

ORDINANCE 16 - ____

AN ORDINANCE OF THE MAYOR AND TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AMENDING ORDINANCES 06-10, 09-06 AND 10-04 RELATING TO “FLOODPLAIN MANAGEMENT REGULATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, in order to obtain coverage under the National Flood Insurance Program (“NFIP”) the Town must adopt Floodplain Management Regulations; and

WHEREAS, in consultation with the Federal Emergency Management Agency (“FEMA”), the Federal Agency which administers the NFIP, Town Staff recommends additional changes to the Town’s regulations in order to fully comply with NFIP standards; and

WHEREAS, the Town Council wishes to make the following technical changes to Ordinance 06-10, which governs Floodplain Management; and

WHEREAS, on January 18, 2009 Town Council adopted Ordinance 09-06 to revise the definitions and amend Ordinance 06-10; and

WHEREAS, on March 17, 2010 Town Council adopted Ordinance 10-04 to amend Towns Ordinance 09-06; and

WHEREAS, the Town Council finds that this Ordinance is in the best interest of the health, safety and welfare of the residents of the Town.

NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CUTLER BAY, FLORIDA, AS FOLLOWS¹:

Section 1. Recitals Adopted. That each of the above stated recitals is hereby adopted and confirmed.

Section 2. Amendment to Ordinances 06-10, 09-06 and 10-04 of the Town Code. The Town Council of the Town of Cutler Bay hereby amends Ordinances 06-10, 09-04 and 10-04 of the Town Code of Ordinances as follows:

FLOODPLAIN MANAGEMENT REGULATIONS²

¹ Coding: underlined words are additions to existing text, ~~struck through~~ words are deletions from existing text.

SECTION A. STATUTORY AUTHORIZATION

ARTICLE 1. INTENT AND PURPOSE

The Legislature of the State of Florida has authorized and delegated in Florida Statutes Chapter 166, the responsibility to local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the Council of Cutler Bay does hereby adopt the following floodplain management regulations.

SECTION B. FINDINGS OF FACT

- (1) The flood hazard areas of Cutler Bay are subject to periodic inundation, which results 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.
- (2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages.

SECTION C. STATEMENT OF PURPOSE

It is the purpose of this ordinance to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights and velocities;
- (2) Require that uses vulnerable to floods including facilities which serve such uses be protected against flood damage throughout their intended life span;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters;
- (4) Control filling, grading, dredging and other development which may increase erosion or flood damage; and
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

SECTION D. OBJECTIVES

The objectives of this ordinance are to:

- (1) Protect human life, health and to eliminate or minimize property damage;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, roadways, and bridges and culverts located in floodplains;
- (6) Maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and
- (7) Ensure that potential homebuyers are notified that property is in a flood hazard area.

ARTICLE 2. DEFINITIONS

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

Accessory structure (Appurtenant structure) means a structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

Appeal means a request for a review of the Floodplain Administrator's interpretation of any provision of this ordinance or a request for a variance.

Area of shallow flooding means a designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard is the land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This term is synonymous with the phrase "special flood hazard area."

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year (also called the “100-year flood” and the “regulatory flood”). Base flood is the term used throughout this ordinance.

Base Flood Elevation means the water-surface elevation associated with the base flood.

Basement means that portion of a building having its floor sub-grade (below ground level) on all sides.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or the supporting foundation system.

Building – see **Structure**.

Coastal high hazard area means an area of special flood hazard 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. The area is designated on the FIRM as Zone V1 – V30, VE, or V.

Critical facility means a facility for which the impact of even a slight chance of flooding might be too great, including, but not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, and installations which produce, use, or store hazardous materials or hazardous waste.

Crown of road (center line) shall mean a line running parallel with the highway right-of-way which is half the distance between the extreme edges of the official right-of-way width as shown on a map approved by the Department of Public Works.

Datum A reference surface used to ensure that all elevation records are properly related. Many communities have their own datum that was developed before there was a national standard. The current national datum is the National Geodetic Vertical Datum (NGVD) of 1929, which is expressed in relation to mean sea level, or the North American Vertical Datum (NAVD) of 1988.

Development means any man-made change to improved or unimproved real estate, including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or storage of materials or equipment.

Elevated building means a non-basement building built to have the lowest floor elevated above the ground level by foundation walls, posts, piers, columns, pilings, or shear walls.

Encroachment means the advance or infringement of uses, plant growth, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Existing Construction means, for the purposes of floodplain management, structures for which "the start of construction" commenced before the date of the initial Flood Insurance Rate Map (FIRM). Existing construction, means for the purposes of determining rates structures for which the "start of construction" commenced May 25, 2006. This term may also be referred to as "existing structures".

Existing manufactured home park or subdivision means 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 May 25, 2006.

Expansion to an existing manufactured home park or subdivision means 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).

Flood or Flooding means:

- (a) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (i) The overflow of inland or tidal waters.
 - (ii) The unusual and rapid accumulation or runoff of surface waters from any source.
 - (iii) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a) (2) of this definition and are akin to a river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.
- (b) The collapse or subsidence of land along a shore of a lake or other body of water as the result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a) (1) of this definition.

