

# FREQUENTLY ASKED QUESTIONS

## ABOUT THE FLOODPLAIN MANAGEMENT MODEL ORDINANCE AND FLORIDA BUILDING CODE AMENDMENTS

Please remember to send your tailored ordinance showing all edits in <track changes> mode to allow us to more quickly review and return your document. Please allow plenty of time for at least two reviews (longer if you make many changes). At a minimum provide the first draft at least 6 weeks before your first reading. At any given time we have many draft ordinances under review and cannot guarantee fast turn-around.

For additional assistance and to have your draft ordinance reviewed, email Technical Support at [flood.ordinance@em.myflorida.com](mailto:flood.ordinance@em.myflorida.com) (**please put your community's name in the subject line**).

Many common questions are answered in the FAQs that follow and the notes and instructions that accompany the model ordinance and code amendment packages. One model ordinance is for coastal communities (with both Zone A and Zone V) and one model ordinance is for communities that have only Zone A. Please see all of the resources at [http://www.floridadisaster.org/Mitigation/SFMP/lobc\\_resources.htm](http://www.floridadisaster.org/Mitigation/SFMP/lobc_resources.htm).

### Frequently Asked Questions

1. Are we required to do anything at all? ..... 2
2. Are we required to use the DEM floodplain management model ordinance? ..... 2
3. Has FEMA approved the floodplain management model ordinance? ..... 3
4. If we use the FBC-coordinated ordinance, will we have to modify our floodplain management ordinance every time the FBC is updated?..... 3
5. Will DEM review our existing local floodplain management regulations to determine if it has everything we need? ..... 3
6. What are the top six tips that will help us work with the model ordinance? ..... 3
7. What are the seven most common errors made when customizing the model ordinance?..... 4
8. Many communities, especially those that are in the NFIP's Community Rating System, have previously adopted some "higher standards" that exceed the NFIP minimum requirements. Is assistance available to help us keep our higher standards? ..... 5
9. Does the Building Official have to be designated the Floodplain Administrator?..... 5
10. Can we delete provisions in the ordinance that apply only to specific flood hazard areas not shown on our maps?..... 5
11. Why is it necessary in Sec. 104.3 of the model ordinance to have the numbered list of the buildings, structures and facilities that are exempt from the *Florida Building Code*? ... 6

12. What about agricultural structures (nonresidential farm buildings on farms) that are exempt from the FBC? .....	6
13. What about State and Federal construction projects? How are local communities expected to regulate these activities? .....	6
14. How do we explain this code-coordinated ordinance to the public and local elected officials? .....	6
15. Some communities, especially smaller towns, have arrangements with other jurisdictions (or private companies) to perform some or all of their building permit and floodplain management responsibilities. Will those arrangements be affected?.....	7
16. What are “local technical code amendments”? .....	7
17. Can we adopt the building code amendments in a separate ordinance?.....	7
18. Why do we need to include a fiscal impact statement at the end if FBC technical amendments are included? .....	7
19. If our draft ordinance has already been reviewed, should we send it back if we’ve made additional edits?.....	8
20. What do we do after we adopt the floodplain management ordinance (and FBC technical amendments, if applicable)? .....	8
21. Previous versions of the Model Ordinance included some local administrative amendments to the <i>Florida Building Code</i> . Why were they removed?.....	8

**1. Are we required to do anything at all?**

Yes. By law, the Florida Building Code (FBC) contains all laws and rules that pertain to and govern the design and construction of buildings (see section [553.73](#) (1)(a), F.S.). This means the flood provisions of the FBC that govern the flood-resistant design of buildings in mapped flood zones (special flood hazard areas) supersede local regulations that are not consistent with the FBC. Most of the differences between the flood provisions of the FBC and local regulations are relatively minor for most buildings. However, that does not alter the fact that the code governs the design of buildings.

Coordinating floodplain management regulations with the building code (making them “work together”) should be done as quickly as possible, otherwise inconsistencies and possible conflicts could occur. The model ordinance is specifically designed to repeal and replace existing regulations, to satisfy the NFIP, to coordinate with the FBC, and to meet the requirements of section [553.73](#) (5), F.S.

