

ORDINANCE
No. 2022-20

AN ORDINANCE OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF FELLSMERE, FLORIDA BY AMENDING CHAPTER 38 FLOODPLAIN MANAGEMENT, SECTION 38-8 DEFINITIONS, SECTION 38-10 BASIS FOR ESTABLISHING THE FLOOD HAZARD AREA, ADDING A NEW SECTION 38-112 NON-ELEVATED ACCESSORY STRUCTURES, AMENDING SECTION 38-142 FOUNDATIONS AND SECTION 38-144 ELEVATION; PROVIDING FOR RATIFICATION; AMENDMENT; APPLICABILITY; CONFLICTS; SEVERABILITY; CODIFICATION AND AN EFFECTIVE DATE.

WHEREAS, the City of Fellsmere, Florida is a duly constituted municipality having such powers and authority conferred upon it by the Florida Constitution and Chapter 166 Florida Statutes; and

WHEREAS, the City of Fellsmere, Florida 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 and achieved a CRS rating of Class 8, making citizens who purchase NFIP flood insurance policies eligible for premium discounts; 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

WHEREAS, to satisfy the prerequisite and for City of Fellsmere, Florida to maintain the current CRS rating, all manufactured homes installed or replaced in special flood hazard areas must be elevated to 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 released FEMA Policy #104-008-03 Floodplain Management Requirements for Agricultural Structures and Accessory Structures; and

WHEREAS, the City Council has determined it appropriate to adopt regulations that are consistent with the FEMA Policy to allow issuance of permits for non-elevated wet floodproofed accessory structures that are not larger than the sizes specified in the FEMA Policy; and

WHEREAS, the City Council determined that it is in the public interest to amend the floodplain management regulations to better protect manufactured homes and to continue participating in the Community Rating System at the current class rating.

WHEREAS, the Planning and Zoning Commission/Local Planning Agency held a duly noticed public hearing on _____, 2022, and recommended that the City Council approve the changes to the Code of Ordinances of the City of Fellsmere, Florida; and

WHEREAS, the City Council held duly advertised public hearings and has determined that the amendments to the Code of Ordinances of the City of Fellsmere, Florida are in the best

interest of the City and that the public health, safety, environmental and general welfare of the citizens of the City will be furthered by the amendments to the Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FELLSMERE, INDIAN RIVER COUNTY, FLORIDA, AS FOLLOWS:

SECTION 1. RATIFICATION. The above recitals are hereby ratified, adopted and incorporated herein as legislative findings of the City Council.

SECTION 2. AMENDMENT. That Sections 38-8, 38-10, 38-142 and 38-144 of the Code of Ordinances of the City of Fellsmere, Florida are amended to read as set forth in Exhibit "A" attached hereto and by this reference made a part hereof and that a new Section 38-112 be added to the Code of Ordinances to read as set forth in Exhibit "A" attached hereto.

SECTION 3. APPLICABILITY. For the purpose of jurisdictional applicability, this Ordinance shall apply in all areas of the City of Fellsmere, Florida. This Ordinance shall apply to all applications for development in flood hazard areas submitted on or after the effective date of this Ordinance.

SECTION 4. CONFLICTS. All previous ordinances or parts of ordinances, resolutions, or motions of the City which conflict with the provisions of this Ordinance are hereby repealed to the extent of such conflict.

SECTION 5. SEVERABILITY. If any section, part of a sentence, phrase or word of this Ordinance is for any reason held to be unconstitutional, inoperative or void, such holdings shall not affect the remaining portions hereof and it shall be construed to have been the legislative intent to pass this Ordinance without such unconstitutional, invalid or inoperative part.

SECTION 6. CODIFICATION. The provisions of this Ordinance may be incorporated into the Code of Ordinances of the City of Fellsmere, Florida and the word "ordinance" may be changed to "section", "article" or other appropriate word, and the sections of the ordinance may be re-titled, re-numbered or re-lettered, to accomplish such codification.

SECTION 7. EFFECTIVE DATE. This Ordinance shall become effective immediately upon its adoption.

The foregoing Ordinance was moved for adoption by Council Member _____ . The motion was seconded by Council Member _____ and, upon being put to a vote, the vote was as follows:

Mayor, Joel Tyson	_____
Council Member Fernando Herrera	_____
Council Member Inocencia Hernandez	_____
Council Member Gerald Renick	_____
Council Member Jessica Salgado	_____

The Mayor thereupon declared this Ordinance fully passed and adopted this _____ day of _____, 2022.