Flood Boundary and Floodway Map (FBFM) means the official map of the community on which the Federal Emergency Management Agency (FEMA) has delineated the areas of special flood hazard and regulatory floodways.

Flood Hazard Boundary Map (FHBM) means an official map of the community, issued by FEMA, where the boundaries of the areas of special flood hazard have been identified as only Approximate Zone A.

Flood Insurance Rate Map (FIRM) means an official map of the community, issued by FEMA, which delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) is the official hydraulic & hydrologic report provided by FEMA. The study contains an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and other flood-related erosion hazards. The study may also contain flood profiles, as well as the FIRM, FHBM (where applicable), and other related data and information.

Floodplain means any land area susceptible to being inundated by water from any source (see definition of “flooding”).

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain Administrator is the individual appointed to administer and enforce the floodplain management regulations of the community.

Floodplain management regulations means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power which control development in flood-prone areas. This term describes Federal, State of Florida, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Floodproofing means any combination of structural and non-structural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Floodway fringe means that area of the floodplain on either side of the regulatory floodway.

Freeboard means the additional height, usually expressed as a factor of safety in feet, above a flood level for purposes of floodplain management. Freeboard tends to compensate for many unknown factors, such as wave action, blockage of bridge or culvert openings and hydrological

effect of urbanization of the watershed, that could contribute to flood heights greater than the height calculated for a selected frequency flood and floodway conditions.

Functionally dependent use means a use that cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

Hardship as related to variances from this ordinance means the exceptional hardship associated with the land that would result from a failure to grant the requested variance. The community requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

Historic Structure means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register:
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic or a district preliminarily determined by the Secretary to qualify as a registered historic district:
- (c) Individually listed on the Florida inventory of historic places, which has been approved by the Secretary of the Interior; or
- (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - (i) By the approved Florida program as determined by the Secretary of the Interior, or
 - (ii) Directly by the Secretary of the Interior.

Lowest adjacent grade means the lowest elevation, after the completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the nonelevation design standards of this ordinance.

Mangrove Stand means an assemblage of mangrove trees which are mostly low trees noted for a copious development of interlacing adventitious roots above ground and which contain one or more of the following species: Black mangrove (*Avicennia Nitida*); red mangrove (*Rhizophora mangle*); white mangrove (*Languncularia Racemosa*); and buttonwood (*Conocarpus Erecta*).

Manufactured home means a building, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value means the building value, which is the property value excluding the land value and that of the detached accessory structures and other improvements on site (as agreed to between a willing buyer and seller) as established by what the local real estate market will bear. Market value can be established by an independent certified appraisal (other than a limited or curbside appraisal, or one based on income approach), Actual Cash Value (replacement cost depreciated for age and quality of construction of building), or adjusted tax-assessed values.

Mean Sea Level means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this ordinance, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929, or North American Vertical Datum (NAVD) of 1988.

National Geodetic Vertical Datum (NGVD) of 1929 means a vertical control used as a reference for establishing varying elevations within the floodplain.

New Construction means, for floodplain management purposes, any structure for which the "start of construction" commenced on or after the effective date of the initial floodplain management code, ordinance, or standard based upon specific technical base flood elevation data that establishes the area of special flood hazard - include only one date. The term also includes any subsequent improvements to such structures. For flood insurance rates, structures for which the start of construction commenced on or after May 25, 2006, and includes any subsequent improvements to such structures, are considered new construction.

New manufactured home park or subdivision means 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 the effective date of the first floodplain management code, ordinance or standard.

North American Vertical Datum (NAVD) of 1988 means a vertical control used as a reference for establishing varying elevations within the floodplain.

On Site Retention shall mean the containment and disposal of stormwater runoff by means other than positive drainage within the limit of the property and/or project site.

Free of Obstruction means any type of lower area enclosure or other construction element that will obstruct the flow of velocity water and wave action beneath the lowest horizontal structural member of the lowest floor of an elevated building during a base flood event is not allowed. This requirement applies to the structures in velocity zones (V-Zones).

Program deficiency means a defect in the community's floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations or of the standards required by the National Flood Insurance Program.

Public safety and nuisance means anything which is injurious to safety or health of the entire community or a neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Recreational vehicle means a vehicle that is:

- (a) Built on a single chassis;
- (b) 400 square feet or less when measured at the largest horizontal projection;
- (c) Designed to be self-propelled or permanently towable by a light duty truck; and
- (d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Remedy a deficiency or violation means to bring the regulation, procedure, structure or other development into compliance with State of Florida, Federal or local floodplain management regulations; or if this is not possible, to reduce the impacts of its noncompliance. Ways the impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

Repetitive Loss means flood related damage sustained on a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Sand dune means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Shallow flooding means the same as area of shallow flooding.

Special flood hazard area means the same as area of special flood hazard.