**2. Are we required to use the DEM floodplain management model ordinance?**

No, but the model ordinance is carefully crafted to meet NFIP requirements and to explicitly coordinate with the FBC. While the model that DEM prepared is not the only way a community could achieve NFIP compliance and coordinate with the FBC, technical support provided by DEM will be allocated on a priority basis for the communities that choose to use the model. DEM is not preparing guidance to modify local FPM regulations that were based on a model used by most Florida communities several years ago. Taking this approach is a time- and labor-intensive effort. Since DEM began this initiative, fewer than 10 communities out of nearly

380 elected to modify their existing regulations, but some of them are now transitioning to the FBC-coordinated ordinance (as of mid-March 2017).

### **3. Has FEMA approved the floodplain management model ordinance?**

Yes. The January 15, 2013 model ordinances were approved by FEMA on January 17, 2013. The NFIP Checklist that documents consistency is also available at the above webpage.

FEMA's approval is important: it means communities that use the model as the basis for their local floodplain management regulations will have rules that are both consistent with the NFIP and also coordinated with the FBC.

### **4. If we use the FBC-coordinated ordinance, will we have to modify our floodplain management ordinance every time the FBC is updated?**

No. However, as with every new edition of the FBC, local officials should pay attention to changes in flood provisions. For example, the 6<sup>th</sup> Edition FBC, scheduled to be effective at the end of 2017, has a number of changes in the flood provisions of the FBC, Residential and FBC, Building (by reference to the 2014 edition of ASCE 24). The more significant changes are freeboard in the FBC, Residential in all flood zones, Coastal A Zone is treated like Zone V (if LiMWA delineated or otherwise designated by a community), flood openings in breakaway walls, and critical facilities (Flood Design Class 4/Risk Category IV) elevated or protected to BFE + 2 feet or 500-year flood elevation, whichever is higher. In August 2017, DEM will post the excerpts of the 6<sup>th</sup> Edition FBC at the above webpage, along with a list of changes.

### **5. Will DEM review our existing local floodplain management regulations to determine if it has everything we need?**

No, DEM does not review existing ordinances for compliance. However, we will use existing ordinances to identify higher standards and to help customize the model ordinance. Do not send your existing regulations to Technical Support.

The model ordinance is coordinated with the FBC and is improved in several respects over the model used by most Florida communities several years ago. Notably, it incorporates floodplain management provisions that are clearer and more detailed, including administrative provisions and requirements for development other than buildings. These provisions are based largely on various FEMA guidance documents which makes it easier for both communities and applicants to apply NFIP-consistent requirements.

### **6. What are the top six tips that will help us work with the model ordinance?**

**Tip #1.** After selecting the correct version of the model ordinance, please download and read the "Instructions and Notes" that go with that version. Many common questions are answered in the "Instructions and Notes."

**Tip #2.** Please use <track changes> to prepare your Word file and send it to [Flood.Ordinance@em.myflorida.com](mailto:Flood.Ordinance@em.myflorida.com) for review (please put your community name in the subject line). This will make our review easier and faster. Email Technical Support if you'd like help using <track changes>.

**Tip #3.** There are many provisions and definitions that cannot be changed but some that may be changed. Remember the model ordinance package was carefully prepared to satisfy all requirements and was approved by FEMA and reviewed by the Building Officials Association of Florida. This makes it very important that you use <track changes> to show all of your proposed changes. We'll notify you if there is a compliance concern with your changes.

**Tip #4.** In Section 102.3 of the model ordinance, be sure to insert the name and date of the current effective Flood Insurance Study (not the date and title of the FIRMs). Email Technical Support if you need help.

**Tip #5.** Several sections contain cross references to other sections. Do not modify to make the cross references generic; vague cross references render an ordinance unenforceable. We have developed a tool (available upon request) that you can use to help with renumbering the model and the internal cross references to match. Please plan to renumber before we do the final technical review, at which time we'll proof the cross references. Do not plan to have it renumbered when codified: we have seen cross references completely ignored or rendered incorrect when ordinances are codified in Municode ([www.municode.com](http://www.municode.com)).

**Tip #6.** Send your draft ordinance to Technical Support well BEFORE your first reading and we will review it as quickly as possible. Depending on our backlog, we normally return drafts within one to two weeks.

## **7. What are the seven most common errors made when customizing the model ordinance?**

The most common errors likely are made because communities, attorneys, and consultants are not reading the Instructions and Notes. The model ordinance was carefully prepared and has been approved by FEMA. It, along with the FBC, has everything necessary to meet the requirements of the NFIP.

