

TOWN OF FORT MYERS BEACH
ORDINANCE NO. 08-___

AN ORDINANCE OF THE TOWN OF FORT MYERS BEACH, FLORIDA, TO BE KNOWN AS THE TOWN OF FORT MYERS BEACH ~~PRE-EVENT PLANNING, EMERGENCY RESPONSE AND~~ POST-DISASTER RECOVERY AND RECONSTRUCTION ORDINANCE; PROVIDING FOR AUTHORITY; PURPOSES; DEFINITIONS; ~~REPEALING TOWN ORDINANCES 96-19, 99-06, 04-14, 05-16, 05-17 AND 06-12~~; RECOVERY ORGANIZATION; RECOVERY PLAN; GENERAL PROVISIONS; TEMPORARY REGULATIONS; DEMOLITION OF DAMAGED BUILDINGS; TEMPORARY AND PERMANENT HOUSING; HAZARD MITIGATION PROGRAM; RECOVERY AND RECONSTRUCTION STRATEGY; PENALTIES; CONFLICT AND SEVERABILITY; AND AN EFFECTIVE DATE.

WHEREAS, the Town of Fort Myers Beach (Town) is vulnerable to various natural hazards, including but not limited to tropical storms, hurricanes, flooding, and wind, resulting in disasters causing substantial loss of life and/or property and it is essential to the well-being of the Town to expedite recovery and reconstruction, mitigate hazardous conditions, and improve the community after such disasters; and

WHEREAS, Chapter 252, Florida Statutes, authorizes the waiver of procedures and formalities, otherwise required of political subdivisions, to take whatever action is necessary to ensure the health, safety, and welfare of its residents, visitors, business community, and property before, during and after such disasters; and

WHEREAS, Florida Statute 252.38 authorizes and encourages municipalities to create municipal emergency management programs, and requires that such program activities be coordinated with those of the county emergency management agency and it is also mutually beneficial to cooperatively plan activities needed between and among the Town, Lee County, other local municipalities, and state and federal governmental authorities; and

WHEREAS, preparation of a pre-event plan for emergency response and disaster recovery and reconstruction can help the Town organize to expedite recovery in advance of a disaster and to identify and mitigate hazardous conditions, both before and after such a disaster; and

WHEREAS, recovery can be expedited by pre-event adoption of an ordinance authorizing certain extraordinary governmental actions to be taken during the declared local emergency to expedite implementation of emergency response and disaster recovery and reconstruction measures identified in a pre-event plan; and

WHEREAS, disaster recovery and reconstruction can be facilitated by establishing a recovery organization within the Town to plan, coordinate, and expedite recovery and long-term reconstruction activities; and

\\FMB-DC1\Folders 2\Community Development\Local Planning Agency\Ordinance Cases\Post Disaster Recovery\080609 Draft Post Disaster R&R Ordinance.doc: AS AMENDED 060808

WHEREAS, Article VIII, Section 2 of the State Constitution and Chapter 166 of the 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 services, and exercise any power for municipal purposes, except when expressly prohibited by law; and

WHEREAS, Article X of the Town Charter 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 measures set forth in this Ordinance are necessary to provide for the protection of public health, safety, and welfare and to preserve the lives and property of the people of the Town.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS.

Section 1. Adoption of Recitals. The above recitals as set forth in the various "Whereas" clauses are hereby adopted and incorporated into the body of this Resolution.

Section 2. Purposes. It is the intent of the Town under this Ordinance to:

- (A) ~~It is the intent of the town to~~ make every effort to develop its capacity to identify and coordinate various post-disaster recovery and reconstruction resources while at the same time ensuring maximum local control over the recovery and reconstruction process.
- A. Authorize creation of an organization to plan and prepare in advance of a disaster for orderly and expeditious post-disaster recovery and to direct and coordinate recovery and reconstruction activities; and
- B. Direct the preparation of a pre-event plan for ~~emergency response~~ and post-disaster recovery and reconstruction to be updated on an ongoing basis; and
- C. Authorize in advance of a disaster the exercise of certain planning and regulatory powers related to disaster recovery and reconstruction to be implemented upon declaration of a local emergency; and
- D. Identify means by which the Town will take cooperative action with other governmental entities in expediting recovery.

(E) (B) Following a major or catastrophic disaster, sufficient time must be provided to conduct damage assessments, classify and categorize individual structure damage, and evaluate the effectiveness and enforcement of its regulations including, but not limited to the Florida Building Code for existing structures. It is further the intent of the town to allow rebuilding and reconstruction in an orderly manner by controlling the issuance of building permits, development orders and site plans in order to manage the location, timing and sequence of reconstruction and repair.

(F) (C) The purpose of this chapter, however, is not to provide a specific guideline or set forth the specific requirements as to whether, to what extent, where, or how a private structure may be rebuilt. Those determinations will be made in conformance with the applicable portions of the town's comprehensive plan, zoning code, flood code, building code as well as other provisions of state and local law. Rather, the purpose of this chapter is to provide: an effective and coordinated method for the determination of the extent of damage which occurred within the town as a result of the disaster; a framework for addressing the restoration of essential services within the town; and protection of the health, safety and welfare of the citizens and property owners of the town while these purposes are being accomplished.

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Section 3. Authority of the Town Council. Nothing in this Ordinance shall be construed to limit the authority of the Town Council to take any action authorized by law.

Section 4. Definitions. The following definitions apply in this ordinance. The words "must" and "will" are mandatory and not discretionary.

Building value: Is 120 percent of the latest assessment of all improvements on a parcel of land as recorded in the county property appraiser's records immediately before the structure was damaged. LBK

"Building Value" means the latest total assessment of all improvements on a parcel of land recorded on the Lee County Property Appraiser's file before the structure was damaged. LC

"Catastrophic Disaster" means a disaster that will require massive state and federal assistance including immediate military involvement. LC

Catastrophic disaster: Is defined as an event that overwhelms local response capabilities and will require mutual aid, state response, federal disaster relief programs, and activation of the state and federal response plans. LBK

Disaster means any natural catastrophe, including any hurricane, tornado, storm, high water, wind-driven water, tidal wave, tsunami, earthquake, landslide, mudslide, or drought, or, regardless of cause, any fire, flood, or explosion, that in the determination of the federal and/or state government causes damage of sufficient severity and magnitude to warrant disaster assistance under the Stafford Act and/or state relief provisions to supplement the efforts and available resources of the state, ancillary jurisdictions, and/or disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

"Chief Building Official" means the Director of the Division of Codes and Building Services or his/her designee, who is hereby designated by the Board of County Commissioners of Lee County, Florida to implement, administer and enforce the building permit moratoria provisions of this ordinance. LC

Building official: Means the head of building services who is hereby designated by the town manager to implement, administer and enforce the building permit moratorium provision of this chapter. LBK

Current regulatory standards for new construction: Includes consideration of the following: Density, floodplain management, building code, land use, land development code and comprehensive plan requirements and site location. LBK

"Current regulatory standards for new construction" means the following:

1. Federal requirements for elevation above the 100-year flood level.
2. Building code requirements for flood-proofing.
3. Repair work meets current building and life safety codes. LC

Damage assessment survey means a field survey to determine levels of damage for structures and to identify the condition of structures.