Start of construction For other than new construction or substantial improvements under the Coastal Barrier Resources Act P. L. 97-348, includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main building. For 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.

Storm cellar means a place below grade used to accommodate occupants of the structure and emergency supplies as a means of temporary shelter against severe tornadoes or similar windstorm activity.

Structure means for floodplain management purposes a walled and roofed building, including gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure during a five-year period whereby the cumulative cost of restoring the structure to its before damaged condition would equal or exceed 44 percent of the market value of the structure before the damage occurred. This term also includes repetitive loss structures. See definition of substantial improvement for an explanation of the procedure to be utilized for the purpose of calculating substantial damage.

Substantial improvement means any combination of reconstruction, rehabilitation, addition, or other improvement of a structure taking place during a five-year period, the cumulative cost of

which equals or exceeds 44 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures that have incurred "repetitive loss" or "substantial damage" regardless of the actual repair work performed. This term does not, however, include any repair or improvement of a structure to correct existing violations of State of Florida or local health, sanitary, or safety code specifications, which have been identified by the local code enforcement official prior to the application for permit for improvement, and which are the minimum necessary to assure safe living conditions. For the purposes of calculating substantial improvements and/or substantial damage, the following procedure shall be utilized:

- (a) The costs of the improvements or repairs for a project shall be obtained from one of the following sources:
 - (i) Detailed cost estimate of the improvements or repairs from the licensed general contractor of record.
 - (ii) A cost estimate prepared using professional construction estimation software, such as R.S. Means or the Federal Emergency Management Agency's substantial damage estimation program, as prepared by a licensed architect or engineer.

- (b) Any one of the following sources will be considered acceptable estimates of market value:
 - (i) An independent appraisal by a professional appraiser licensed by the State of Florida. The appraisal must exclude the value of the land and not use the "income capitalization approach" which bases value on the use of the property, not the structure.
 - (ii) Detailed estimates of the structure's actual cash value, which shall equal the replacement cost of the building, minus depreciation percentage based on age and condition.
 - (iii) Property appraisals used for tax assessment purposes with an adjustment recommended by the Miami-Dade County Property Appraiser to reflect market conditions (adjusted assessed value).

- (c) For structures in which the substantial improvement or substantial damage percentage is greater than or equal to 30 percent, a more precise market value estimate may be required.

Substantially improved existing manufactured home parks or subdivisions is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 44 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

Variance is a grant of relief from the requirements of this ordinance.

Violation means the failure of a structure or other development to be fully compliant with the requirements of this ordinance. A structure or other development without the elevation

certificate, other certifications, or other evidence of compliance required in this ordinance is presumed to be in violation until such time as that documentation is provided.

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 or the North American Vertical Datum (NAVD) of 1988, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

ARTICLE 3. GENERAL PROVISIONS

SECTION A. LANDS TO WHICH THIS ORDINANCE APPLIES

This ordinance shall apply to all areas ~~of special flood hazard~~ within the jurisdiction of the Council of the Town of Cutler Bay.

SECTION B. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD

The areas of special flood hazard identified by the Federal Emergency Management Agency in the Flood Insurance Study (FIS) for Miami-Dade County, dated March 2, 1994, with the accompanying maps and other supporting data, and any subsequent revisions thereto, are adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study and Flood Insurance Rate Map are on file at the Office of the Town Clerk, Town of Cutler Bay.

SECTION C. DESIGNATION OF FLOODPLAIN ADMINISTRATOR

The Council of Cutler Bay hereby appoints the Town Manager to administer and implement the provisions of this ordinance and is herein referred to as the Floodplain Administrator.

SECTION D. ESTABLISHMENT OF DEVELOPMENT PERMIT

A development permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities.

SECTION E. COMPLIANCE

No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this ordinance and other applicable regulations.

(1) Prohibitions.

- (a) It shall be unlawful and a violation of this ordinance to encroach on or into the floodway including secondary and private canals without the review and approval

of the Towns Public Works Department. Submittal must provide proof that there will be no change in flood elevations and flow through the canal as result of the encroachment.

- (b) It shall be unlawful and a violation of this ordinance to dispose of any rainwater, stormwater runoff or other liquids by allowing or causing the same flow on, over or across any adjoining property, ROW, easement, and drainage canal either private or public. Exceptions to this condition may be allowed on a limited basis for necessary repairs to swimming pools, based on a case by case review and approval of the Towns Public Works Department as long as necessary treatment of the water meets the minimum standards as established by Miami- Dade County DERM, SFWMD or the governing agency.

SECTION F. ABROGATION AND GREATER RESTRICTIONS

This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

SECTION G. INTERPRETATION

In the interpretation and application of this ordinance 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 of Florida statutes.

SECTION H. WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Council of Cutler Bay or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

SECTION I. PENALTIES FOR VIOLATION

Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall be punishable for a non-criminal violation. Any person who

violates this ordinance or fails to comply with any of its requirements shall, upon adjudication therefore, be fined not more than \$500, and in addition, shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Floodplain Administrator from taking such other lawful actions as is necessary to prevent or remedy any violation.

