

1. **Requested Motion:**

**Meeting Date:** December 4, 2023

First Reading and Public Hearing of an Ordinance entitled: AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V., DIVISION 2, SECTION 34-3238 POST-DISASTER BUILDBACK; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE. Open the first public hearing and schedule for second reading and final adoption on December 18, 2023 at 9:00 AM

**Why the action is necessary:**

Feedback will assist staff in making any desired changes and the ordinance requires two hearings.

**What the action accomplishes:**

This will assist staff in updating language and set the second hearing.

2. **Agenda:**

PUBLIC HEARINGS

3. **Requirement/Purpose:**

Ordinance

4. **Submitter of Information:**

Sarah Propst, Planning &  
Zoning

5. **Background:**

Staff has been asked to provide some options to amend to the Post-Disaster Buildback policy. This policy is found in Section 34-3238 of the LDC and allows a property owner to redevelop a structure that exceeds current allowable density. The language allows the existing legal number of units to be rebuilt but the existing square footage may not increase, and the property must be brought into compliance with building and flood requirements if the damage exceeds 50% of the value of the property. Currently the code states: "For the purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking and similar common or non-air-conditioned space." This limitation decreases the amount of usable square footage for a rebuild of structures.

**Attachments:**

1. 23-18, Post Disaster Buildback - ns edits
2. 23-18 Business Impact Estimate - Ordinance 23-18 (Post Disaster Buildback) ns edits
3. Exhibit A - Proposed Language
4. Post Disaster Buildback memo
5. Exhibit B - Existing PDB

**Financial Impact:**

unknown

6. **Alternative Action**

Provide feedback on language and schedule a second hearing.

7. **Management Recommendations:**

Provide feedback on language and schedule a second hearing.

8. **Recommended Approval:**

Kendra Rosa, Zoning Coordinator/Planner 1  
Frankie Kropacek, Operations & Compliance Director  
Nancy Stuparich, Town Attorney  
Amy Baker, Town Clerk  
Andy Hyatt, Town Manager

Created/Initiated - 11/28/2023  
Approved - 11/28/2023  
Approved - 11/28/2023  
Approved - 11/29/2023  
Final Approval - 11/29/2023

## **ORDINANCE NO. 23-18**

### **AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA AMENDING CHAPTER 34, ARTICLE V, DIVISION 2, SECTION 34-3238 POST-DISASTER BUILDBACK; PROVIDING FOR SEVERABILITY; CODIFICATION; SCRIVENER'S ERRORS; CONFLICTS OF LAW AND AN EFFECTIVE DATE.**

**WHEREAS**, Florida Statutes provide that municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal service, and exercise any power for municipal purposes, except when expressly prohibited by law; and

**WHEREAS**, Article X of the Town Charter of the Town of Fort Myers Beach empowers the Town to adopt, amend, or repeal such ordinances and resolutions as may be required for the proper governing of the Town; and

**WHEREAS**, the Town recognizes that redevelopment of the Town, following Hurricane Ian requires evaluation, changes and updates to the Land Development Code; and

**WHEREAS**, a public hearing was held before the Local Planning Agency (LPA) on the 14th day of November, 2023, at which time the LPA gave full and complete consideration of the proposed ordinance, recommendations by staff, the documents in the record, and the testimony of all interested persons, and the LPA made a finding of consistency with the Ft. Myers Beach Comprehensive Plan and Land Development Code and thereafter voted 7-0, to recommend approval of the proposed ordinance amending Chapter 34, Article V, Division 2, Section 34-3238 Post-Disaster Buildback of the Land Development Code to the Town Council; and

**WHEREAS**, on the 4th day of December, 2023, the Town Council held a first reading of the proposed Ordinance and gave full and complete consideration to the proposed ordinance, the recommendation of the LPA, the recommendation of staff, the documents in the record, and the testimony of all interested persons; and