CITY OF FELLSMERE, FLORIDA

ATTEST:

Joel Tyson, Mayor

Maria Suarez-Sanchez, City Clerk

I HEREBY CERTIFY that Notice of the public hearing on this Ordinance was published in the Press Journal, as required by State Statute, that the foregoing Ordinance was duly passed and adopted on the _____ day of _____, 2022, and the first reading was held on the _____ day of _____, 2022, and the public hearing and second and final reading was held on the _____ day of _____, 2022.

Maria Suarez-Sanchez, City Clerk

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**EXHIBIT “A”
TO
ORDINANCE NO. 2022-20**

Sec. 38-8. Definitions.

(a) General.

- (1) *Scope.* Unless otherwise expressly stated, the following words and terms shall, for the purposes of this chapter, have the meanings shown in this section.
- (2) *Terms defined in the Florida Building Code.* Where terms are not defined in this chapter and are defined in the Florida Building Code, such terms shall have the meanings ascribed to them in that code.
- (3) *Terms not defined.* Where terms are not defined in this chapter or the Florida Building Code, such terms shall have ordinarily accepted meanings such as the context implies.

- (b) *Definitions.* Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application:

Accessory structure. A structure on the same parcel of property as a principal structure and the use of which is limited to parking and storage incidental to the use of the principal structure.

Alteration of a watercourse. A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

Appeal. A request for a review of the floodplain administrator's interpretation of any provision of this chapter.

ASCE 24. A standard titled Flood Resistant Design and Construction that is referenced by the Florida Building Code. ASCE 24 is developed and published by the American Society of Civil Engineers, Reston, VA.

Base flood. A flood having a one-percent chance of being equaled or exceeded in any given year. [Also defined in FBC, B, Section 1612.2.] The base flood is commonly referred to as the "100-year flood" or the "one-percent-annual chance flood."

Base flood elevation. The elevation of the base flood, including wave height, relative to the National Geodetic Vertical Datum (NGVD), North American Vertical Datum (NAVD) or other datum specified on the flood insurance rate map (FIRM). [Also defined in FBC, B, Section 1612.2.]

Basement. The portion of a building having its floor subgrade (below ground level) on all sides. [Also defined in FBC, B, Section 1612.2.]

Building official. The officer or other designated authority charged with the administration and enforcement of the Florida Building Code, or a duly authorized representative. [Also defined in FBC, B, Section 1612.2.]

Building permit. An official document or certificate issued by the community which authorizes performance of specific activities that are determined to be compliant with the Florida Building Code.

Design flood. The flood associated with the greater of the following two areas: [Also defined in FBC, B, Section 1612.2.]

- (1) Area with a floodplain subject to a one-percent or greater chance of flooding in any year; or
- (2) Area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Design flood elevation. The elevation of the "design flood," including wave height, relative to the datum specified on the community's legally designated flood hazard map. In areas designated as zone AO, the design flood elevation shall be the elevation of the highest existing grade of the building's perimeter plus the depth number (in feet) specified on the flood hazard map. In areas designated as zone AO where the depth number is not specified on the map, the depth number shall be taken as being equal to two feet. [Also defined in FBC, B, Section 1612.2.]

Development. Any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of equipment or materials, mining, dredging, filling, grading, paving, excavations, drilling operations or any other land disturbing activities.

Encroachment. The placement of fill, excavation, buildings, permanent structures or other development into a flood hazard area which may impede or alter the flow capacity of riverine flood hazard areas.

Existing building and existing structure. Any buildings and structures for which [the] "start of construction" commenced before October 18, 1993. [Also defined in FBC, B, Section 1612.2.]

~~*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 the final site grading or the pouring of concrete pads) is completed before October 18, 1993.~~

Existing construction. Any structure for which the "start of construction" commenced before December 16, 1993.

~~*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).~~ x

Federal Emergency Management Agency (FEMA). The federal agency that, in addition to carrying out other functions, administers the National Flood Insurance Program.

Flood or flooding. A general and temporary condition of partial or complete inundation of normally dry land from: [Also defined in FBC, B, Section 1612.2.]

- (1) The overflow of inland or tidal waters.
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood damage-resistant materials. Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Also defined in FBC, B, Section 1612.2.]