"Damage Assessment" means a systematic procedure for evaluating damage to public and private property, based on current replacement cost. The assessment may be used to determine if the damaged area can qualify for federal or state disaster assistance.

Damage assessment: Means a systematic procedure for evaluating damage to public and private property, based on current replacement cost. The assessment may be used to determine if the damaged area can qualify for federal or state disaster assistance.

Damage assessment team: Means a local group of qualified individuals charged with providing an initial assessment of damage to private and public properties in the aftermath of a significant natural or manmade event.

Debris: Misplaced, broken, or discarded building/construction materials, garbage, vegetative matter, spoiled or ruined household goods or materials, dead fish or marine flotsam and jetsam.

"Destroyed Structure" means a structure that is a total loss or damaged to such an extent that repairs are not technically or economically feasible. The indicator for this category is if the cost to repair exceeds fifty percent (50%) of the replacement value at the time of damage or destruction.

Destroyed structure: Means a structure that is a total loss or damaged to such an extent that repairs are not technically or economically feasible. An indicator for this category is if the cost to repair equals or exceeds 50 percent of the building value at the time of damage or destruction.

Development moratorium means a temporary hold, for a defined period of time, on the issuance of building permits, approval of land-use applications or other permits and entitlements related to the use, development, redevelopment, repair, and occupancy of private property in the interests of protection of life, safety and property.

Development order: Means any order, permit, determination, or action granting with conditions an application for any final development order, building permit, temporary use permit, temporary construction and development permit, electrical permit, plumbing permit, daylight plane waiver, boat-dock permit, septic tank permit, right-of-way permit, construction approval for infrastructure (including water, sewer, grading, paving), zoning ordinance amendment, comprehensive plan amendment, flood variance, coastal construction control line variance, tree removal permits, site development plan approval, subdivision approval (including plats, plans, variances and amendments), rezoning, outline development plan amendment, zoning certification, special exception, variance, or any other official action of the town having the effect of permitting development as defined in the land development code.

"Disaster Advisory Council" means a group of officials designated by this ordinance for the effectuation of its purposes.

Disaster Field Office (DFO). A center established by FEMA for coordinating disaster response and recovery operations, staffed by representatives of federal, state, and local agencies as identified in the Federal Response Plan (FRP) and determined by disaster circumstances.

Disaster Recovery Center (DRC) means a multi-agency center organized by FEMA and/or other federal and/or state and/or Town or other municipal government for coordinating assistance to disaster victims.

Damage Survey Report (DSR) means a report that forms the basis of a claim by the Town for financial reimbursement for repair or replacement of a public facility damaged in a disaster, as authorized under the Stafford Act and other federal and/or state regulations, plans, and policies.

Emergency means a local emergency that has been declared by the Town or County for a specific disaster and that has not been terminated.

"Emergency Review Board" means a committee of three members from the Post-Disaster Recovery Task Force established for the purposes of this ordinance.

Event means any natural occurrence resulting in the declaration of a state of emergency and will include, but not be limited to, an earthquake, fire, flood, wind storm, hurricane, and/or tropical storm.

Federal Response Plan (FRP) means a plan to coordinate efforts of the Town and other governments in providing response to disasters and other incidents requiring federal assistance under the Stafford Act in an expeditious manner.

Flood Insurance Rate Map (FIRM) means an official map of the Town, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Hazard Mitigation Grant Program (HMGP) means a federal program that assists states and local communities in implementing long-term hazard mitigation measures following a disaster declaration.

"Historic Resource" means any prehistoric or historic district, site, building, structure, object or other real or personal property of historical, architectural or archaeological value. Historic resources may include but are not limited to monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government or culture of the county, the state or the United States.

"Local Damage Assessment Team" means a group of individuals designated by the local jurisdiction to perform damage assessment according to state and federal requirements.

"Major Damage Structure" means a structure that can be made habitable with extensive repairs. Damage may include foundation, roof structure, and major structure components. The indicator for this category is if the cost to repair is greater than twenty-five point zero one percent (25.01%) and up to and including fifty percent (50%) of the replacement value at the time of damage.

Major damaged structure: Means a structure that can be made habitable with extensive repairs. Damage may include foundation, roof structure, and major structural components. The indicator for this category is if the cost to repair is greater than 20 percent and up to 50 percent of the building value at the time of damage.

"Major Disaster" means a disaster that will likely exceed local capabilities and require a broad range of state and federal assistance.

Major disaster: Is defined as an event that may require mutual aid, state response assistance and federal disaster relief programs.

"Minor Damage Structure" means a structure that can be made habitable in a short period of time with minimal repairs. Damages may include doors, windows, floors, roofs, central air conditioners, and other minor structure damage. The indicator for this category is if the cost to repair is twenty-five percent (25%) or less than the replacement value at the time of damage.

Minor damaged structure: Means a structure that can be made habitable in a short period of time with minimal repairs. Damages may include doors, windows, floors, roofs, central air conditioners, and other minor structural damage. The indicator for this category is if the cost to repair is 20 percent or less than the building value at the time of damage.

"Minor Disaster" means a disaster that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance.

Minor disaster: Means a structure that is likely to be within the response capabilities of local government and to result in only a minimal need for state or federal assistance.

"Post-Disaster Recovery Task Force" means a group of officials designated by and for the purposes of this ordinance.

Private property: All property that is not owned or controlled by a governmental entity.

Private streets, roads and road-way: Includes the rights-of-way as well as the improved surface that provides access to residential and commercial areas as identified in the map referred to as exhibit "A" in subsection 159.07(B) and on file in the town clerk's office, and reflected as green referred to as "private roadways".

