




TO: KRISTE KIRSTEIN, CRS COORDINATOR  
FROM: Peter Sweeney, City Attorney   
RE: Floodplan Management Ordinance Amendment  
CAO RLS File: No. 19-138  
DATE: June 7, 2019

I have reviewed the Request for Legal Services related to the proposed Floodplain Management Ordinance Amendment. It is approved as to Form and Correctness and I have signed in the appropriate signature spaces.

If you have any further questions, please contact this office via phone or email.

Thank you.

PS/mm

cc: Nicholas C. Mimms, P.E., City Manager  
Paul Thomas, Building Official  
Linda Cox, City Clerk



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CITY ATTORNEY USE ONLY

Date Received:	
Assigned To:	
File:	19-138
Due Date:	
Hours:	

RECEIVED  
MAY 21 2019  
City Attorney *[Signature]*

Received  
MAY 21 2019  
City of Fort Pierce  
City Manager's Office

**REQUEST FOR LEGAL SERVICES**

**TO:** PETER SWEENEY, CITY ATTORNEY

**SUBMITTED BY:** KRISTIE KIRSTEIN, CRS COORDINATOR *[Signature]*

**THROUGH:** PAUL THOMAS, BUILDING OFFICIAL *[Signature]*

**CITY MANAGER AUTHORIZATION:** NICHOLAS C. MIMMS, P.E., CITY MANAGER *[Signature]*

**RE:** FLOODPLAIN MANAGEMENT ORDINANCE AMENDMENT

**DATE:** MAY 16, 2019

Service Required: (please circle or underline)		
<u>Review Documents</u>	Draft Document	Written Opinion Requested
Attend Meetings	Advise	Other: _____
Upon review and/or "Approval as to Form and Correctness," the Department submitting the RLS is responsible for placement of any related item on a Commission or Board Agenda.		

- Brief statement of the nature of the request or problem:** This amendment is to delete references to the Construction Board of Adjustment and Appeals, amend section 5-316.102 to correct the effective date of the initial flood insurance rate maps and to clarify market value determination criteria.
- Discussion of the implications and the possible impact if not apparent from preceding information:** N/A
- Time considerations and their significance:** At your earliest convenience
- Are City funds required? If so, list approvals obtained for expenditure of funds:** No
- Factual background:** N/A
- List and/or attach all related documents and known authorities (e.g., statute, ordinance, resolution, administrative code, legal case, RFP, bidder's response, contract, lease, letter, memorandum, prior legal opinion, deed, etc.):** N/A

7. Identify prior legal assistance on this or a related matter and the attorney who handled it:  
N/A

8. If this is a request for review of a contract, provide the following:

a. List of individuals who have read and approved the business terms and conditions of the contract and confirmed the ability to carry out the terms of the contract as they apply to the City: N/A

b. Insurance requirements that differ from the City's template insurance terms: N/A

CITY ATTORNEY USE ONLY			
Routed for Review	Date	Response Deadline	Response

ORDINANCE NO. 19- \_\_\_\_\_

AN ORDINANCE BY THE CITY COMMISSION OF THE CITY OF FORT PIERCE, FLORIDA, BY AMENDING **CHAPTER 5, ARTICLE X (A)** OF THE CODE OF ORDINANCES ENTITLED "FLOODPLAIN MANAGEMENT", SECTION 5-315.107 BY DELETING REFERENCES TO THE CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS; AMENDING SECTION 5-316.102 CORRECTING THE EFFECTIVE DATE OF THE INITIAL FLOOD INSURANCE RATE MAP AND TO CLARIFY MARKET VALUE DETERMINATION CRITERIA; REPEALING ALL ORDINANCES AND PARTS THEREOF IN CONFLICT; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, the City of Fort Pierce was accepted for participation in the National Flood Insurance Program on December 1, 1977 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, allows for local technical amendments to the Florida Building Code that provide for more stringent requirements than those specified in the Code and allows adoption of local administrative and local technical amendments to the Florida Building Code to implement the National Flood Insurance Program and incentives; and

**WHEREAS**, on March 18, 2019, there was adopted Ordinance 19-05 which ordinance established Chapter 5, Article X(A) entitled "Floodplain Management" therein providing definitions that shall be amended for compliance with the Florida Division of Emergency Management; and

**WHEREAS**, on March 18, 2019, there was adopted Ordinance 19-10 which ordinance repealed former § 5-1.140 pertaining to the Construction Board of Adjustment and Appeals therein abolishing the Fort Pierce Construction Board of Adjustment and Appeals.

**NOW, THEREFORE, BE IT ORDAINED** by the City Commission of Fort Pierce, Florida:

**SECTION 1.** Chapter 5 Article X (A) Division I, Sec. 5-315.107 "Variances and Appeals", of the Code of Ordinances, is here by amended to read as follows:

*Florida Statutes*

**Sec. 5-315.107.1 General.** ~~The Construction Board of Adjustment and Appeals or~~ Special Magistrate shall hear and decide on requests for appeals and requests for variances from the strict application of this ordinance. Pursuant to section 553.73(5), ~~§~~, the ~~Construction Board of Adjustment and Appeals or~~ Special Magistrate 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.

