



## **CHAPTER 7.5**

### **FLOOD DAMAGE PROTECTION**

Editor's note: Ord. No. 80-1, enacted March 12, 1980 as a new Chapter No. 24 has been revised to Chapter 7.5 at the discretion of the editor to agree with standard format and to modify the title to agree with general usage.

Article I. In General

#### **ARTICLE I. IN GENERAL**

**SECTION 7.5-1. STATUTORY AUTHORIZATION.** The legislature of the State of Florida has in Chapter 166 of the Florida Statutes delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety and general welfare of its citizenry.

#### **SECTION 7.5-2. FINDINGS OF FACT.**

(a) The flood hazard areas of the Town of Melbourne Village are subject to periodic inundation which results in loss of life, 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;

(b) These flood losses are caused by the cumulative effect of obstructions in flood plains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to their lands which are inadequately elevated, flood proofed, or otherwise protected from flood damages.

**SECTION 7.5-3. STATEMENT OF PURPOSE.** It is the purpose of this chapter to promote the public health, safety and general welfare to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(a) Restrict or prohibit uses which are dangerous to health, safety and property due to water or erosion or in flood heights or velocities;

(b) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

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- (c) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
- (d) Control filling, grading, dredging and other development which may increase erosion or flood damage;
- (e) Prevent or regulate the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards to other lands.

**SECTION 7.5-4. OBJECTIVES.** The objectives of this chapter are:

- (a) To protect human life and health;
- (b) To minimize expenditure of public money for costly flood control projects;
- (c) To minimize the need for rescue and relief effort associated with flooding and generally undertaken at the expense of the general public;
- (d) To minimize prolonged business interruptions;
- (e) To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
- (f) To help maintain a stable tax base by providing for the sound use and development of flood-prone areas in such a manner as to minimize future flood blight areas;
- (g) To insure that potential home buyers are notified that property is in a flood area.

**SECTION 7.5-5. DEFINITIONS.** Unless specifically defined below, words or phrases used in this chapter shall be interpreted so as to give them the meaning they have in common usage and to give this chapter its most reasonable application.

*APPEAL* means a request for a review of the Town Superintendent's interpretation of any provision of this chapter or a request for a variance.

*AREA OF SHALLOW FLOODING* means a designated AO or VO Zone on a community's flood insurance rate map (FIRM) with base flood depths from one to three (3) feet where a

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clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

*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.

*BASE FLOOD* means the flood having a one percent chance of being equalled or exceeded in any given year.

*BREAKAWAY WALLS* means any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic, or any other suitable building material which is not part of the structural support of the building and which is so designed as to breakaway, under abnormal high tides or wave action, without damage to the structural integrity of the building on which they are used or any buildings to which they might be carried by flood waters.

*COASTAL HIGH HAZARD AREA* means the area subject to high velocity waters, including but not limited to hurricane wave wash or tsunami. The areas are designated on a FIRM as Zone V1-30.

*DEVELOPMENT* means any man-made change to improve or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

*ELEVATED BUILDING* means a non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts or piers), shear walls, or breakaway walls.

*FLOOD OR FLOODING* means a general and temporary condition of partial or complete inundation of normally dry land areas from:

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

*FLOOD HAZARD BOUNDARY MAP* means an official map of a community, on which the Federal Insurance Administration delineated where the boundaries of the areas of special flood hazards have been designated a Zone A.

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*FLOOD INSURANCE RATE MAP (FIRM)* means an official map of a community, on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

*FLOOD INSURANCE STUDY* is the official report provided by the Federal Insurance Administration. The report contains flood profiles, as well as the Flood Hazard Boundary-Floodway Map and the water surface elevation of the base flood.

*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 one foot.

*HABITABLE FLOOR* means any floor usable for living purposes, which includes working, sleeping, eating, cooking or recreation, or a combination thereof. A floor used only for storage purposes is not a "habitable floor".

*MANUFACTURED HOME* means a structure, 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 trailer parks, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property. (Ord. 88-11)

*MEAN SEA LEVEL* means the average height of the sea for all stages of the tide.

*NEW CONSTRUCTION* means structures for which the "start of construction" commenced on or after the effective date of this chapter.

*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 structure 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. 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 structure. (Ord. 88-11)

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*STRUCTURE* means a walled and roofed building that is principally above ground, as well as a mobile home.