Flood hazard area. The greater of the following two areas: [Also defined in FBC, B, Section 1612.2.]

- (1) The area within a floodplain subject to a one-percent or greater chance of flooding in any year.

- (2) The area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Flood insurance rate map (FIRM). The official map of the community on which the Federal Emergency Management Agency has delineated both special flood hazard areas and the risk premium zones applicable to the community. [Also defined in FBC, B, Section 1612.2.]

Flood insurance study (FIS). The official report provided by the Federal Emergency Management Agency that contains the flood insurance rate map, the flood boundary and floodway map (if applicable), the water surface elevations of the base flood, and supporting technical data. [Also defined in FBC, B, Section 1612.2.]

Floodplain administrator. The office or position designated and charged with the administration and enforcement of this chapter (may be referred to as the floodplain manager).

Floodplain development permit or approval. An official document or certificate issued by the community, or other evidence of approval or concurrence, which authorizes performance of specific development activities that are located in flood hazard areas and that are determined to be compliant with this chapter.

Floodway. The channel of a river or other riverine 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 one foot. [Also defined in FBC, B, Section 1612.2.]

Floodway encroachment analysis. An engineering analysis of the impact that a proposed encroachment into a floodway is expected to have on the floodway boundaries and base flood elevations; the evaluation shall be prepared by a qualified Florida licensed engineer using standard engineering methods and models.

Floor. The top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

Florida Building Code. The family of codes adopted by the Florida Building Commission, including: Florida Building Code, Building; Florida Building Code, Residential; Florida Building Code, Existing Building; Florida Building Code, Mechanical; Florida Building Code, Plumbing; Florida Building Code, Fuel Gas.

Functionally dependent use. A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; the term does not include long-term storage or related manufacturing facilities.

Highest adjacent grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.

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

Letter of map change (LOMC). An official determination issued by FEMA that amends or revises an effective flood insurance rate map or flood insurance study. Letters of map change include:

Letter of map amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated special flood hazard area. A LOMA

amends the current effective flood insurance rate map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

Letter of map revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

Letter of map revision based on fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

Conditional letter of map revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective flood insurance rate map or flood insurance study; upon submission and approval of certified as-built documentation, a letter of map revision may be issued by FEMA to revise the effective FIRM.

Light-duty truck. As defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds gross vehicular weight rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

- (1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or
- (2) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
- (3) Available with special features enabling off-street or off-highway operation and use.

Lowest floor. The lowest floor of the lowest enclosed area of a building or structure, including basement, but excluding any unfinished or flood-resistant enclosure, other than a basement, usable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the structure in violation of the non-elevation requirements of the Florida Building Code or ASCE 24. [Also defined in FBC, B, Section 1612.2.]

Manufactured home. A structure, transportable in one or more sections, which is eight feet or more in width and greater than 400 square feet, and which is built on a permanent, integral chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle" or "park trailer." [Also defined in 15C-1.0101, F.A.C.]

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

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 chapter, the~~ The term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser is the actual cash value (in-kind replacement cost depreciated for age, wear and tear, neglect, and quality of construction) determined by a qualified independent appraiser, or tax assessment value adjusted to approximate market value by a factor provided by the property appraiser.

New construction. For the purposes of administration of this chapter and the flood resistant construction requirements of the Florida Building Code, structures for which the "start of construction" commenced on or after October 18, 1993, 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 serving 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 the final site grading or the pouring of concrete pads) is completed on or after October 18, 1993.~~

Nonresidential. Any building or structure or portion thereof that is not classified residential in accordance with the Florida Building Code, Building (Residential Group R or Institutional Group I) and ASCE 24. [Also see definition in ASCE 24.]

Park trailer. A transportable unit which has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. [Defined in section 320.01, F.S.]

Recreational vehicle. A vehicle, including a park trailer, which is: [Defined in F.S. § 320.01(b)]

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

Special flood hazard area. An area in the floodplain subject to a one-percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as zone A, AO, A1-A30, AE, A99, AH, V1-V30, VE or V. [Also defined in FBC, B, Section 1612.2.]

Start of construction. The date of issuance of permits for new construction and substantial improvements, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The actual start of construction means either the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, or the construction of columns. Permanent construction

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

Structure. A walled and roofed building that is principally above ground, a manufactured home, a gas or liquid storage tank, or other manmade facilities or infrastructures.