Reconstruction means the rebuilding of permanent replacement housing, construction of large-scale public or private facilities badly damaged or destroyed in a disaster, addition of community improvements, and full restoration of a healthy economy in the Town.

Recovery means the process by which most of private and public buildings and structures not severely damaged or destroyed in a disaster are repaired and most public and commercial services are restored to normal.

Recovery organization means an interdepartmental organization coordinates actions of the Town staff in planning and implementing disaster recovery and reconstruction functions

Recovery plan means a pre-event plan for emergency response and post-disaster recovery and reconstruction, composed of policies, plans, implementation actions, and designated responsibilities related to expeditious and orderly post-disaster recovery and rebuilding, with an emphasis on mitigation.

Recovery strategy means a post-disaster strategic program identifying and prioritizing actions contemplated or under way regarding such essential recovery functions as business resumption, economic reinvestment, industrial recovery, housing replacement, infrastructure restoration, and potential sources of financing to support these functions.

"Replacement Cost" means the actual cost to repair, reconstruct, rebuild or replace a damaged structure. It will not include the following parts of a structure or items not considered a permanent part of the structure: building plans, surveys, permits, sidewalks, pools, screens, sheds, gazebos, fences, furniture and carpeting. For purposes of this ordinance, the replacement cost will be compared to the structure's replacement value to determine the percent of the structure damaged.

Replacement cost: Means the estimated cost to repair, reconstruct, rebuild or replace a damaged structure. It will not include the following parts of a structure or items not considered a permanent part of the structure: Building plans, surveys, permits, sidewalks, pools, screens, sheds, gazebos, fences, furniture and carpeting.

"Replacement Value" of a structure means the market building value contained in the Lee County Property Appraiser's file multiplied by one of the following factors:

1. 120% in a major disaster, or
2. 150% in a catastrophic disaster.

The structure's owner may opt to establish replacement value by hiring a state certified property appraiser rather than use the formula stated in this definition.

"Structure" means that building or accessory building which is built or constructed.

Responsible Official means the following Town Officials in the order indicated: first, the Mayor of the Town Council; secondly, in the absence, unavailability, or incapacity of the Mayor, the Vice-Mayor of the Town Council; thirdly, in the absence, unavailability, or incapacity of the Mayor and the Vice-Mayor, the Town Manager; fourthly, in the absence, unavailability, or incapacity of the Mayor, the Vice-Mayor and the Town Manager, such designee(s) as may be appointed by the Town Manager.

Stafford Act means the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93-288, as amended).

Structure: Means anything constructed or erected requires a fixed location on the ground, or attached to something having a fixed location on or in the ground.

Town Manager means the Town Manager of the Town of Fort Myers Beach or designee.

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Section 5. Disaster Recovery Organization. There is hereby created the Town of Fort Myers Beach Disaster Recovery Organization (DRO) for the purpose of coordinating the actions of the Town with other nearby municipalities, Lee County, and state and federal jurisdictions in planning and implementing disaster recovery and reconstruction activities.

A. Powers and duties. The DRO will have such powers as are required or advisable to enable it to carry out the purposes, provisions, and procedures of this ordinance.

B. Disaster Recovery Task Force. The DRO will include the Town Disaster Recovery Task Force (DRTF) comprised of the following members:

1. The Town Manager or designee, who will be Chair
2. The Town Community Development Director or designee who will be Vice-Chair;
3. The Town Public Works Director or designee who will act as Vice-Chair in the absence of the Town Community Development Director; and
4. The Town Attorney who will be Legal Adviser; and
5. A member of Town Council, as selected by Town Council no later than June 1 of each year in a regularly scheduled meeting. Such member shall serve in an ex officio capacity.
6. Other members as appointed by the Town Manager and who may serve on an ad hoc or ex officio basis, including the Chief of the Fort Myers Beach Fire Control District or his designee, the emergency management coordinator, the historic preservation board chair or designee, the Lee County Sheriff or designee, a media contact person, the manager of utilities, and representatives from such other entities as may be deemed necessary for effective operation by the Chair or designee.

C. Operations and Meetings. The Chair will be responsible for DRO operations. When an emergency declaration is not in force, the DRTF will meet as necessary, upon call of the Chair. After a declaration of an emergency, and for the duration of declared emergency period, the DRTF will meet as set forth in the Town Emergency Operations Plan or as frequently as determined by the Chair.

D. Succession. In the absence of the Chair, the Vice-Chair shall serve as Acting Chair and shall be empowered to carry out the duties and responsibilities of the Chair. On or before May 1st of each year, the Chair will name the succession of persons to carry on the duties of the Chair, and to serve as Acting Chair in the event of the unavailability of the Town Manager. In the absence of such written document, the succession in place from the prior year shall continue in full force and effect.

E. Organization. The DRTF may create such standing or ad hoc committees as it determines necessary.

F. Relation to County. The DRO will work in concert with the Lee County departments charged with interrelated functions.

G. Open Communications. It is hereby declared the policy of that Town that all decisions by the DRO and by the DRTF shall be communicated to residents and property owners of the Town as soon as practicable.

Section 6. Recovery Plan

A. Pre-Disaster Planning. The DRTF is responsible for preparing Pre-event Planning and the Emergency Response and Post-Disaster Recovery Plan (Recovery Plan).

B. Pre-Event Planning and Recovery Plan Content. The pre-event plan will include policies regarding implementation actions and designated responsibilities when a disaster appears imminent. The Recovery Plan will include the pre-event planning and post-disaster policies of implementation actions and designated responsibilities for such subjects as business resumption, damage assessment, demolitions, debris removal and storage, expedited repair permitting, fiscal reserves, communication to residents and business owners, hazard evaluation, hazard mitigation, historical buildings, unlawful buildings and uses, development moratorium procedures, nonconforming buildings and uses, rebuilding plans, redevelopment procedures, relation to comprehensive plan, restoration of infrastructure, restoration of standard operating procedures, temporary and replacement housing, and/or such other subjects as may be appropriate to expeditious and wise pre-event planning and emergency response and post-disaster recovery, including provision for redundancies in pre-event and post-disaster recovery operations and services.