*SUBSTANTIAL IMPROVEMENTS* mean any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (50) percent of the market value of the structure either, (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred. For the purpose of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or (2) any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic places.

*VARIANCE* is a grant of relief to a person from the requirements of this chapter which permits construction in a manner otherwise prohibited by this chapter where specific enforcement would result in unnecessary hardship.

**SECTION 7.5-6 APPLICABILITY.** This chapter shall apply to all areas of special flood hazards within the jurisdiction of the Town of Melbourne Village, Florida.

**SECTION 7.5-7. BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD.** The areas of special flood hazard identified by the Federal Insurance Administration in its flood hazard boundary map (FHBM), Number H-01-12, dated August 30, 1974, and any revisions thereto are adopted by reference and declared to be a part of this chapter; or the areas of special flood hazard identifies the Federal Insurance Administration through a scientific and engineering report entitled "The Flood Insurance study for the Town of Melbourne Village" with accompanying flood insurance rate maps and flood boundary and floodway maps and any revisions thereto, when received from the Federal Insurance Administration and adopted by the Town Commission.

**SECTION 7.5-8. ESTABLISHMENT OF DEVELOPMENT PERMITS.** A development permit shall be required in conformance with the provisions of this chapter.

**SECTION 7.5-9. COMPLIANCE.** No structure or land shall hereafter be located, extended, converted, or structurally altered without full compliance with the terms of this chapter and other applicable regulations.

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**SECTION 7.5-10. ABROGATION AND GREATER RESTRICTIONS.** This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

**SECTION 7.5-11. INTERPRETATION.** In the interpretation and application of this chapter, all provisions shall be:

- (1) Considered as minimum requirements.
- (2) Liberally construed in favor of the governing body.
- (3) Deemed neither to limit nor repeal any other powers granted under state statutes.

**SECTION 7.5-12. WARNING AND DISCLAIMER OF LIABILITY.** The degree of flood protection required by this chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the Town of Melbourne Village or by any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

**SECTION 7.5-13. DESIGNATION OF ADMINISTRATOR.** The Town Superintendent is hereby appointed to administer and implement the provisions of this chapter.

**SECTION 7.5-14. DUTIES AND RESPONSIBILITIES OF THE ADMINISTRATOR.** Duties of the administrator shall include, but not be limited to:

- (a) Review all development permits to assure that the permit requirements of this chapter have been satisfied;
- (b) Review permits for proposed development to assure that all necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required;

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- (c) Notify adjacent communities and the state department of community affairs prior to any alteration or relocation of a watercourse, and shall submit evidence of such notification to the Federal Insurance Administration;
- (d) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished;
- (e) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures have been floodproofed;
- (f) Verify and record the actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed;
- (g) When floodproofing is utilized for a particular structure, the Town Superintendent shall obtain certification from a registered professional engineer or architect;
- (h) Where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), the Town Superintendent 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 section;
- (i) When base flood elevation data has not been provided, then the Town Superintendent shall obtain, review, and reasonably utilize any base flood elevation data available from a federal, state or other source, in order to administer the provisions of Sections 7.5-16 through 7.5-19;
- (j) All records pertaining to the provisions of this chapter shall be maintained in the Town Office, and shall be open for public inspection.

**SECTION 7.5-15 PERMIT PROCEDURES.** Application for a development permit shall be made to the Town Superintendent on forms furnished by him 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, fill storage of materials; drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- (a) Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures;

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- (b) Elevation in relation to mean sea level to which any non-residential structure has been floodproofed;
- (c) Provide a certificate from a registered professional engineer or architect that the nonresidential floodproofed structure meets the floodproofing criteria in section 7.5-18(b);
- (d) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.

## **SECTION 7.5-16 VARIANCE PROCEDURES.**

- (a) The Board of Adjustment as established by the Town Commission shall hear and decide appeals and requests for variances from the requirements of this chapter;
- (b) The Board of Adjustment shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Town Superintendent in the enforcement or administration of this chapter;
- (c) Any person aggrieved by the decision of the Board of Adjustment or any taxpayer may appeal such decision to the circuit court, in and for Brevard County;
- (d) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic Places, without regard to the procedures set forth in the remainder of this subsection;
- (e) In passing upon such applications, the Board of Adjustment shall consider all technical evaluations, all relevant factors, standards specified in other sections of this chapter:
  - (1) The danger that materials may be swept onto other lands to the injury of others.
  - (2) The danger to 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.
  - (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.