ARTICLE 4. ADMINISTRATION

SECTION A. PERMIT PROCEDURES

Application for a Development Permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- (1) Application Stage:
 - (a) Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all buildings;
 - ~~(b) Elevation in relation to mean sea level to which any non-residential building will be flood proofed;~~
 - (b) Certificate from a registered professional land surveyor ~~engineer or architect~~ that any the non-residential flood proofed building residential structure will meet the flood proofing criteria in Article 4, Section A (2) and Article 5, Section B (2) highest of the following criteria:
 - (i) Base Flood Elevation as depicted on the current FIRM plus one foot (one foot of freeboard)
 - (ii) Highest Adjacent Crown of road plus one foot
 - (iii) Back of sidewalk elevation plus one foot
 - (iv) Street abutting property plus one foot
 - (v) Highest edge of cross section of road plus one foot
 - ~~(c) Certificate from a registered~~ Certificate from a registered professional land surveyor that any non-residential structure will meet the highest of the following criteria:
 - (i) Base Flood Elevation as depicted on the current FIRM plus one foot (one foot of freeboard)
 - (ii) Highest Adjacent Crown of road plus one foot

- (d) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and
- (e) Elevation in relation to mean sea level of the bottom of the lowest horizontal structural member of the lowest floor and provide a certification from a registered engineer or architect indicating that they have developed and or reviewed the structural designs, specifications and plans of the construction and certified that are in accordance with accepted standards of practice in Coastal High Hazard Areas.

(2) Construction Stage:

Upon placement of the lowest floor, or flood-proofing by whatever construction means, or bottom of the lowest horizontal structural member it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the NGVD or NAVD elevation of the lowest floor or flood-proofed elevation, or bottom of the lowest horizontal structural member as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood proofing is utilized for a particular building said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the lowest floor and flood-proofing elevation survey data submitted. The permit holder immediately and prior to further progressive work being permitted to proceed shall correct violations detected by such review. Failure to submit the survey or failure to make said corrections required hereby, shall be cause to issue a stop-work order for the project.

SECTION B. DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR

Duties of the Administrator shall include, but are not be limited to:

- (1) Review permits to assure sites are reasonably safe from flooding;
- (2) Review all development permits to assure that the permit requirements of this ordinance have been satisfied;
- (3) Advise permittee that additional Federal, State of Florida, or local permits may be required, and if such additional permits are necessary, especially as it relates to Chapters 161.053; 320.8249; 320.8359; 373.036; 380.05; 381.0065, and 553, Part IV, Florida Statutes, require that copies of such permits be provided and maintained on file with the development permit;
- (4) Notify adjacent communities, the Department of Community Affairs, Division of Emergency Management, the South Florida Water Management District, the Federal

- Emergency Management Agency and other Federal and/or State of Florida agencies with statutory or regulatory authority prior to any alteration or relocation of a watercourse;
- (5) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained;
 - (6) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (A-Zones) or bottom of the lowest horizontal structural member of the lowest floor (V-Zones) of all new or substantially improved buildings, in accordance with Article 5, Section B (1) and (2) and Section E (2), respectively;
 - (7) Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved buildings have been flood-proofed, in accordance with Article 5, Section B (2);
 - (8) Review certified plans and specifications for compliance. When flood-proofing is utilized for a particular building, certification shall be obtained from a registered engineer or architect certifying that all areas of the building below the required elevation are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy in compliance with Article 5, Section B (2) of this ordinance. In Coastal High Hazard Areas, certification shall be obtained from a registered professional engineer or architect that the building is designed and securely anchored to pilings or columns in order to withstand velocity waters and hurricane wave wash. Additionally in Coastal High Hazard Areas, if the area below the lowest horizontal structural member of the lowest floor is enclosed, it may be done so with open wood lattice and insect screening or with non-supporting breakaway walls that meet the standards of Article 5, Section E (6) of this ordinance;
 - (9) Interpret the exact location of boundaries of the areas of special flood hazard. When there appears to be a conflict between a mapped boundary and actual field conditions, the Floodplain Administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article;
 - (10) When base flood elevation data or floodway data have not been provided in accordance with Article 3, Section B, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State of Florida, or any other source, in order to administer the provisions of Article 5;
 - (11) Coordinate all change requests to the FIS, FIRM and FBFM with the requester, State of Florida, and FEMA, and
 - (12) Where Base Flood Elevation is utilized, obtain and maintain records of lowest floor and floodproofing elevations for new construction and substantial improvements in accordance with Article 5, Sections B (1) and (2), respectively.