C. Coordination of Recovery Plan with County and Regional Plans, FEMA, and other Agencies. The Recovery Plan will identify relationships of planned response and recovery actions with those of adjacent communities and county, state, federal, and/or mutual aid agencies involved in disaster recovery and reconstruction, including but not limited to the Federal Emergency Management Agency (FEMA), the American Red Cross, the Department of Housing and Urban Development (HUD), the Small Business Administration (SBA), the Environmental Protection Administration (EPA), the Department of Transportation (DOT), the State emergency agency or agencies, the County emergency agency or agencies, and other entities that may provide assistance in the event of a disaster. The Town Manager will provide a copy of the plan to the appropriate state and county officials.

D. Recovery Plan Adoption. Following formulation, the Recovery Plan will be transmitted to the Local Planning Agency (LPA) and Town Council pursuant to the requirements of the Town of Fort Myers Beach Land Development Code (LDC) for review and approval. The Town Council will hold one or more public hearings to receive comments from the public on the Recovery Plan. Following one or more public hearings, the Town Council will adopt the Recovery Plan, including any modifications deemed appropriate, or transmit the plan back to the DRTF and/or the LPA for further modification and review prior to final action.

E. Recovery Plan Implementation. The DRTF will be responsible for implementation of the Recovery Plan both before and during an emergency and after a disaster, as applicable. The Chair will prepare reports annually, or more frequently as necessary, to fully advise the Town Council on the progress of preparation or implementation of the Recovery Plan. After a declaration of emergency in a disaster, the Chair will report to the Town Council as often as necessary on implementation actions taken in the post-disaster setting, identify policy and procedural issues and receive direction and authorization to proceed with plan modifications necessitated by specific circumstances.

F. Recovery Plan Training and Exercises. The DRTF will organize and conduct periodic training and exercises annually, or more often as necessary, in order to develop, convey, and update the contents of the Recovery Plan. Such training and exercises will be conducted in coordination with similar training and exercises related to Lee County's emergency operations plan.

G. Recovery Plan Consultation with Citizens. The DRTF may schedule and conduct community meetings, periodically convene advisory committees comprised of representatives of homeowner, resident, business and community organizations, or implement such other means as to provide information and receive input from members of the public regarding preparation, adoption, or amendment of the Recovery Plan.

H. Recovery Plan Amendments. During implementation of the Recovery Plan, the DRTF will address key issues, strategies and information bearing on the orderly maintenance and periodic revision of the Recovery Plan. In preparing modifications to the Recovery Plan, the DRTF will consult with departments, businesses, community organizations, and other government entities to obtain information pertinent to possible Recovery Plan amendments and any such modifications shall be heard by the Local Planning Agency prior to hearing by Town Council.

I. Recovery Plan Coordination with Related Plans. The Recovery Plan will be prepared in coordination with related elements of the Town Comprehensive Plan, provisions of the LDC, and such other plan(s) as may be pertinent. Town Council will amend such related documents as necessary to be mutually consistent.

Section 7. General Provisions.

The following general provisions will be applicable to implementation of this Ordinance following a disaster:

A. Powers, Procedures, and Duration.

1. Following a declaration of local emergency contemporaneous to a disaster and while such declaration is in force, the Chair and the DRTF will have authority to exercise powers and procedures authorized by this ordinance, subject to extension, modification, or replacement of all or portions of these provisions by

separate ordinances adopted by the Town Council. The provisions of this ordinance will be in effect for a period of six months from the date of a local emergency declaration contemporaneous to a disaster or until termination of a state of local emergency, whichever occurs later, or until these provisions are extended, modified, replaced by new provisions, or terminated, in whole or in part, by action of the Town Council through separate ordinance(s).

2. Up to 72 hours prior to an impending storm event, the Chair and the DRTF will have authority to require and effect the removal of signs, barricades, and other potentially dangerous or damaging projectiles, and the removal or securing of portable latrines, construction materials, construction debris, and commercial, construction, and residential dumpsters.

B. Pre-event Planning and Post-Disaster Operations. The Chair will direct and control pre-event planning, emergency response and post-disaster recovery and reconstruction operations, which may include, but are not limited to, the following:

1. Activate and deploy hazard evaluation teams to locate and determine the severity of hazards that may influence the location, timing, and procedures for repair and rebuilding processes;
2. Activate and deploy damage assessment teams to identify damaged structures and to determine further actions that should be taken regarding such structures;
3. Cooperate with Lee County, state emergency personnel, and other public and private entities, such as FEMA, and the American Red Cross in providing necessary information on damaged and destroyed buildings or infrastructure, natural and technological hazards, street and utility restoration priorities, temporary housing needs and similar recovery concerns;
4. Recommend to the Town Council and other appropriate entities necessary actions for reconstruction of damaged infrastructure;
5. Prepare plans and proposals for action by the Town Council for redevelopment projects, redesign of previously established projects or other appropriate special measures addressing reconstruction of heavily damaged areas;
6. Establish a development moratorium subject to the Town Council ratification;
7. Activate streamlined procedures to expedite repair and rebuilding of properties damaged or destroyed in the disaster;
8. Establish a "one-stop" field office staffed to provide information about repair and rebuilding procedures, issue repair and reconstruction permits, and provide information and support services on such matters as business resumption, and temporary and permanent housing;
9. Formulate proposals for action by the Town Council to amend the comprehensive plan, land development code, or other Town ordinances and other relevant plans, programs, and regulations in response to new needs resulting from a disaster;
10. Implement such other emergency response and post-disaster recovery and reconstruction activities identified in the Recovery Plan or by this ordinance, or as deemed by the Chair as necessary to public health, safety, and well-being.

C. Coordination with FEMA and Other Agencies. The Chair and the DRTF will coordinate recovery and reconstruction actions with those of state, federal, or mutual aid agencies involved in disaster response and recovery, including but not limited to the Federal Emergency Management Agency (FEMA), the American Red Cross, the Department of Housing and Urban Development (HUD), the Small Business Administration (SBA), the Florida Department of Community Affairs and other entities that provide assistance in the event of a disaster.

D. Essential Service and Facility Restoration Priorities.

1. The following priorities will govern power and communication service restoration once damaged electrical transmission systems, substations and distribution systems are restored:
 - a. Priority # 1 – Emergency response and recovery facilities having no emergency power or telephone service (community emergency operations or command centers, response/recovery centers); medical facilities having no emergency power, repairing emergency communication centers and facilities and designated facilities providing emergency food, water and ice.
 - b. Priority #2 – Water treatment and pumping facilities, special care centers, nursing home facilities having no emergency power, law enforcement and fire stations having no emergency power, staging areas and distribution centers requiring emergency power.
 - c. Priority #3 – Wastewater treatment plants and lift stations, general telephone service, solid waste facilities, medical facilities having emergency power, nursing homes having emergency power, law enforcement and fire stations having emergency power, public shelters still housing evacuees and the homeless, adult congregate living facilities, facilities serving as disaster application centers for federal disaster relief, and public and private facilities necessary for resource management and distribution activities (governmental facilities handling emergency purchasing, designated grocery store/restaurant outlets).
 - d. Priority #4 – Community areas receiving damage, and other government facilities.
2. Procedures regarding restoration of water service shall be set forth in the Plan.
3. Procedures regarding wastewater service restoration shall be set forth in the Plan.