**WHEREAS**, on the \_\_\_\_ day of \_\_\_\_\_, 2023, an advertisement of the public hearing for adoption of the proposed ordinance was published 10 days prior to the second reading of the proposed Ordinance, as required by Section 166.041, Florida Statutes; and

**WHEREAS**, a Business Impact Estimate was prepared and posted on the City's website on the \_\_\_\_ day of \_\_\_\_\_, 2023, as required by Section 166.041(4), Florida Statutes; and

**WHEREAS**, on the \_\_\_\_ day of \_\_\_\_\_, 2023, the Town Council held a public hearing and second reading of the proposed Ordinance; and

**WHEREAS**, the Town Council determined by a vote of \_\_\_\_ that adoption of the Ordinance is in the best interest of the health, safety and welfare of the public.

**NOW THEREFORE IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH, FLORIDA:**

Section 1. The above WHEREAS recitals are true and correct, and incorporated herein by this reference and are hereby adopted as the legislative and administrative findings of the Town Council.

Section 2. Chapter 34, Article V, Division 2, Section 34-3238 Post-Disaster Buildback is hereby amended to read as found in attached Exhibit A – Amended Sec. 34-3238.

Section 3. The Town Council intends that the provisions of this ordinance be made a part of the Fort Myers Beach Code of Ordinances, and that sections herein may be renumbered or re-lettered and the words or phrases herein may be changed to accomplish codification; regardless, typographical errors that do not affect intent may be corrected with notice to and authorization of the Town Manager without further process.

Section 4. Whenever the requirements or provisions of this ordinance conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive shall apply.

Section 5. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason, declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision will not affect the validity of the ordinance, or any part thereof, other than the part so declared.

Section 6. This ordinance shall become effective upon adoption by the Town Council.

The foregoing Ordinance was adopted by the Town Council upon a motion by Councilmember \_\_\_\_\_ and seconded by Councilmember \_\_\_\_\_ and upon being put to a roll call vote, the result was as follows:

Dan Allers, Mayor	_____
Jim Atterholt, Vice Mayor	_____
John R. King, Council Member	_____
Bill Veach, Council Member	_____
Karen Woodson, Council Member	_____

ADOPTED this \_\_\_\_ day of December 2023, by the Town Council of the Town of Fort Myers Beach, Florida.

**TOWN OF FORT MYERS BEACH**

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Dan Allers, Mayor

**ATTEST:**

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Amy Baker, Town Clerk

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE  
AND RELIANCE OF THE TOWN OF FORT MYERS BEACH ONLY:**

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Vose Law Firm, LLP, Town Attorney

**EXHIBITS**

Exhibit A – Amended Sec. 34-3238



# **Business Impact Estimate**

Proposed ordinance's title/reference:

**Ordinance 23-18 Post Disaster Buildback Amendment**

This Business Impact Estimate is provided in accordance with section 166.041(4), Florida Statutes. If one or more boxes are checked below, this means the Town is of the view that a business impact estimate is not required by state law<sup>1</sup> for the proposed ordinance, but the Town is, nevertheless, providing this Business Impact Estimate as a courtesy and to avoid any procedural issues that could impact the enactment of the proposed ordinance. This Business Impact Estimate may be revised following its initial posting.

- ☐ The proposed ordinance is required for compliance with Federal or State law or regulation;
- ☐ The proposed ordinance relates to the issuance or refinancing of debt;
- ☐ The proposed ordinance relates to the adoption of budgets or budget amendments, including revenue sources necessary to fund the budget;
- ☐ The proposed ordinance is required to implement a contract or an agreement, including, but not limited to, any Federal, State, local, or private grant or other financial assistance accepted by the municipal government;
- ☐ The proposed ordinance is an emergency ordinance;
- ☐ The ordinance relates to procurement; or
- ☒ The proposed ordinance is enacted to implement the following:
  - a. Part II of Chapter 163, Florida Statutes, relating to growth policy, county and municipal planning, and land development regulation, including zoning, development orders, development agreements and development permits;
  - b. Sections 190.005 and 190.046, Florida Statutes, regarding community development districts;
  - c. Section 553.73, Florida Statutes, relating to the Florida Building Code; or
  - d. Section 633.202, Florida Statutes, relating to the Florida Fire Prevention Code.