ARTICLE 5. PROVISIONS FOR FLOOD HAZARD REDUCTION

SECTION A. GENERAL STANDARDS

In all areas of special flood hazard, all development sites including new construction and substantial improvements shall be reasonably safe from flooding, and meet the following provisions:

- (1) New construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable State of Florida requirements for resisting wind forces;
- (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- (4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (5) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (6) Adequate drainage shall be provided to reduce exposure to flood hazards;
- (7) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;
- (8) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- (9) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
- (10) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance shall meet the requirements of “new construction” as contained in this ordinance;

- (11) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this ordinance shall be undertaken only if said non-conformity is not furthered, extended, or replaced;
- (12) All applicable additional Federal, State of Florida, and local permits shall be obtained and submitted to the Floodplain Administrator. Copies of such permits shall be maintained on file with the development permit. State of Florida permits may include, but not be limited to the following:
 - (a) South Florida Water Management District(s): in accordance with Chapter 373.036 Florida Statutes, Section (2)(a) – Flood Protection and Floodplain Management.
 - (b) Department of Community Affairs: in accordance with Chapter 380.05 F.S. Areas of Critical State Concern, and Chapter 553, Part IV F.S., Florida Building Code.
 - (c) Department of Health: in accordance with Chapter 381.0065 F.S. Onsite Sewage Treatment and Disposal Systems.
 - (d) Department of Environmental Protection, Coastal Construction Control Line: in accordance with Chapter 161.053 F.S. Coastal Construction and Excavation.
- (13) Standards for Subdivision Proposals and other Proposed Development (including manufactured homes):
 - (a) All subdivision proposals shall be consistent with the need to minimize flood damage;
 - (b) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;
 - (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
 - (d) When a structure is partially located in a special flood hazard area, the entire structure shall meet the provisions for new construction and substantial improvements.
 - (e) When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the entire structure shall meet the provisions for the more restrictive flood hazard risk zone and the highest base flood elevation.

SECTION B. SPECIFIC STANDARDS.

In all A-Zones where base flood elevation data have been provided (Zones AE, A1-30, and AH), as set forth in Article 3, Section B, the following provisions, in addition to those set forth in Article 5, Section A, shall apply:

- (1) *Residential Construction.* All new construction or substantial improvement of any residential building (including manufactured home) shall have the lowest floor, including basement, mechanical and utility equipment and ductwork, elevated to no lower than one foot above the base flood elevation, beginning March 1, 2009. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate automatic equalization of flood hydrostatic forces on both sides of the exterior walls shall be provided in accordance with standards of Article 5, Section B (3).
- (2) *Non-Residential Construction.* All new construction or substantial improvement of any commercial, industrial, or non-residential building (including manufactured home) shall have the lowest floor, including basement, mechanical and electrical equipment and ductwork, elevated to no lower than one foot above the base flood elevation, beginning March 1, 2009. All buildings located in A-Zones may be flood-proofed, in lieu of being elevated, provided that all areas of the building components (including mechanical and electrical equipment and ductwork) below the base flood elevation plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied using the FEMA Floodproofing Certificate. Such certification along with the corresponding engineering data, and the operational and maintenance plans shall be provided to the Floodplain Administrator.
- (3) *Elevated Buildings.* ~~New construction or substantial improvements of elevated buildings that include enclosed areas formed by foundation and other exterior walls below the lowest floor elevation shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.~~ shall prohibit enclosures below the elevated floor to protect the integrity of the building from wave action or from hydrostatic pressure. Enclosures include, but are not limited to solid walls, Breakaway walls, louvers, screening, or lattice work or any other kind of obstruction below the elevated floor or below the Base Flood Elevation for the zone in which the building is located. This means that an enclosure on one side (or any side) of the lower level of an elevated building is also prohibited.
 - (a) ~~Designs for complying with this requirement must be certified by a professional engineer or architect and meet or exceed the following minimum criteria: Areas below the elevated flood may be used only for parking of vehicles, access to the building or limited storage of materials used in connection with the building.~~

- ~~(i) Provide openings in each wall having a total net area of not less than 50% of the total wall area subject to flooding and shall equal or exceed one square inch for each square foot of enclosed area.~~
- ~~(ii) Provide at least one opening per wall and the bottom elevation of all such openings shall be no higher than one foot above grade; and~~
- ~~(iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they provide the required net area of the openings and permit the automatic flow of floodwaters in both directions.~~
- ~~(b) Enclosed areas below the lowest floor shall solely be used for parking of vehicles, storage, and building access. Access to the enclosed area shall be minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door), or entry to the living area (stairway or elevator); and~~
- ~~(c) The interior portion of such enclosed area shall not be finished or partitioned into separate rooms.~~

(4) Standards for Manufactured Homes and Recreational Vehicles

- (a) All manufactured homes that are placed, or substantially improved within Zones A1-30, AH, and AE, on sites (i) outside of an existing manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, the lowest floor be elevated on a permanent foundation to no lower than one foot above the base flood elevation, beginning March 1, 2009, and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- (b) All manufactured homes to be placed or substantially improved in an existing manufactured home park or subdivision within Zones A-1, AH, and AE, that are not subject to the provisions of paragraph 4 (a) of this Section, must be elevated so that either:
 - (i) The lowest floor of the manufactured home is elevated to no lower than one foot above the base flood elevation, or
 - (ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength that are no less than 48 inches in height above the grade and securely anchored to an adequate foundation system to resist flotation, collapse, and lateral movement.
- (c) Placement of manufactured homes is prohibited within the regulatory floodway, except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of Article 5, Section A(2),

the elevation standards of Article 5, Section B (1) and (2), and the encroachment standard of Article 5, Section B (7) (a), are met.