4. Procedures for the return of the evacuees to their home: Upon the satisfactory restoration of the water supply to fight fires; an operational sewer system and after assessment of the structural damage, properly identified residents, property owners and business owners will be permitted on island. Prior to that time, such persons shall be permitted limited visits to their home and/or place of business, as safety permits.

E. Damage Assessment. The Chair will direct damage assessment teams having authority to conduct field surveys of damaged structures and post color-coded placards designating the condition of such structures as follows:

1. A placard indicating "Inspected – Lawful Occupancy Permitted" is to be posted on any building in which no apparent structural hazard has been found. This does not mean there are not other forms of damage that may temporarily affect occupancy. These will be the "green tag placard."
2. A placard indicating "Restricted Use" is to be posted on any building in which damage has resulted in some form of restriction to continued occupancy. The individual posting this placard will note in general terms the type of damage encountered and will clearly and concisely note the restrictions on continued occupancy. This will be the "yellow tag placard."
3. A placard indicating "Unsafe – Do Not Enter or Occupy" is to be posted on any building that has been damaged to the extent continued occupancy poses a threat to life safety. Buildings posted with this placard will not be entered under any circumstances except as authorized in writing by the department that posted the building or by authorized members of damage assessment teams. The individual posting this placard will note in general terms the type of damage encountered. This placard is not to be considered a demolition order. This will be the "red tag placard."
4. Reference to this Ordinance, including the section number, plus the name of the initiating department, its address, and phone number will be permanently affixed to each placard.
5. Once a placard has been attached to a structure, the placard must not be removed, altered, or covered until done so by an authorized representative of the Town or upon written notification from the Town. Failure to comply with this prohibition will be considered a violation of the LDC punishable as provided therein.
6. The owner of the affected property shall have the right to contest the Damage Assessment provided for in this section by filing a Notice of Contesting Damage Assessment with the Town Clerk within 10 days of the determination by the Damage Assessment Team. Such Notice shall be deemed to be a request for

review by the Special Magistrate pursuant to Article V. of the LDC. Such review shall be conducted by the Special Magistrate pursuant to Sections 2-425, 2-426, 2-427 and 2-429 of the LDC, as amended from time to time.

F. Debris Removal. The Chair will have the authority to order removal from public rights-of-way of debris and rubble, trees, damaged or destroyed cars, trailers, equipment and other private property, without notice to owners, for protection of life and property, provision of emergency evacuation, assurance of firefighting or ambulance access, mitigation of otherwise hazardous conditions, or restoration of public infrastructure. The Chair will also have the authority to secure emergency waivers of environmental regulations from state and federal authorities and to call upon outside support from such agencies for debris clearance, hazardous materials spills, and restoration of ground access.

G. One-Stop Center for Permitting. The Chair may establish a one-stop center, staffed for the purpose of establishing and implementing streamlined permit processing to expedite repair and reconstruction of buildings, and may provide information support for provision of temporary housing and encouragement of business resumption. The Chair will have the authority to establish such center and procedures in coordination with other governmental entities that may provide services and support, such as FEMA, SBA, HUD, and/or applicable state or county emergency personnel.

H. Temporary Use Permits. The Chair will have the authority to issue permits in any residential, commercial, or other zone for the temporary use of property that will aid in the immediate restoration of an area adversely impacted by a disaster, subject to the following provisions:

1. **Critical response facilities.** Any police, fire, emergency medical, or emergency communications facility that will aid in the immediate restoration of the area may be permitted in any zone for the duration of the declared emergency.
2. **Other temporary uses.** Temporary use permits may be issued in any zone, with conditions, as necessary, provided written findings are made establishing a factual basis that the proposed temporary use:
 - a. will not be detrimental to the immediate neighborhood;
 - b. will not adversely affect the (comprehensive plan or any applicable specific plan); and
 - c. will contribute in a positive fashion to the reconstruction and recovery of areas adversely impacted by the disaster.

Temporary use permits may be issued for a period of one year following the declaration of local emergency and may be extended for an additional year, to a maximum of two years from the declaration of emergency, provided such findings

are determined to be still applicable by the end of the first year. If during this period, substantial evidence contradicting one or more of the required findings comes to the attention of the Chair, the temporary use permit will be revoked.

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I. **Emergency Permitting System.** Following a declaration of disaster, temporary emergency repairs may be undertaken to secure structures and property damaged in the disaster against further damage or to protect adjoining structures or property. The Chair or designee must be notified of such repairs by the owner or person making the repair(s) within five (5) working days of such repair being initiated, and regular permits with fees may then be required by the Town. Except for temporary emergency repairs performed pursuant to this ordinance, all other repairs, restoration, and reconstruction of buildings damaged or destroyed in a disaster must be pursued through application for approval(s) under the provisions of the LDC.

NOTE:

At this point add moratoria and build-back policies.

Lee City and Longboat Key Sections follow. (FMB had none in its draft)

Lee City Moratoria

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C. Moratoria. The following moratoria will apply for the purpose of prioritizing repair and reconstruction immediately needed for public health, safety and welfare purposes.

1. Initial Building Moratorium.

a. Effective date of an Initial Building Moratorium. An initial building moratorium will become effective when one or more of the following actions or findings occur:

- (1) The Governor of the State of Florida or the President of the United States declares the County a disaster area.
- (2) The Chief Building Official determines that one hundred (100) or more structures have received major damage or have been destroyed.
- (3) Upon a finding by the Board of County Commissioners of the existence of a state of local emergency in accordance with Chapter 252 of the Florida Statutes.
- (4) The County is unable to maintain acceptable levels of public service expected during non-emergency situations.

b. Duration. The initial building moratorium will remain in effect for up to seventy-two (72) hours. No building permits may be issued during this time period. After expiration of this initial building moratorium, the following moratoria will become immediately effective unless modified by the Board.