**Error #1.** Adding language from existing regulations to incorporate requirements for buildings – obviating the objective to use the flood provisions already provided in the FBC. Do not copy text from your existing regulations into the model ordinance. To see excerpts of the flood provisions of the FBC, download the summary from the DEM web site, Building Code Resources.

**Error #2.** Deleting whereas statements or sections of the ordinance (e.g., Warning, Disclaimer of Liability, Severability). Certain legal elements are required under the NFIP, so even if the ordinance is being adopted as an addendum or as part of a wholesale update to the Land Development Regulations for example, we will have to see and approve the adopting language.

**Error #3.** Using another community's ordinance as the starting point. Please start with the FEMA-approved model ordinance and we will help you modify it to suit your community. The exception to this is municipalities that have or will have an interlocal agreement with a county, in which case there are benefits to having similar regulations. Please contact Technical Support for assistance before you decide to use another community's ordinance as your starting point. Please note Florida law requires written interlocal agreements.

**Error #4.** Using incorrect dates in the definitions. Contact Technical Support for the date that is in FEMA's records as the date the community joined the NFIP (usually the same or nearly the same date the community's first floodplain management ordinance was adopted).

**Error #5.** Making changes AFTER review by Technical Support and not obtaining another review. What may appear to you or your attorney to be minor changes can easily result in a noncompliant ordinance that will require another visit to Council to correct.

**Error #6.** Ignoring Technical Support's edits, comments, and questions. Please ask questions if you don't understand or agree with our edits and comments. Also, once a draft is started, don't start a new draft. Remember, our job is to help you produce an ordinance that meets DEM and FEMA standards.

**Error #7.** Modifying definitions to try to capture higher standards. Instructions for some higher standards have been prepared. Technical Support will help you incorporate higher standards.

**8. Many communities, especially those that are in the NFIP’s Community Rating System, have previously adopted some “higher standards” that exceed the NFIP minimum requirements. Is assistance available to help us keep our higher standards?**

Yes. However, every community that has “higher standards” that exceed the NFIP minimum requirements needs to identify which of those higher standards they wish to retain. CRS communities should pay particular attention to any higher standard that receives credit and decide whether to retain those requirements. Retention of some higher standards can be accomplished by modifying the model ordinance, and some will also require formatting as a local administrative and/or local technical code amendment to comply with Section [553.73](#)(5), F.S.

We have prepared General Instructions for Adding Higher Standards and instructions for a number of the most common higher standards: [http://www.floridadisaster.org/Mitigation/SFMP/lobc\\_resources.htm](http://www.floridadisaster.org/Mitigation/SFMP/lobc_resources.htm). For other higher standards or locally-specific provisions, we will review any new ordinance language you prepare or we can help draft new language.

Section [553.73](#), F.S., was amended in 2010 explicitly to allow communities to retain higher standards, including those adopted for the CRS. Higher standards that are adopted as local technical amendments to the FBC and that satisfy specific conditions do not sunset every three years, as do other local amendments to the FBC.

**9. Does the Building Official have to be designated the Floodplain Administrator?**

No. Communities should designate the position of a qualified staff member who is knowledgeable about floodplain management to fulfill the broad range of responsibilities of the Floodplain Administrator. It is common to designate a department head, planning manager, building official, or a town manager, who then delegates functions. By law, the building official is responsible for enforcing the building code. If designated as the Floodplain Administrator, the building official functions under the authority of the FPM regulations.

Communities with interlocal agreements with other communities – and communities with private providers of building code services – must designate a position *from their communities* with ultimate authority to enforce the community’s floodplain management ordinance and to fulfill commitments to the NFIP. See Question #15.

**10. Can we delete provisions in the ordinance that apply only to specific flood hazard areas not shown on our maps?**

Yes, but it must be done very carefully. The first step is to ensure you’re considering the correct version of the model ordinance based on the flood zones in your community. There are two versions: one for communities with both A Zones and V Zones and another for communities with only A Zones. Communities that are entirely coastal (without any riverine waterways) may remove floodway and some other provisions and communities that have BFEs in all flood zones may remove requirements for flood hazard areas without BFEs. Check with Technical Support before deleting any sections or provisions for zones that do not appear on your FIRM. We will need to verify your flood zones and ensure that certain sections are not applicable before providing specific advice.