In accordance with the provisions of controlling law, even notwithstanding the fact that an exemption noted above may apply, the Town hereby publishes the following information:

**1. Summary of the proposed ordinance, (e.g. statement of the public purpose serving the public health, safety, morals and welfare):**

The proposed ordinance amends the existing Section 34-3238 which applies to buildings with 50% or more damage. The amendment will allow the structure to be rebuilt with the same number of legally existing, but nonconforming units and allow some additional square footage, beyond what the code previously allowed.

<sup>1</sup> See Section 166.041(4)(c), Florida Statutes.

2. An estimate of the direct economic impact of the proposed ordinance on private, for-profit businesses in the Town, including the following, if any:

- (a) An estimate of direct compliance costs that businesses may reasonably incur;
- (b) Any new charge or fee imposed by the proposed ordinance or for which businesses will be financially responsible; and
- (c) An estimate of the Town's regulatory costs, including estimated revenues from any new charges or fees to cover such costs.

There are unlikely to be direct compliance costs associated with Ordinance 23-18.

Ordinance 23-18 does not impose any new charge or fee on businesses.

There are no new charges or fees that will be imposed on businesses by the ordinance.

The Town will not likely incur additional costs.

3. Good faith estimate of the number of businesses likely to be impacted by the proposed ordinance:

The Town estimates that a dozen private, for-profit businesses in the Town would potentially be impacted by Ordinance 23-18. The impact should be positive for the business.

4. Additional information the governing body deems useful (if any):

N/A

Sec. 34-3238. - Post-disaster buildback.

Owners of buildings or groups of buildings that exceed the density, intensity, or height limits for new buildings and that are damaged or destroyed by a natural disaster, including fire, tropical storms, floods, and hurricanes, shall be permitted to replace those buildings at up to their pre-disaster existing lawful density, intensity, and/or height in accordance with Policy 4-D-1 of the Fort Myers Beach Comprehensive Plan.

- (1) *Less than 50 percent damage.* If the cost to repair the damaged building is less than 50 percent of the building's value and the repair is thus not a "substantial improvement" as that term is defined in § 6-405 of this LDC, then the following rules shall apply:
  - a. The repairs may be made without bringing the building into full compliance with the requirements of this code for building size, dimension, location on the lot, number of dwelling units or guest units, building type, or compliance with floodplain regulations.
  - b. The repairs may not physically enlarge the building either laterally or vertically, with the following potential exception:
    1. During the repair process, owners may wish to elevate lawfully existing dwelling units or guest units that do not comply with the floodplain regulations in ch. 6 of this code.
    2. To encourage this elevation, the director may administratively modify setbacks, open space, buffer, or height requirements to the minimum extent that would accommodate rebuilding the units in conformance with ch. 6 of this LDC up to their existing interior square footage, as computed in accordance with subsections (2)d.1. or e.1 of this section.
    3. However, if the combined cost to repair the damage and elevate the units exceeds 50 percent of the building's value, then all provisions of subsection (2) of this section will apply.
  - c. All repairs must comply with all current building, life safety, and accessibility codes.
- (2) *More than 50 percent damage.* If the cost to repair or rebuild the damaged building is more than 50 percent of the building's value and is thus a "substantial improvement" as that term is defined in § 6-405 of this LDC, then the following rules shall apply:
  - a. The building must meet the floodplain regulations for new buildings, as provided in article IV of ch. 6 of this LDC.
  - b. The building must meet the coastal construction requirements that apply to new structures and portions thereof, as provided in article III of ch. 6 of this LDC and in state regulations. Due to these requirements, habitable major structures and most minor structures that are damaged by more than 50 percent must be rebuilt landward of the 1978 coastal construction control line.
  - c. The building must comply with all current building, life safety, and accessibility codes.
  - d. *Residential buildings.* A rebuilt residential building may exceed the density limits for new buildings on vacant land but cannot exceed the legally documented number of dwelling units in the building immediately before the natural disaster.
    - ~~1. All dwelling units legally existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt dwelling units does not exceed the interior square footage of the previous dwelling units. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air conditioned.~~
    1. The total interior square footage above base flood elevation of the reconstructed building may not exceed the square footage of the total under roof square footage of the previous structure. The square footage under roof means the area within the