2. Destroyed Structure Moratorium. No building permit may be issued within thirty (30) days following the expiration of the initial building moratorium for the replacement of any structure which has been destroyed.

3. Major Damaged Structure Moratorium. No building permit for repairs of a major damaged structure may be issued for at least ten (10) days following the expiration of the initial building moratorium.

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Lee County Moratoria
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4. Minor Damaged Structure Moratorium. No building permits for the repair or minor damaged structures may be issued for at least four (4) days following the expiration of the initial building moratorium.
5. No Development Moratorium. No building permit for new construction or reconstruction unrelated to rebuilding or repairing disaster damaged structures may be issued for at least thirty (30) days following the expiration of the initial building moratorium in order to allow an examination of existing building and life safety codes. The Disaster Advisory Committee or Post-Disaster Recovery Task Force will determine and advise the Board of County Commissioners whether a new development moratorium is necessary based upon the results of damage assessment and recommendations from the Chief Building Official and the Recovery Task Force.
6. Outstanding Building Permit Inspection Moratorium.
 - a. With the exception of inspections for certificates of occupancy, inspections for all building permits issued prior to the disaster will be suspended for a minimum period of thirty (30) days following the expiration of the initial building moratorium, unless the Chief Building Official determines on an area wide or case-by-case basis that sufficient inspection staff will be available to inspect the structures. Suspension of inspections of building permits process means that except as allowed by the Chief Building Official no building permit inspections by the Lee County Division of Codes and Building Services will be performed during the moratorium period, and that no further building permit work is authorized beyond the point at which any inspection is otherwise required.
 - b. The County may re-inspect all building permit work in place prior to the disaster to verify that the work was not damaged during the disaster. If the County determines the building permit work was damaged during the disaster or suspects damage occurred, the developer will be responsible for rework, removal, retesting, and uncovering work to facilitate inspection to ensure compliance with the building permit documents and the building code.
 - c. Scheduled inspections and requests for building permit inspections suspended under this section will be adjusted to reflect the thirty (30) day moratorium.

7. Outstanding Development Order Moratorium.

- a. All applications for development orders, inspections of development order work, and all development orders issued prior to a major or catastrophic disaster will be suspended for a minimum period of thirty (30) days following the expiration of the initial building moratorium. Suspension of outstanding development order process means that no development order work is authorized beyond the point at which a development order inspection is required and that no development order inspections will be performed by the Lee County Division of Zoning and Development Services during this moratorium except as may be authorized by the Department of Community Development Director on an area wide or case-by-case basis.
- b. The County may re-inspect all development order work in place prior to the disaster to verify that the work was not damaged during the disaster. If the County determines that such work was damaged during the disaster or suspects that damage occurred, the developer will be responsible for rework, removal, retesting, and uncovering work to facilitate inspection to ensure compliance with the development order documents and Chapter 10 of the Land Development Code.
- c. All applications for development orders, inspections required for approval of development orders, and development orders that would otherwise expire, are suspended under this section and their corresponding dates will be adjusted to account for the effect of this moratorium period.

8. Moratorium on Review of Site Plans, Zoning Requests and Subdivision Plats.

- a. Site plans, zoning requests and subdivision plats submitted to the County prior to the disaster will not be reviewed by the County staff or considered by the Board of County Commissioners for a period of thirty (30) days following the expiration of the initial building moratorium.
- b. No new site plans, zoning requests or subdivision plats will be accepted by the County for a period of thirty (30) days following the expiration on the initial building moratorium.
- c. All submittal dates and review periods will be adjusted to reflect the thirty (30) day moratorium.
- d. Notwithstanding these restrictions, the Director of Community Development may authorize review otherwise precluded by this moratorium, on a case-by-case basis.

9. Duration of Moratoria. All moratoria other than the initial building moratorium will be in effect for the duration described above and may be repealed or extended upon resolution by the Board of County Commissioners.

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Longboat Key Moratoria

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- (A) *Conditions for declaration.* The town commission may, pursuant to F.S. ch. 252, declare a moratorium under the following conditions in order to prioritize the repair and reconstruction of damaged critical public facilities immediately needed for public health, safety and welfare purposes:
- (1) *Initial building moratorium.* An initial building moratorium may be declared when one or more of the following actions or findings occur:
 - (a) The town is declared a disaster area by either the Governor of the State of Florida or the President of the United States.
 - (b) A finding has been made by the town commission that a state of local emergency exists in accordance with F.S. ch. 252;
 - (c) Fifty or more structures have received major damage or have been destroyed as determined by the building official; or
 - (d) The town is unable to maintain minimum acceptable levels of service expected during non-emergency situations as provided for by the capital improvement element of the town's comprehensive plan.
 - (2) *Destroyed structure moratorium.* No building permit will be issued for at least 30 days, or such other time which may be established by the town commission, following the expiration of the initial building moratorium for the replacement of any structure that has been destroyed. When a building permit is issued, structures damaged can be rebuilt in accordance with section 158.139 and chapter 154
 - (3) *Major damaged structure moratorium.* No building permit for repairs of a major damaged structure will be issued for at least ten days, or such other time which may be established by the town commission, following the expiration of the initial building moratorium.
 - (4) *Minor damaged structure moratorium.* No building permits for the repair of minor damaged structures will be issued for at least five days, or such other time which may be established by the town commission, following the expiration of the initial building moratorium.
 - (5) *New development moratorium.* No building permit for new construction or reconstruction unrelated to rebuilding or repairing structures damaged by the disaster will be accepted nor building permits will be issued for at least 30 days, or such other time which may be established by the town commission, following the expiration of the initial building moratorium so that damage may be assessed and repairs be made. The town manager will determine and advise the town commission whether a new development moratorium is required based upon the results of damage assessment and recommendations from the building official.
 - (6) *Outstanding building permit inspection moratorium.*
 - (a) All building permits that were issued prior to the disaster will be suspended for a minimum period of 30 days, or such other time which may be established by the town commission, following the expiration of the initial building moratorium, unless the building official determines on an individual case-by-case basis that sufficient inspection staff is available to adequately inspect the structures should construction begin or resume. Suspension of the building permit means that no further construction authorized by the building permit is permitted and that no inspections by the town planning, zoning and building department will be performed during the applicable moratorium period. Applications for
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Longboat Key
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inspections relating to building permits suspended under this section shall be adjusted accordingly to reflect the time period covered by this moratorium.