Another fairly common request is from communities that have no manufactured homes and do not allow placement of new manufactured homes. When documentation (e.g., citation of LDC section) is provided during review of the draft ordinance, the provisions for manufactured homes can be deleted. The documentation is retained in DEM’s records in the event questions are raised about the deletion.

### **11. Why is it necessary in Sec. 104.3 of the model ordinance to have the numbered list of the buildings, structures and facilities that are exempt from the *Florida Building Code*?**

Keeping the list shown in the model ordinance without any changes ensures those who use the adopted regulations are informed of the complete list of buildings, structures, and facilities that are subject to the floodplain management regulations, even though exempt from the FBC. During its review, FEMA paid attention to the exemptions from the FBC.

One commitment made by every local jurisdiction that participates in the NFIP is to regulate *all* development in mapped flood zones. A summary of responsibilities is posted on the web page shown above. Having to regulate *all* development means communities must have another mechanism to regulate – for flood – those buildings, structures and facilities that are, by Florida Statute, exempt from the FBC. The model ordinance is written to accomplish this by requiring those buildings, structures and facilities to comply with ASCE 24, *Flood Resistant Design and Construction* (which is a referenced standard in the FBC). “Highlights of ASCE 24,” prepared by FEMA, are available at the SFMO webpage:

[http://www.floridadisaster.org/Mitigation/SFMP/lobc\\_resources.htm](http://www.floridadisaster.org/Mitigation/SFMP/lobc_resources.htm).

### **12. What about agricultural structures (nonresidential farm buildings on farms) that are exempt from the FBC?**

Nonresidential farm buildings on farms (agricultural structures) in mapped flood zones should have always been regulated by communities. The model ordinance requires buildings exempt from the FBC to comply with ASCE 24. Depending on the nature of the structures, they might not need to be elevated. Contact Technical Support for additional guidance.

### **13. What about State and Federal construction projects? How are local communities expected to regulate these activities?**

State agencies must comply with the FBC. Sec. 553.79(17), Florida Statutes, provides that “state agencies responsible for the construction, erection, alteration, modification, repair, or demolition of public buildings, or the regulation of public and private buildings, structures, and facilities, shall be subject to the enforcement of the Florida Building Code by local jurisdictions.” Sec. 553.79(9) authorizes state agencies whose enabling legislation authorizes them to enforce the FBC to “enter into an agreement with any other unit of government to delegate its responsibility to enforce those provisions.”

The FBC specifically does not apply to “buildings and structures specifically regulated and preempted by the federal government” (Section 102.2). Federal construction on Federal lands is governed by federal requirements.

### **14. How do we explain this code-coordinated ordinance to the public and local elected officials?**

Instructions and Notes that go with the model ordinance include brief background notes. Also, we prepared a short PowerPoint presentation for this purpose. It includes a brief explanation of the need for older ordinances to be repealed and replaced and explains some of the unique properties of the ordinance. You can download and customize it to meet your community’s specific needs.

**15. Some communities, especially smaller towns, have arrangements with other jurisdictions (or private companies) to perform some or all of their building permit and floodplain management responsibilities. Will those arrangements be affected?**

No. Florida Statute Chapter 163, Intergovernmental Programs, authorizes local governments to enter into written inter-local agreements to have one jurisdiction perform some functions for another jurisdiction. We encourage communities with such arrangements to develop and adopt agreements that specifically address floodplain management. A model inter-local agreement designed to help communities adopt acceptable formal agreements and a handout that summarizes community responsibilities under the NFIP are available on the State Floodplain Management Office website listed below.

**16. What are “local technical code amendments”?**

Chapter 1 of the FBC, Building contains administrative provisions. The remainder of the FBC, Building and all the other codes in the FBC family of codes contain the technical provisions that set forth the requirements for the design and construction of buildings and structures. Section [553.73\(4\)\(a\)](#), F.S., provides that local technical amendments must be more stringent than the code and that “(b) Local governments may, subject to the limitations of this section, adopt amendments to the technical provisions of the Florida Building Code which apply solely within the jurisdiction of such government and which provide for more stringent requirements than those specified in the Florida Building Code, not more than once every 6 months.” Please note that there are several other requirements that must be met that are not copied here.