- (d) All recreational vehicles placed on sites within Zones A1-30, AH, and AE must either:
 - (i) Be on the site for fewer than 180 consecutive days,
 - (ii) Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions), or
 - (iii) Meet all the requirements for new construction, including anchoring and elevation requirements in accordance with Section B, provisions (4) (a) and (b) of this Article.
- (5) Adequate drainage paths around structures shall be provided on slopes to guide water away from structures.
- (6) Standards for waterways with established Base Flood Elevations, without Regulatory Flood ways located within the areas of special flood hazard established in Article 3, Section B, where streams exist for which base flood elevation data has been provided by the Federal Emergency Management Agency without the delineation of the regulatory floodway (Zones AE and A1-30), the following additional provisions, in addition to those set forth in Article 5, Section A, shall also apply.
 - (a) Until a regulatory floodway is designated, no new construction, substantial improvements, or other development including fill shall be permitted within the areas of special flood hazard, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community.
 - (b) Development activities which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the developer or applicant first applies – with the community’s endorsement – for a conditional FIRM revision, and receives the approval of the Federal Emergency Management Agency.
- (7) Standards for waterways with established Base Flood Elevations and Floodways located within areas of special flood hazard established in Article 3, Section B, are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles and have significant erosion potential, the following additional provisions shall also apply:

- (a) Prohibit encroachments, including fill, new construction, substantial improvements and other developments within the regulatory floodway unless certification (with supporting technical data) by a registered professional engineer is provided through hydraulic and hydrologic analysis performed in accordance with standard engineering practice demonstrating that encroachments would not result in any increase in flood levels during occurrence of the base flood discharge.
 - (b) Prohibit the placement of manufactured homes (mobile homes), except in an existing manufactured homes (mobile homes) park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of Article 5, Section A (2), and the elevation standards of Article 5, Section B (4)(A) and (B), and the encroachment standards of Article 5, Section B (7) (a), are met.
 - (c) Development activities including new construction and substantial improvements that increase the water surface elevation of the base flood by more than one (1) foot may be allowed, provided that the developer or applicant first applies – with the community’s endorsement – for a conditional FIRM revision, and receives the approval of FEMA.
 - (d) When fill is proposed, in accordance with the permit issued by the Florida Department of Health, South Florida Water Management District and/or Miami Dade County Department of Environmental Resource Management, within the regulatory floodway, the development permit shall be issued only upon demonstration by appropriate engineering analysis that the proposed fill will not increase the water surface elevation of the base flood in accordance with Article 5, Section (7) (a).
- (8) For all structures located seaward of the Coastal Construction Control Line (CCCL), the lowest floor of all new construction and substantial improvements shall be elevated to the regulatory flood elevation established by the Florida Department of Environmental Protection or the base flood elevation established by FEMA plus one foot in accordance with Article 3, Section B, whichever is higher. All non-elevation design requirements of Article 5, Section E shall apply.
- (9) *Buildings on Fill.* New and substantially improved buildings may be constructed on permanent fill in accordance with the following:
- (a) The lowest floor, including basement, mechanical and utility equipment and ductwork, shall be a minimum of one-foot above the base flood elevation; and
 - (b) The fill shall be placed in layers no greater than one foot deep before compacting and shall extend at least ten (10) feet beyond the foundation of the building before sloping below the base flood elevation; and

- (c) The top of the fill shall be above the base flood elevation. However, the ten foot minimum required in Article 5, Section B(9)(b) may be waived if a structural engineer certifies an alternative method to protect the building from damage due to erosion, scour, and other hydrodynamic forces; and
 - (d) The fill shall not adversely affect the flow or surface drainage from or onto neighboring properties.
- (10) *Critical Facilities.* New and substantially improved critical facilities shall be constructed on properly compacted fill and have the lowest floor (including basement) elevated to at least one (1) foot above the elevation of the 0.2% annual chance (500-year) flood (this regulation also applies to all X zone areas).

SECTION C. SPECIFIC STANDARDS FOR A-ZONES WITHOUT BASE FLOOD ELEVATIONS AND REGULATORY FLOODWAYS.

Located within the areas of special flood hazard established in Article 3, Section B, where there exist A Zones for which no base flood elevation data and regulatory floodway have been provided or designated by the Federal Emergency Management Agency, the following provisions shall apply:

- (1) Require standards of Article 5, Section A.
- (2) Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data.
- (3) The Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State of Florida, or any other source, in order to administer the provisions of this ordinance. When such data is utilized, provisions of Article 5, Section B shall apply. The Floodplain Administrator shall:
 - (a) Obtain the elevation (in relation to the mean sea level) of the lowest floor (including the basement) of all new and substantially improved structures,
 - (b) Obtain, if the structure has been floodproofed in accordance with the requirements of Section B (2) of Article 5, the elevation in relation to the mean sea level to which the structure has been floodproofed, and
 - (c) Maintain a record of all such information.
- (4) Notify, in riverine situations, adjacent communities, the State of Florida, Department of Community Affairs, NFIP Coordinating Office, the South Florida Water Management District, and the Miami-Dade County Department of Environmental Resource Management prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.