- (b) The town reserves the right to reinspect any and all construction in progress pursuant to validly issued predisaster building permits to verify that the work in place suffered no damage as a result of the disaster. In the event that the town determines that such construction sustained damage during the disaster or suspects that damage occurred, the property owner and/or general contractor is responsible for rework, removal, retesting, repair, and uncovering work to facilitate inspection so that compliance with the building permit and the building code can be ensured.
- (7) *Outstanding development order moratorium.*
- (a) All development orders as defined herein issued prior to the disaster will be suspended for a minimum period of 30 days, or such other time which may be established by the town commission, following the expiration of the initial building moratorium. Suspension of the development order means that no development order work is authorized and that no development order inspections by the planning, zoning and building department will be performed during the moratorium. Applications for development orders suspended under this section will be adjusted accordingly to reflect the time period covered by this moratorium.
 - (b) The town reserves the right to reinspect any and all development order work in place prior to the disaster to verify that the work in place was not damaged during the disaster. In the event that the town determines that development order work in place was damaged during the disaster or suspects that damage occurred, the developer will be responsible for rework, removal, retesting, repair, and uncovering work to facilitate inspection so that compliance with the development order documents and the land development code can be ensured.
- (8) *Site development plan, subdivision plat review, and zoning request moratorium.*
- (a) Site plan, zoning and subdivision plat requests that were submitted to the town prior to the disaster will not be reviewed by the town staff for a period of 30 days following the expiration of the initial building moratorium. All submittal dates and review periods will be adjusted accordingly to reflect the time period covered by this moratorium.
 - (b) No new site plan, zoning or subdivision plat requests will be accepted by the town for a period of 30 days following the expiration of the initial building moratorium. All submittal dates and review periods will be adjusted accordingly to reflect the time period covered by this moratorium.
- (9) *Duration.* All moratoria other than the initial building moratorium as enacted will be in effect for the length of time described above and may be terminated or extended by the town commission.

County Build-Back Policy. Structures which have been damaged by fire or other natural forces to the extent that the cost of their reconstruction or repair exceeds fifty percent (50%) may be reconstructed at (but not to exceed) the legally documented actual use, density, and intensity existing at the time of destruction, thereby allowing those structure to be rebuilt or replaced to the size, style, and type of their original construction, including original square footage; provided, however, that the affected structure, as rebuilt or replaced, complies with all federal and state regulations, local building and life safety regulations, and other local regulations, which do not preclude reconstruction otherwise intended by this policy.

In accordance with this policy, this ordinance provides:

1. Structures damaged up to and including fifty percent (50%) may be rebuilt to their original conditions, with repair work subject to current building and life safety codes, except that structures damaged by flood waters in a disaster by more than twenty-five percent (25%) which have recorded one or more national flood insurance losses of one thousand dollars (\$1,000.00) or more since 1978, must be brought into compliance with current regulatory standards for new construction.
2. Structures damaged more than fifty percent (50%) may be rebuilt to their original square footage and density, provided they comply with:
 - a. federal requirements for evaluation above the 100-year flood level;
 - b. building code requirements for floodproofing;
 - c. repair work meets current building and life safety codes;
 - d. Coastal Construction Control Lines regulations (if applicable);
 - e. disability access regulations; and
 - f. any required zoning and other development regulations (other than density or intensity), unless compliance with those regulations would preclude reconstruction otherwise intended by the build-back policy as may be determined by the Emergency Review Board set forth below.

Lee City Build-Back Policy (23)

3. To minimize the need for individual variances or compliance determinations before reconstruction or redevelopment of structures damaged more than fifty percent (50%), and in order to expedite the processing of the large number of anticipated applications for reconstruction, the development regulations affecting setback, parking, buffering and open space in any area declared a disaster may be modified by majority action of the Emergency Review Board as set forth below. Additionally, the listed development regulations will be evaluated for their applicability to allow reconstruction or redevelopment that will most closely comply with current regulations. These regulations will be prioritized as to their relative importance based upon, among other factors, the sites' use, location, size, and the condition of any remaining pre-existing structures. More specific guidelines will be established by Administrative Code.
- a. For single family, two family and duplexes and their accessory structures - The Emergency Review Board is authorized to apply and modify development regulations for lot area and dimension, setbacks, lot coverage, height, handicapped access and open space.
 - b. For multiple family, commercial and industrial buildings - The Emergency Review Board is authorized to modify development regulations for lot area and dimensions, setbacks, lot coverage, height, handicapped access, buffering, open space, loading space and parking.
 - c. Any modifications granted will be the minimum necessary. No modifications will be granted that will totally eliminate buffering or open space, or that will allow buildings to exceed the special height limitations specified in Land Development Code, Section 34, Zoning, Division 30, Property Development Regulations, Subdivision II, Height.
 - d. The Emergency Review Board is specifically authorized to modify street, rear side or waterbody setback requirements under the following circumstances:
 - (1) Street, rear, side, or waterbody setbacks may be modified to permit the reconstruction of, or additions to, pre-existing structures that are nonconforming with regard to a specific setback as long as:
 - (2) Prior to approving any modification of street or street easement setbacks a determination will be made through consultation

Lee County Build-Back Policy (24)

with Lee County Department of Transportation regarding future road widening requirements.

- (a) the reconstruction will not result in a further diminution of the setback, however, the Emergency Review Board may approve bay windows, chimneys and similar architectural features that encroach further into a setback provided the encroachment does not protrude beyond the pre-existing overhang of the building; and
 - (b) setbacks may be modified to allow the replacement of stairs or decking that will provide access into a reconstructed dwelling unit.
- e. The Emergency Review Board is specifically authorized to modify the parking requirements under the following circumstances:
- (1) To improve ingress and egress to the site.
 - (2) To eliminate or reduce the instances where parked vehicles were required to back out onto thoroughfares to gain access to the roadway system.
 - (3) To provide on-site handicapped parking.
- f. The Emergency Review Board is specifically authorized to modify buffering requirements to accommodate modifications to parking or additional proposed parking.
- g. The Emergency Review Board may also consider other modifications, conditions or variances necessary to reconstruct a pre-existing structure in a timely and expeditious manner, including requests for reconstruction not specifically set forth above.
- h. The Emergency Review Board may require documentation as to the actual uses, densities and intensities in existence at the time of earlier construction through such means as photographs, diagrams, plans, affidavits, permits, etc. before authorizing modifications to the requirements referenced above.
5. No provision is made to redevelop property containing damaged structures for a more intense use or at a density higher than that which existed prior to a major or catastrophic disaster. No redevelopment at a higher density or more intense use will be permitted unless appropriate Zoning, Development Review, Building Permit and other applicable land development approvals are granted.