Also note section [553.73\(5\)](#) that was added in 2010 to explicitly address higher standards for flood. The requirements of section 553.73(4) do not apply in three specific circumstances, and technical amendments may not be rendered void every three years when a new edition of the FBC becomes effective. The three specific circumstances are:

1. “if the amendment is adopted for the purpose of participating in the Community Rating System promulgated pursuant to 42 U.S.C. s. 4022;”
2. “if the amendment had already been adopted by local ordinance prior to July 1, 2010;” and
3. “if the amendment requires a design flood elevation [i.e., freeboard] above the base flood elevation.”

Even though section 553.73(4) does not apply to higher standards under those three circumstances, the higher standards need to be formatted to be consistent with the FBC to be most useable to the public. The General Instructions for Adding Higher Standards explain why ordinances with local technical amendments must some certain whereas clauses and a fiscal impact statement (see Question #18).

**17. Can we adopt the building code amendments in a separate ordinance?**

Yes. Some communities do this because local rules related to the building code are in a different chapter, while floodplain management rules often are in land development codes. We prepared a “mini-ordinance” for this purpose and it is available from Technical Support.

**18. Why do we need to include a fiscal impact statement at the end if FBC technical amendments are included?**

Section [553.73](#), Florida Statutes, contains the requirements for local administrative and local technical amendments to the *Florida Building Code*. According to section [553.73\(4\)\(b\)](#), local governments may, subject to certain limitations in that section, adopt amendments to the technical provisions of the FBC. In [553.73\(4\)\(b\)\(9\)](#) is a requirement that adoption of local

technical amendments is to include “a fiscal impact statement which documents the costs and benefits of the proposed amendment. Criteria for the fiscal impact statement shall include the impact to local government relative to enforcement, the impact to property and building owners, as well as to industry, relative to the cost of compliance.”

**19. If our draft ordinance has already been reviewed, should we send it back if we’ve made additional edits?**

Yes. Edits that you or your attorney think are minor can easily result in a noncompliant ordinance that will require follow up action to correct, perhaps even action by Council. Remember, the model was approved by FEMA which means care must be taken when making any changes. While we have some degree of flexibility to tailor the ordinance, we must be careful not to modify certain sections and phrasing that are important for NFIP compliance.

**20. What do we do after we adopt the floodplain management ordinance (and FBC technical amendments, if applicable)?**

- Send a copy of the fully executed ordinance to Technical Support: [flood.ordinance@em.myflorida.com](mailto:flood.ordinance@em.myflorida.com). We will do a final review to complete the process. If FEMA has established a deadline for ordinance revisions, DEM will submit your adopted ordinance to FEMA for approval. If there is no FEMA deadline DEM will notify you of approval.
- If you adopted technical amendments, submit the adopted ordinance to the Florida Building Commission (be sure to identify the pages on which the amendments are located). Pursuant to 553.73(4)(a), F.S., local code amendments must be transmitted to the Commission within 30 days after enactment. Mark the pages of the adopted ordinance that show the FBC amendments and scan the first page, the marked pages, and the signature page and send to [mo.madani@dbpr.state.fl.us](mailto:mo.madani@dbpr.state.fl.us)

**21. Previous versions of the Model Ordinance included some local administrative amendments to the Florida Building Code. Why were they removed?**

Chapter 1 of the 5<sup>th</sup> Edition of the FBC now includes the necessary administrative amendments. In addition, the Model Administrative Code prepared by BOAF as a companion to the 5<sup>th</sup> Edition FBC includes the necessary amendments. This removes the need for communities to individually adopt the FEMA-required administrative amendments. Communities that already adopted those amendments do not need to take any action – their local administrative amendments are superseded by the equivalent provisions in the FBC.

**Links:**

**State Floodplain Management Office**

[www.floridadisaster.org/Mitigation/SFMP/Index.htm](http://www.floridadisaster.org/Mitigation/SFMP/Index.htm)

**DEM Local Ordinance & Building Code Resources:**

[www.floridadisaster.org/Mitigation/SFMP/lobc\\_resources.htm](http://www.floridadisaster.org/Mitigation/SFMP/lobc_resources.htm)

**FEMA Building Science webpage (click on “Building Code Resources”)**

<http://www.fema.gov/rebuild/buildingscience/index.shtm>