- (5) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- (6) Manufactured homes shall be installed using methods and practices that minimize flood damage. They must be elevated and anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State of Florida and local anchoring requirements for resisting wind forces.
- (7) When the data is not available from any source as in paragraph 3 of this Section, the lowest floor of the structure shall be elevated to no lower than three feet above the highest adjacent grade.

SECTION D. STANDARDS FOR AO-ZONES

Located within the areas of special flood hazard established in Article 3, Section B, are areas designated as shallow flooding areas. These areas have flood hazards associated with base flood depths of one to three feet, where a clearly defined channel does not exist and the path of flooding is unpredictable and indeterminate; therefore, the following provisions, in addition to those set forth in Article 5, Section A, apply:

- (1) All new construction and substantial improvements of residential structures in all AO Zones shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Flood Insurance Rate Map plus one foot. If no flood depth number is specified, the lowest floor, including basement, shall be elevated to no less than three feet above the highest adjacent grade.
- (2) All new construction and substantial improvements of non-residential structures shall:
 - (a) Have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Flood Insurance Rate Map plus one foot. If no flood depth number is specified, the lowest floor, including basement, shall be elevated to at least two feet above the highest adjacent grade, or
 - (b) Together with attendant utility and sanitary facilities be completely floodproofed to no less than one foot above that level to meet the floodproofing standard specified in Article 5, Section B (2)(a).
- (3) Adequate drainage paths around structures shall be provided on slopes to guide water away from structures.
- (4) All elevated buildings shall meet the non-elevation design requirements of Article 5, Section B.

SECTION E. COASTAL HIGH HAZARD AREAS (V-ZONES)

Located within areas of special flood hazard established in Article 3, Section B are Coastal High Hazard Areas, designated as Zones V1–30, VE, or V (with BFE). The following provisions shall apply for all development activities:

- (1) Meet the Requirements of Article 4, Section A, and Article 5, Sections A, B (except B (7)), C, and D.
- (2) All new construction and substantial improvements in Zones V1–V30, VE, and V (with BFE) shall be elevated on pilings or columns so that:
 - (a) The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to no lower than one foot above the base flood elevation whether or not the structure contains a basement; and
 - (b) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading will be those values associated with the base flood. Wind loading values will be those required by applicable State of Florida or local, if more stringent than those of the State of Florida, building standards; and
 - (c) For all structures located seaward of the Coastal Construction Control Line (CCCL), the bottom of the lowest horizontal structural member of the lowest floor of all new construction and substantial improvements shall be elevated to the 100-year flood elevation established by the Florida Department of Environmental Protection or the base flood elevation plus one foot, whichever is higher.
- (3) A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this Section.
- (4) Obtain the elevation (in relation to mean sea level) of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures. The Floodplain Administrator shall maintain a record of all such information.
- (5) All new construction and substantial improvements shall be located landward of the reach of mean high tide.
- (6) ~~Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with nonsupporting breakaway walls, open wood lattice work, or insect screening intended to collapse under wind and~~

~~water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions: New construction or substantial improvements of elevated buildings shall prohibit enclosures below the elevated floor to protect the integrity of the building from wave action or from hydrostatic pressure. Enclosures include, but are not limited to solid walls, Breakaway walls, louvers, screening, or lattice work or any other kind of obstruction below the elevated floor or below the Base Flood Elevation for the zone in which the building is located. This means that an enclosure on one side (or any side) of the lower level of an elevated building is also prohibited.~~

- (a) ~~Breakaway wall collapse shall result from water load less than that which would occur during the base flood; and Areas below the elevated flood may be used only for parking of vehicles, access to the building or limited storage of materials used in connection with the building.~~
 - (b) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). The water loading shall be those values associated with the base flood. The wind loading values shall be those required by applicable Florida or local, if more stringent than those of the State of Florida, building standards.
 - (c) Such enclosed space shall be useable solely for parking of vehicles, building access, or storage. Such space shall not be finished, partitioned into multiple rooms, or temperature-controlled.
- (7) Prohibit the use of fill for structural support. No development permit shall be issued for development involving fill in coastal high hazard areas unless it has been demonstrated through appropriate engineering analyses that the subject fill does not cause any adverse impacts to the structure on site or adjacent structures.
 - (8) Prohibit man-made alteration of sand dunes and mangrove stands that would increase potential flood damage.
 - (9) Standards for Manufactured Homes
 - (a) All manufactured homes to be placed or substantially improved on sites: (i) Outside a manufactured home park or subdivision, (ii) In a new manufactured home park or subdivision, (iii) In an expansion to an existing manufactured home park or subdivision, or, (iv) In an existing manufactured home park or subdivision

in which a manufactured home has incurred “substantial damage” as the result of a flood, must meet the standards of Article 5, Section E (2) through (8),