- perimeter of the roof, multiplied by the number of stories that existed prior to the disaster, including stories below flood elevation.
2. At the owner's option, this same square footage can be used for fewer but larger dwelling units.
  3. Also at the owner's option, the number of dwelling units and the square footage of the new building may be determined by this code's current regulations for new buildings on the same site instead of using either the pre-disaster or post-disaster buildback regulations.
  4. The number of bedrooms may not exceed the legally documented number of bedrooms in the dwelling unit immediately before the natural disaster. The number of full bathrooms may only be increased to equal the number of bedrooms in the structure.
  5. Once additional square footage is added to the structure for post-disaster buildback, no additional below flood elevation square footage may be added for future disaster rebuilds.
- e. *Hotels/motels.* A rebuilt hotel/motel may exceed the intensity~~equivalency factor multiplier~~ limits for new hotel/motel buildings on vacant land, but cannot exceed the documented number of lawful guest units square footage within the building footprint immediately before the natural disaster.
- ~~1. All guest units lawfully existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt guest units does not exceed the interior square footage of the previous guest units. However, interior square footage in the new building may be increased by 30 square feet for each bathroom to reflect current code requirements for larger bathrooms, and any lawfully existing guest units that are smaller than the minimum sizes required by this code may be enlarged to meet the minimum size requirements. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air conditioned space.~~
  2. At the owner's option, this same square footage can be used for fewer but larger guest units.
  3. Also at the owner's option, the number of guest units and the square footage of the new building may be determined by this code's current regulations for new hotel/motel buildings on the same site instead of using either the pre-disaster or post-disaster buildback regulations.
  1. The total interior square footage above base flood elevation of the reconstructed building may not exceed the square footage of the total under roof square footage of the previous structure. The square footage under roof means the area within the perimeter of the roof, multiplied by the number of stories that existed prior to the disaster, including stories below flood elevation.
  2. If the additional square footage gained does not provide adequate space to meet building or ADA codes, additional space may be allocated for that purpose.
  3. The owner may choose to reduce the number of rooms or increase the number of rooms but may not create more guest unit space than defined in Sec.34-3238(2) e.1.
  4. This section may not be used to increase the number of guest units in a hotel that previously had 49 rooms or less to more than 49 rooms.
- f. *All buildings.* The new building must comply with all other zoning and development regulations except where compliance with such regulations would preclude reconstruction otherwise intended by Policy 4-D-1 of the comprehensive plan. Specifically:

1. If the lowest floor of the rebuilt building must be elevated higher than the damaged or destroyed building to comply with current floodplain or coastal regulations, then the total height of the rebuilt building can be increased by the same amount.
2. If a rebuilt building must be set back further from any property lines due to current requirements of this code, then the volume of the building so reduced can be rebuilt elsewhere on the site, including one or more extra stories on the building if in the opinion of the director there is no other suitable location to replace the volume.
3. If current open space, parking, landscaping or buffer regulations cannot be met, those requirements may be ~~waived~~ reduced through a written determination ~~administratively~~ by the director.