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SECTION 9. DEMOLITION OF DAMAGED BUILDINGS. The Chair will have authority to order the demolition of buildings and structures damaged in the disaster in accordance with the standard provisions of the Land Development Code and other applicable state and federal laws. Absent an emergency materially affecting life, safety or welfare of the public, the owner of the affected property shall have the right to contest the order of demolition provided for in this section by filing a Notice of Contesting Demolition Order with the Town Clerk within 5 days of such determination by the Chair. Such Notice shall be deemed to be a request for review by the Special Magistrate pursuant to Article V. of the LDC. Such review shall be conducted by the Special Magistrate pursuant to Sections 2-425, 2-426, 2-427 and 2-429 of the LDC, as amended from time to time. In the event of an emergency which materially affects life, safety or welfare of the public, the Chair shall not have an obligation to wait for the expiration of the 5 day period provided for in this section.

SECTION 10. TEMPORARY AND PERMANENT HOUSING

The Chair may assign staff to work with FEMA, SBA, HUD, the state, Lee County, and other appropriate governmental and private entities to identify special programs by which provisions can be made for temporary or permanent replacement housing that will help avoid undue displacement of people and businesses. Such programs may include deployment of manufactured housing and manufactured housing developments under the temporary use permit procedures provided elsewhere in this ordinance, use of SBA loans, and available Section 8 and Community Development Block Grant funds to offset repair and replacement housing costs, and other initiatives appropriate to the conditions found after a disaster.

SECTION 11. HAZARD MITIGATION PROGRAM

Prior to a disaster, the Chair will establish a comprehensive hazard mitigation program that includes both long-term and short-term components.

A. Long-Term Hazard Mitigation Program. The long-term hazard mitigation program will be prepared and adopted by resolution of the Town Council for the purpose of enhancing long-term safety against future disasters. The long term Hazard Mitigation Program will identify the presence, location, extent, and severity of natural hazards, such as, but not limited to:

1. severe flooding;
2. wildland and urban fires;
3. seismic hazards such a ground shaking and deformation, fault rupture, liquefaction, tsunamis, and dam failure;
4. slope instability, mudslides, landslides, and subsidence;
5. coastal erosion;
6. hurricanes and other tropical storms;
7. technological hazards, such as oil spills, natural gas leakage and fires, hazardous and toxic materials contamination, and nuclear power plant and radiological accidents;
8. epidemics.

26
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B. Short-Term Hazard Mitigation Program. A short-term hazard mitigation program will be included in the Recovery Plan. It will be comprised of hazard mitigation program elements of highest priority for action, including preparation and adoption of separate ordinances dealing with specific hazard mitigation and abatement measures, as necessary. Such ordinances may require special site planning, land-use, and development restrictions or structural measures in areas affected by flooding, fire, wind, seismic, or other natural hazards, or remediation of known technological hazards, such as oil spills, natural gas leakage and fires, hazardous and toxic materials contamination.

C. Post-Disaster Actions. Following a disaster, the Chair may participate in developing a mitigation strategy with FEMA and other entities, as called for in Section 409 of the Stafford Act and related federal regulations. As appropriate, the Chair may recommend to the Town Council that the Town participate in the state's Hazard Mitigation Grant Program, authorized in Section 404 of the Stafford Act, in order to partially offset costs of recommended hazard mitigation measures.

D. New Information. As new information is obtained regarding the presence, location, extent, and severity of natural or technological hazards, or regarding new mitigation techniques, such information will be made available to the public, and will be incorporated as soon as practicably possible within the Town comprehensive plan Recovery Plan, LDC, and Town Ordinances, as appropriate.

SECTION 12. RECOVERY AND RECONSTRUCTION STRATEGY

At the earliest practicable time following the declaration of local emergency in a disaster, the Chair and the DRTF will prepare a strategic program for recovery and reconstruction based on the Recovery Plan and its policies.

A. Functions. To be known as the Recovery Strategy, the proposed strategic program will identify and prioritize major actions contemplated or under way regarding such essential functions as business resumption, economic re-investment, housing replacement, infrastructure restoration, and potential sources of financing to support these functions.

B. Review. The recovery strategy will be provided to the Town Council for review and approval following consultation with other governmental agencies and business and citizen representatives as appropriate. The recovery strategy will provide detailed information as appropriate regarding proposed and ongoing implementation of initiatives necessary to the expeditious fulfillment of critical priorities and will identify amendments to any plans, codes, or ordinances that might otherwise contradict or block strategic action. The Chair will periodically report to the Town Council regarding progress toward implementation of the recovery strategy, together with any adjustments that may be called for by changing circumstances and conditions.

SECTION 15.13. PENALTIES

A. Any person who fails to comply with any provision of this Ordinance, or the emergency measures made effective pursuant to this Ordinance is guilty of a code violation and subject to enforcement and penalties as provided in the Town of Fort Myers Beach Land Development Code. Each day of continued non-compliance or violation will constitute a separate offense.

B. Nothing contained in this Section prevents the Town from taking such other lawful action in any court of competent jurisdiction as is necessary to prevent or remedy and failure to comply with or violation of, this Ordinance or the emergency measures that may be made effective according to this Ordinance. Other lawful action will include, but is not limited to, an equitable action for injunctive relief or an action at law for damages.

Section XX Repeal of Prior Town Ordinances. Town Ordinances 96-19, 04-14, 05-16, and 06-12 are hereby repealed in their entirety and have no force or effect.

SECTION 14. SEVERABILITY

If any provision of this ordinance is found to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such invalidity will not affect the remaining provisions that can be implemented without the invalid provision, and, to this end, the provisions of this ordinance are declared to be severable.

The foregoing Resolution was adopted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____ and, upon being put to a vote, the result was

as follows:

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|---------------------------------------|-----------------------------------|
| Larry Kiker, Mayor | Herb Aiken, Vice Mayor |
| Tom Balseck, Councilmember | Joelist, Councilmember |
| Bob Raymond, Councilmember | |

DULY PASSED AND ADOPTED this ___ day of ___, 2008

ATTEST:

TOWN OF FORT MYERS BEACH

By: _____
Michelle Mayher, Town Clerk

By: _____
Larry Kiker, Mayor

Approved as to legal sufficiency by:

Anne Dalton, Town Attorney

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