- (b) All manufactured homes placed or substantially improved on other sites in an existing manufactured home park or subdivision shall meet the requirements of Article 5, Section B (4)(a) and (b).
- (10) Recreational vehicles placed on sites within Zones VE, V1–V30, V (with base flood elevation) on the FIRM either
- (a) Be on the site for fewer than 180 consecutive days,
 - (b) Be fully licensed and ready for highway use (on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or
 - (c) Meet the requirements of Article 5, Section E (2) through (8).
 - (d) Prohibit the placement of recreational vehicles, except in an existing recreational vehicle park. They must be on site for fewer than 180 consecutive days, fully licensed and ready for highway use (on its wheels or jacking system, is attached to the site by quick disconnect type utilities and security devices, and has no permanently attached additions). They shall also have a plan for removal in case of a threat.
- (11) For all structures located seaward of the Coastal Construction Control Line (CCCL), the bottom of the lowest horizontal structural member of the lowest floor of all new construction and substantial improvements shall be elevated to the flood elevation established by the Florida Department of Environmental Protection or the base flood elevation plus one foot, whichever is higher. All non-elevation design requirements Article 5, Section E (2) through (10) shall apply.
- (12) When fill is proposed, in accordance with the permit issued by the Florida Department of Health, in coastal high hazard area, the development permit shall be issued only upon demonstration by appropriate engineering analyses that the proposed fill will not increase the water surface elevation of the base flood nor cause any adverse impacts to adjacent properties by wave ramping and deflection.

ARTICLE 6. VARIANCE PROCEDURES.

SECTION A. DESIGNATION OF VARIANCE AND APPEALS BOARD.

The Town Council of the Town of Cutler Bay shall hear and decide appeals and requests for variances from the requirements of this ordinance.

SECTION B. DUTIES OF VARIANCE AND APPEALS BOARD.

The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Management Administrator in the enforcement or administration of this ordinance. Any person aggrieved by the decision of the board may appeal such decision to the Circuit Court.

SECTION C. VARIANCE PROCEDURES.

In acting upon such applications, the Council shall consider all technical evaluations, all relevant factors, standards specified in other sections of this ordinance, and:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger of life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise, and sediment of transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- (11) 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, and streets and bridges.

SECTION D. CONDITIONS FOR VARIANCES.

- (1) Variances shall only be issued when there is:
 - (a) A showing of good and sufficient cause;

- (b) A determination that failure to grant the variance would result in exceptional hardship; and
 - (c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (2) Variances shall only be issued upon a determination that the variance is the minimum necessary deviation from the requirements of this ordinance.
 - (3) Variances shall not be granted after-the-fact.
 - (4) The Floodplain Administrator shall maintain the records of all variance actions, including justification for their issuance or denial, and report such variances in the community's NFIP Biennial Report or upon request to FEMA and the State of Florida, Department of Community Affairs, NFIP Coordinating Office.

SECTION E. VARIANCE NOTIFICATION.

Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

- (1) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and
- (2) Such construction below the base flood level increases risks to life and property.

A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Clerk of Court and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

SECTION F. HISTORIC STRUCTURES.

Variances may be issued for the repair or rehabilitation of "historic" structures – meeting the definition in this ordinance – upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a "historic" structure.

SECTION G. STRUCTURES IN REGULATORY FLOODWAY.

Variances shall not be issued within any designated floodway if any impact in flood conditions or increase in flood levels during the base flood discharge would result.

Section 3. Conflicts. All ordinances or Code provisions in conflict herewith are hereby repealed to the extent of such conflict.

Section 4. Severability. That 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 invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Ordinance but they shall remain in effect, it being the legislative intent that this Ordinance shall stand notwithstanding the invalidity of any part.

Section 5. Inclusion In The Code. It is the intention of the Town Council and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of the Town of Cutler Bay; that the sections of this Ordinance may be renumbered or relettered to accomplish such intentions; and that the word "Ordinance" shall be changed to "Section" or other appropriate word.

Section 6. Effective Date. This Ordinance shall be effective immediately upon adoption on second reading.

PASSED on First Reading on this 17th day of February, 2016.

PASSED AND ADOPTED on Second Reading on this ____ day of _____, 2016.

Attest:

PEGGY R. BELL
Mayor

JACQUELINE N. WILSON
Town Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY FOR THE SOLE
USE OF THE TOWN OF CUTLER BAY:

WEISS SEROTA HELFMAN
COLE & BIERMAN, P.L.
Town Attorney

Moved By: _____

Seconded By: _____

FINAL VOTE AT ADOPTION:

Mayor Peggy R. Bell _____

Vice Mayor Ernest N. Sochin _____

Council Member Roger Coriat _____

Council Member Sue Ellen Loyzelle _____

Council Member Mary Ann Mixon _____