**Town of Fort Myers Beach  
COMMUNITY DEVELOPMENT DEPARTMENT**

**To: Town Council**  
**From: Sarah Propst, Community Development**  
**Date: December 4, 2023**  
**Re: Post Disaster Buildback Policy Discussion**

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**BACKGROUND**

Staff has been asked to provide some options to amend to the Post-Disaster Buildback policy. This policy is found in Section 34-3238 of the LDC and allows a property owner to redevelop a structure that exceeds current allowable density. The language allows the existing legal number of units to be rebuilt but the existing square footage may not increase, and the property must be brought into compliance with building and flood requirements if the damage exceeds 50% of the value of the property. Currently the code states: "For the purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking and similar common or non-air-conditioned space." This limitation decreases the amount of usable square footage for a rebuild of structures.

There is also a pre-disaster buildback policy that has been used to redevelop properties that exceed density, to bring them in compliance with flood and building code, in advance of storm damage. This code also disallows increasing the square footage although applicants have gone through the required residential planned development process and received additional square footage, in the past.

The Pre and Post-Disaster Buildback policies are also contained within the comprehensive plan as Policy 4-D-1. The attached proposed language does not run counter to the language in Policy 4-D-1.

**TOWN COUNCIL DISCUSSION**

At the October 5<sup>th</sup>, Town Council Management and Planning Meeting, post disaster buildback was discussed. The Town Council encouraged staff to provide language that allows the square footage of the footprint, including space that was unenclosed, such as garage, lanai or storage areas. The change would essentially allow the same size building as previously existed, raised above the base flood elevation and would not limit the usable space to only previous interior

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space. The proposed change would allow the same number of units, the same number of bedrooms and the same number of bathrooms, except that bathrooms could be increased to match the number of bedrooms.

### LPA DISCUSSION

At the November 14<sup>th</sup> LPA hearing the LPA recommended several changes to the proposed language before you:

- Adding the following language to 34-3238(2)d: If the additional square footage gained does not provide adequate space to meet building or ADA codes, additional space may be allocated for that purpose.
- Removal of the limit of room numbers and bathrooms from the residential (2)d.
- The LPA voiced a desire for the Post Disaster Buildback to allow new structures with the same number of units without limitation on the allowable square footage, only meeting the bulk standards of the zoning district.
- Include further explanation for the square footage per the roofline measurement in the ordinance. **Staff has included this change already.**
- Prior to the meeting staff was approached by a condominium association asking if the language could be clarified to state that the number of bathrooms means full baths, not half baths. **Staff has included this change already.**

### LANGUAGE FOR DISCUSSION

The language provided to you today allows all of the space within the previous roofline to be used toward unit space. This includes parking, storage, hallways and outdoor lanais that were covered by the roof. For residential structures, the number of rooms and units may not be increased but the square footage may be increased by using the additional space. For the purposed of hotels/motels the additional square footage may be used to create additional units but may not be used to increase over 49 rooms, if the hotel previously had fewer than 49 rooms.

This language encourages creative redesign to utilize space without increasing the size of the building a great deal. Some properties will get less of an increase in square footage, if, for instance there was no space below flood that was used for nonhabitable space. Does this go far enough



to provide additional square footage to post disaster buildback structures?

The language change also allows for the director to reduce open space, parking, landscaping and buffer requirements if a structure being rebuilt through post disaster buildback is unable to meet those requirements and requests a reduction.

Please provide feedback regarding the proposed language and please provide feedback regarding the LPA's recommendations.

#### **EXHIBITS**

Exhibit A – Proposed Post Disaster Buildback Language

Exhibit B – Existing Post Disaster Buildback Language

Sec. 34-3238. - Post-disaster buildback.

Owners of buildings or groups of buildings that exceed the density, intensity, or height limits for new buildings and that are damaged or destroyed by a natural disaster, including fire, tropical storms, and hurricanes, shall be permitted to replace those buildings at up to their existing lawful density, intensity, and/or height in accordance with Policy 4-D-1 of the Fort Myers Beach Comprehensive Plan.