**Sec. 5-315.107.2 Appeals.** ~~The Construction Board of Adjustment and Appeals or~~ Special Magistrate 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 this ordinance. Any person aggrieved by the decision may appeal such decision to the Circuit Court, as provided by Florida Statutes.

**Sec. 5-315.107.3 Limitations on authority to grant variances.** ~~The Construction Board of Adjustment and Appeals or~~ Special Magistrate shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in Section 5-315.107.7 of this ordinance, the conditions of issuance set forth in Section 5-315.107.8 of this ordinance, and the comments and recommendations of the Floodplain Administrator and the Building Official. ~~The Construction Board of Adjustment and Appeals or~~ Special Magistrate has the right to attach such conditions as it deems necessary to further the purposes and objectives of this ordinance.

**Sec. 5-315.107.7 Considerations for issuance of variances.** In reviewing request for variances, the ~~Construction Board of Adjustment and Appeals or~~ Special Magistrate shall consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this ordinance, 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.

**Sec. 5-315.107.8 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 size, configuration, or topography of the site limit compliance with any provision of this ordinance or the required elevation standards;
- (2) Determination by the ~~Construction Board of Adjustment and Appeals~~ or Special Magistrate 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~~ <sup>from</sup> 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 for \$100 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

**SECTION 2.** Chapter 5 Article X (A) Division II, Sec. 5-316.102 "Definitions", of the Code of Ordinances, is here by amended to read as follows:

**Existing building and existing structure.** Any buildings and structures for which the "start of construction" commenced before ~~June 15, 1984~~ December 1, 1977. [Also defined in FBC.B.Section 202]

**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 ~~June 15, 1984~~ December 1, 1977.

**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 (specifying it is based on pre-damage condition and all valuation data and/or appraisals shall be dated within six months of the permit application date), ~~Actual Cash Value~~ actual cash value estimate (replacement cost depreciated for age and quality of construction) prepared by a qualified independent appraiser, or current tax assessment building valuation data (as maintained in the records of the Office of the Property Appraiser of St. Lucie County) plus 20 percent. When a state of emergency has been declared, the Building Official may allow the valuation data and/or appraisal to be dated up to a maximum of one year prior of the date the emergency is declared.

**New construction.** For the purposes of administration of this ordinance and the flood resistant construction requirements of the Florida Building Code, structures for which the "start of construction: commenced on or after ~~June 15, 1984~~ December 1, 1977 and includes any subsequent improvements to such structures.

**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 ~~June 15, 1984~~ December 1, 1977.

**Qualified independent appraiser.** An appraiser performing an appraisal assignment as defined in Florida State Statute 475, Part II entitled "Appraisers".

**SECTION 3.** The provisions of this Ordinance are declared to be severable and if any section, sentence, clause, or phrase of this Ordinance shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

**SECTION 4.** All ordinances or parts of ordinances in conflict herewith are and the same shall be repealed

and shall be of no further course or effect whatsoever.

**SECTION 5.** This ordinance is and the same shall become effective immediately upon final passage hereof.

**APPROVED AS TO FORM AND CORRECTNESS:**

Peter Sweeny  
City Attorney *Sweeny*

STATE OF FLORIDA  
ST. LUCIE COUNTY

WE, THE UNDERSIGNED, Mayor, Commissioner and the City Clerk of the City of Fort Pierce, Florida, do hereby certify that the foregoing and above Ordinance No. \_\_\_\_\_ was duly advertised by title only in the Fort Pierce Tribune on \_\_\_\_\_; copy of said ordinance was made available at the office of the City Clerk to the public upon request; said ordinance was duly introduced, read by title only, and passed on first reading by the City Commission of the City of Fort Pierce, Florida, on \_\_\_\_\_; and was duly introduced, read by title only, and passed on second and final reading on \_\_\_\_\_, by the City Commission of the City of Fort Pierce, Florida.

IN WITNESS HEREWITH, we hereunto set our hands and affix the Official Seal of the City of Fort Pierce, Florida, this the \_\_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
Linda Hudson, Mayor

ATTEST:

\_\_\_\_\_  
Linda Cox, City Clerk

ORDINANCE NO. 19- \_\_\_\_\_

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**APPROVED AS TO FORM AND CORRECTNESS:**

\_\_\_\_\_  
Peter Sweeney  
City Attorney

STATE OF FLORIDA  
ST. LUCIE COUNTY

WE, THE UNDERSIGNED, Mayor, Commissioner and the City Clerk of the City of Fort Pierce, Florida, do hereby certify that the foregoing and above Ordinance No. \_\_\_\_\_ was duly advertised by title only in the Fort Pierce Tribune on \_\_\_\_\_; copy of said ordinance was made available at the office of the City Clerk to the public upon request; said ordinance was duly introduced, read by title only, and passed on first reading by the City Commission of the City of Fort Pierce, Florida, on \_\_\_\_\_; and was duly introduced, read by title only, and passed on second and final reading on \_\_\_\_\_, by the City Commission of the City of Fort Pierce, Florida.

IN WITNESS HEREWITH, we hereunto set our hands and affix the Official Seal of the City of Fort Pierce, Florida, this the \_\_\_\_\_ day of \_\_\_\_\_ 2019.

\_\_\_\_\_  
Linda Hudson, Mayor

ATTEST:

\_\_\_\_\_  
Linda Cox, City Clerk