, seconded by Commissioner Ruane. The vote was as follows:

Kevin Ruane	Aye
Cecil L Pendergrass	Aye
Raymond Sandelli	Absent
Brian Hamman	Aye
Mike Greenwell	Aye


DULY PASSED AND ADOPTED this 8<sup>th</sup> day of November, 2022.

ATTEST:  
KEVIN G. KARNES, CLERK

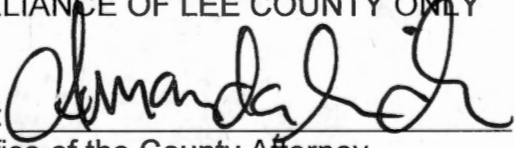
BY:   
Deputy Clerk



BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY:   
Cecil L Pendergrass, Chair

APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY

BY:   
Office of the County Attorney





FLORIDA DEPARTMENT *of* STATE

**RON DESANTIS**  
Governor

**CORD BYRD**  
Secretary of State

November 14, 2022

Honorable Kevin Karnes  
Clerk of the Circuit Courts  
Lee County  
Post Office Box 2469  
Fort Myers, Florida 33902-2469

Attn: Chris Jagodzinski

Dear Kevin Karnes:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Lee County Ordinance No. 22-30, which was filed in this office on November 10, 2022.

Sincerely,

Anya Owens  
Program Administrator

ACO/rra

**RECEIVED**

*By Chris Jagodzinski at 9:11 am, Nov 14, 2022*