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(6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

(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 transport of the floodwaters and the effects of wave action, if applicable, expected at the site.

(11) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewage, gas, electrical, water systems, streets and bridges.

(12) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing items (1) through (11) have been fully considered. As the lot size increases beyond the one-half acre, the technical justification required for issuing the variance increases.

(f) Upon consideration of the factors listed above and the purposes of this chapter, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter;

(g) Variance shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result;

(h) Conditions for variances:

(1) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(2) Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to

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the applicant, and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(3) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with the lowest floor elevation X feet below the base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(4) The Town Superintendent shall maintain the records of all appeal actions and report any variances to the federal insurance administration upon request.

**SECTION 7.5-17. GENERAL CONSTRUCTION AND IMPROVEMENT STANDARDS IN AREAS OF SPECIAL FLOOD HAZARDS.** In all areas of special flood hazards, the following provisions are required:

- (a) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure;
- (b) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- (c) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (d) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
- (e) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters;
- (f) On site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding;

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(g) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. (Ord. 88-11)

### **SECTION 7.5-18. SPECIFIC REQUIREMENTS FOR CONSTRUCTION AND IMPROVEMENTS IN SPECIAL FLOOD HAZARD AREAS.**

In all areas of special flood hazards where base flood elevation data has been provided as set forth in sections 7.5-7 or 7.5-14 (i), the following provisions are required:

(a) **RESIDENTIAL CONSTRUCTION.** New construction or substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above base flood elevation;

(b) **NONRESIDENTIAL CONSTRUCTION.** New construction or substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated to the level of the base flood elevation or, together with attendant utility and sanitary facilities, be floodproofed so that below the base flood level, the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in section 7.5-15;

(c) **FLOODWAYS.** Located within areas of special flood hazard established in section 7.5-7 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris, projectile potential and erosion potential, the following provisions shall apply:

(1) Prohibits encroachments, including fill, new construction, substantial improvements and other developments unless certification by a professional registered engineer or architect is provided demonstrating that encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge.

(2) If section 7.5-18(c) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of sections 7.5-17---7.5-20.

(3) Prohibit the placement of manufactured homes (mobile homes). (Ord. 88-11)

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(d) ELEVATED BUILDINGS. New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the base flood elevation shall be designed to preclude finished living space and designated to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls: (Ord. 88-11)

(1) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:

(i) Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding; (Ord. 88-11)

(ii) The bottom of all openings shall be no higher than one foot above grade; (Ord. 88-11)

(iii) Openings may be equipped with screens, louvers, valves or other coverings or devices provided they permit the automatic flow of floodwaters in both directions. (Ord. 88-11)

(2) Electrical, plumbing and other utility connections are prohibited below the base flood elevation. (Ord. 88-11)

(3) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator). (Ord. 88-11)

(4) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms. (Ord. 88-11)

## **SECTION 7.5-19. STANDARDS FOR AREAS OF SHALLOW FLOODING. (AO ZONES).**

Located within the areas of special flood hazard established in section 7.5-7 are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate; therefore, the following provisions apply:

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- (a) All new construction and substantial improvements of residential structures have the lowest floor, including basement, elevated above the crown of the nearest street to or above the depth number specified on the community's FIRM;
- (b) All new construction and substantial improvements of nonresidential structures shall;
  - (1) Have the lowest floor, including basement, elevated above the crown of the nearest street to or above the depth number specified on the FIRM.
  - (2) Together with attendant utility and sanitary facilities be completely floodproofed to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

### **SECTION 7.5-20 STANDARDS FOR SUBDIVISION PROPOSALS.**

- (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 flood damage;
- (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards;
- (d) Base flood elevation data shall be provided for subdivision proposals and other proposed development which is greater than the lesser of fifty (50) lots or five (5) acres.

**SECTION 7.5-21. PENALTIES FOR VIOLATION.** Violations 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 constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than \$500.00 or imprisoned for not more than sixty (60) days, or both, and in addition, shall pay all costs and expenses involved in the case. Each day that such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of Melbourne Village from taking such other lawful action as is necessary to prevent or remedy any violation. (Ord. 88-11)