- (1) *Less than 50 percent damage.* If the cost to repair the damaged building is less than 50 percent of the building's value and the repair is thus not a "substantial improvement" as that term is defined in § 6-405 of this LDC, then the following rules shall apply:
  - a. The repairs may be made without bringing the building into full compliance with the requirements of this code for building size, dimension, location on the lot, number of dwelling units or guest units, building type, or compliance with floodplain regulations.
  - b. The repairs may not physically enlarge the building either laterally or vertically, with the following potential exception:
    1. During the repair process, owners may wish to elevate lawfully existing dwelling units or guest units that do not comply with the floodplain regulations in ch. 6 of this code.
    2. To encourage this elevation, the director may administratively modify setbacks, open space, buffer, or height requirements to the minimum extent that would accommodate rebuilding the units in conformance with ch. 6 of this LDC up to their existing interior square footage, as computed in accordance with subsections (2)d.1. or e.1 of this section.
    3. However, if the combined cost to repair the damage and elevate the units exceeds 50 percent of the building's value, then all provisions of subsection (2) of this section will apply.
  - c. All repairs must comply with all current building, life safety, and accessibility codes.
- (2) *More than 50 percent damage.* If the cost to repair or rebuild the damaged building is more than 50 percent of the building's value and is thus a "substantial improvement" as that term is defined in § 6-405 of this LDC, then the following rules shall apply:
  - a. The building must meet the floodplain regulations for new buildings, as provided in article IV of ch. 6 of this LDC.
  - b. The building must meet the coastal construction requirements that apply to new structures and portions thereof, as provided in article III of ch. 6 of this LDC and in state regulations. Due to these requirements, habitable major structures and most minor structures that are damaged by more than 50 percent must be rebuilt landward of the 1978 coastal construction control line.
  - c. The building must comply with all current building, life safety, and accessibility codes.
  - d. *Residential buildings.* A rebuilt residential building may exceed the density limits for new buildings on vacant land, but cannot exceed the legally documented number of dwelling units in the building immediately before the natural disaster.
    1. All dwelling units legally existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt dwelling units does not exceed the interior square footage of the previous dwelling units. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air conditioned space.
    2. At the owner's option, this same square footage can be used for fewer but larger dwelling units.
    3. Also at the owner's option, the number of dwelling units and the square footage of the new building may be determined by this code's current regulations for new buildings on

the same site instead of using either the pre-disaster or post-disaster buildback regulations.

- e. *Hotels/motels.* A rebuilt hotel/motel may exceed the intensity limits for new hotel/motel buildings on vacant land, but cannot exceed the documented number of lawful guest units in the building immediately before the natural disaster.
  - 1. All guest units lawfully existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt guest units does not exceed the interior square footage of the previous guest units. However, interior square footage in the new building may be increased by 30 square feet for each bathroom to reflect current code requirements for larger bathrooms, and any lawfully existing guest units that are smaller than the minimum sizes required by this code may be enlarged to meet the minimum size requirements. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air conditioned space.
  - 2. At the owner's option, this same square footage can be used for fewer but larger guest units.
  - 3. Also at the owner's option, the number of guest units and the square footage of the new building may be determined by this code's current regulations for new hotel/motel buildings on the same site instead of using either the pre-disaster or post-disaster buildback regulations.
- f. *All buildings.* The new building must comply with all other zoning and development regulations except where compliance with such regulations would preclude reconstruction otherwise intended by Policy 4-D-1 of the comprehensive plan. Specifically:
  - 1. If the lowest floor of the rebuilt building must be elevated higher than the damaged or destroyed building to comply with current floodplain or coastal regulations, then the total height of the rebuilt building can be increased by the same amount.
  - 2. If a rebuilt building must be set back further from any property lines due to current requirements of this code, then the volume of the building so reduced can be rebuilt elsewhere on the site, including one or more extra stories on the building if in the opinion of the director there is no other suitable location to replace the volume.
  - 3. If current open space or buffer regulations cannot be met, those requirements may be waived administratively by the director.