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. [Also defined in FBC, B, Section 1612.2.]

Substantial improvement. Any repair, reconstruction, rehabilitation, alteration, addition, or other improvement of a building or structure, the 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 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: [Also defined in FBC, B, Section 1612.2.]

- (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.

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

Violation. The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate is presumed to be in violation until such time as that documentation is provided.

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

(Ord. No. 2012-11, § 2(Exh. A (201, 202)), 6-7-12; Ord. No. 2012-20, § 2(Exh. A (202)), 11-15-12; Ord. No. 2020-07, § 2(Exh. A), 9-3-20)

Sec. 38-10. Basis for establishing the flood hazard areas.

- (a) The flood insurance study for Indian River County, FL and incorporated areas dated, after January 1, 2023 ~~December 4, 2012~~, 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 chapter and shall serve as the minimum basis for establishing flood hazard areas. Studies and maps that establish flood hazard areas are on file at the community development department.
- (b) In addition, upon annexation to Fellsmere, the areas of special flood hazard identified by the Federal Emergency Management Agency in its flood hazard boundary map or flood insurance study for unincorporated Indian River County, with accompanying maps and other supporting data, and any revisions thereto, are adopted by reference and declared to be a part of this article.
- (c) Submission of additional data to establish flood hazard areas. To establish flood hazard areas and base flood elevations, pursuant to article II, division 3 of this chapter, the floodplain administrator may require submission of additional data. Where field surveyed topography prepared by a Florida licensed professional surveyor or digital topography accepted by the community development director indicates that ground elevations:

1. Are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as flood hazard area and subject to the requirements of this chapter and, as applicable, the requirements of the Florida Building Code.
2. Are above the closest applicable base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a letter of map change that removes the area from the special flood hazard area.

(Ord. No. 2012-11, § 2(Exh. A (102.3)), 6-7-12; Ord. No. 2012-20, § 2(Exh. A (102.2)), 11-15-12)

Sec. 38-112. Non-elevated accessory structures. Accessory structures are permitted below elevations required by the Florida Building Code provided the accessory structures are used only for parking or storage and:

- (1) Are one-story and not larger than 600 sq. ft.
- (2) Have flood openings in accordance with Section R322.2 of the Florida Building Code, Residential.
- (3) Are anchored to resist flotation, collapse or lateral movement resulting from flood loads.
- (4) Have flood damage-resistant materials used below the base flood elevation plus one (1) foot.
- (5) Have mechanical, plumbing and electrical systems, including plumbing fixtures, elevated to or above the base flood elevation plus one (1) foot.

DIVISION 4. MANUFACTURED HOMES

Sec. 38-142. Foundations.

All new manufactured homes and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that:

- (1) Are designed in accordance with the foundation requirements of the Florida Building Code, Residential Section R322.2 and this chapter. ~~Foundations for manufactured homes subject to section 144(b) of this chapter are permitted to be reinforced piers or other foundation elements of at least equivalent strength.~~

(Ord. No. 2012-11, § 2(Exh. A (304.2)), 6-7-12; Ord. No. 2012-20, § 2(Exh. A (304.2)), 11-15-12; Ord. No. 2020-07, § 2(Exh. A), 9-3-20)

Sec. 38-144. Elevations

All manufactured homes that are placed, replaced, or substantially improved in flood hazard areas shall be elevated such that the bottom of the frame is at or above the elevation required in the *Florida Building Code, Residential* Section R322.2 (Zone A). ~~Manufactured homes that are placed, replaced, or substantially improved shall comply with section 38-144(a) or (b) of this chapter, as applicable.~~

- ~~(a) General elevation requirement. Unless subject to the requirements of section 38-144(b) of this chapter, all manufactured homes that are placed, replaced, or substantially improved on sites located: (1) outside of a manufactured home park or subdivision; (2) in a new manufactured home park or subdivision; (3) in an expansion to an existing manufactured home park or subdivision; or (4) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (zone A).~~
- ~~(b) Elevation requirement for certain existing manufactured home parks and subdivisions. Manufactured homes that are not subject to section 38-144(a) of this chapter, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, shall be elevated such that either the:~~
- ~~1. Bottom of the frame of the manufactured home is at or above the elevation required, as applicable to the flood hazard area, in the Florida Building Code, Residential Section R322.2 (zone A); or~~
 - ~~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.~~