**GENERAL INSTRUCTIONS (April 3, 2017)**

**HIGHER STANDARDS for the FLORIDA BUILDING CODE and SEC. 553.73(5), F.S.**

TECHNICAL SUPPORT: After you review your existing regulations to identify higher standards your community may have already adopted – and review other higher standards to identify those you want to propose for adoption – please read these General Instructions (along with the guidance for specific higher standards).

Get in touch with Technical Support for help: flood.ordinance@em.myflorida.com (please put community name in subject line).

Florida Statute governs adoption of local amendments to the *Florida Building Code*. Sections 553.73(4) and (5) are shown starting on page 4 below.

These instructions are for higher standards that affect the design of buildings (which are technical amendments to the FBC) and that meet one of the three criteria set forth in Sec. 553.73(5):

1. if the higher standard had already been adopted by local ordinance prior to July 1, 2010;
2. if the higher standard is adopted for the purpose of participating in the Community Rating System (CRS); or
3. if the higher standard requires freeboard.

Pursuant to Sec. 553.73(5), these higher standards are not subject to the requirements of Sec. 553.73(4), although they must be formatted to be consistent with the FBC. After adoption, they must be submitted to the Florida Building Commission. It is important to note higher standards that meet one of these three criteria do not sunset when the Commission updates the codes.

Communities considering higher standards that do not qualify under one of the three criteria listed above should contact Technical Support for assistance. DEM recommends using the clause “for the purpose of participating in the CRS” even if the community may not be contemplating joining the CRS at this time. DEM’s statewide initiative encourages more communities to join the CRS and many communities are electing to do so, in part to offset the NFIP’s annual rate increases which are expected to continue for several years.

The statute also allows local administrative amendments. Such amendments change Chapter 1, *Florida Building Code, Building*, which contains administrative procedures and requirements for enforcement of all of the codes. Contact Technical Support for guidance on contemplated changes to Chapter 1*.*

The model language developed by DEM for several higher standards is available online <http://www.floridadisaster.org/Mitigation/SFMP/lobc_resources.htm> Please send all ordinances to Technical Support well in advance of your first reading.

ALERT! You must submit local code amendments to the Florida Building Commission within 30 days of adoption. Mark the pages of the adopted ordinance that show the FBC amendments and scan the first page, the marked pages showing FBC amendments, and the signature page and send to the Commission: mo.madani@dbpr.state.fl.us. Be sure to identify the pages on which the code amendments appear. See sec. 553.73(4), F.S.

***NOTE: Effect of future FBC changes on local technical amendments.***

If a community’s previously-adopted local higher standard exceeds any future FBC change, then the community need not take further action for the local amendment to remain in effect. For example, if a community adopts a technical amendment to require 2 feet of freeboard and a subsequent edition of the FBC, Residential requires just 1 foot freeboard. Without any action on the community’s part, the 2 feet freeboard would remain in effect.

If a community’s previously-adopted FBC amendment matches a future FBC change, the community need not take further action. This will be the case, for example, if a community adopts a technical amendment requiring 1 foot freeboard and a subsequent edition FBC, R shows the same wording.

***INSTRUCTIONS*:**

***Submit your draft ordinance (in <track changes>) to Technical Support*** ***flood.ordinance@em.myflorida.com*** ***for review well in advance of your first reading.***

Higher standards that affect the design of buildings must to be formatted in code language to be consistent with the FBC. The effect of sec. 553.73(5) is that any higher standard that meets one of the three criteria does not have to be re-adopted legislatively, but has to be formatted to be consistent with the building code, and then submitted to the Commission. Thus, while reformatting makes it look like a code amendment, it is not a “new” code amendment and does not have to meet the requirements of sec. 553.73(4). This can be accomplished by inclusion in the model FPM ordinance package by adding a new Whereas clause, and then formatting the current higher standard in the proper format.

**NOTE.** Some communities use a separate ordinance to adopt FBC amendments. Contact Technical Support for a model ordinance (header, whereas clauses, and closing sections).

One Whereas clause can be used to list all higher standards by using a list. See model language prepared by DEM for some common higher standards formatted in the proper format (<http://www.floridadisaster.org/Mitigation/SFMP/lobc_resources.htm>). Be sure to ask Technical Support for help with any other higher standards you want to draft. An important feature of the amendments is showing how the FBC text is modified by using strikethrough and underlining. This formatting should be retained as the best means to inform the public of the locally-adopted amendment.

***Step 1.*** *Change the ordinance header to indicate that technical amendments to the Florida Building Code are being made, if appropriate.*

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| **AN ORDINANCE BY THE {community’s governing body} AMENDING THE {name of community} CODE OF ORDINANCES TO REPEAL {insert appropriate chapter/section numbers}; TO ADOPT A NEW {insert appropriate chapter/section numbers}; TO ADOPT FLOOD HAZARD MAPS, TO DESIGNATE A FLOODPLAIN ADMINISTRATOR, TO ADOPT PROCEDURES AND CRITERIA FOR DEVELOPMENT IN FLOOD HAZARD AREAS, AND FOR OTHER PURPOSES; TO ADOPT TECHNICAL AMENDMENTS TO THE FLORIDA BUILDING CODE; PROVIDING FOR APPLICABILITY; REPEALER; SEVERABILITY; AND AN EFFECTIVE DATE.** |

***Step 2a.***  *For existing requirements that are more stringent than the building code minimum requirements AND that were adopted prior to July 1, 2010, including freeboard, use the following:*

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| **WHEREAS,** Chapter 553, Florida Statutes, allows for local technical amendments to the *Florida Building Code* that provide for more stringent requirements than those specified in the Code and allows adoption of local administrative and local technical amendments to the Florida Building Code to implement the National Flood Insurance Program and incentives;**WHEREAS,** the **{community’s governing body}** previously adopted a requirement to **{insert brief description of the higher standard or standards}** for buildings and structures in flood hazard areas prior to July 1, 2010 and, pursuant to section 553.73(5), F.S., is formatting that requirement to coordinate with the *Florida Building Code*; **WHEREAS**, the **{community’s governing body}** has determined that it is in the public interest to adopt the proposed local technical amendments to the *Florida Building Code* and the proposed amendments are not more stringent than necessary to address the need identified, do not discriminate against materials, products or construction techniques of demonstrated capabilities, are in compliance with section 553.73(4), Florida Statutes.  |

***Step 2b.***  *For new requirements that are more stringent than the building code minimum requirements AND that are adopted for CRS (even if the community is not currently in the CRS), use the following:*

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| **WHEREAS,** Chapter 553, Florida Statutes, allows for local technical amendments to the *Florida Building Code* that provide for more stringent requirements than those specified in the Code and allows adoption of local administrative and local technical amendments to the Florida Building Code to implement the National Flood Insurance Program and incentives; **WHEREAS,** the **{community’s governing body}** is adopting a requirement to **{insert brief description of the higher standard or standards}** for buildings and structures in flood hazard areas for the purpose of participating in the National Flood Insurance Program’s Community Rating System and, pursuant to section 553.73(5), F.S., is formatting that requirement to coordinate with the *Florida Building Code*; **WHEREAS**, the **{community’s governing body}** has determined that it is in the public interest to adopt the proposed local technical amendments to the *Florida Building Code* and the proposed amendments are not more stringent than necessary to address the need identified, do not discriminate against materials, products or construction techniques of demonstrated capabilities, are in compliance with section 553.73(4), Florida Statutes.  |

***Step 3.*** *See instructions for specific higher standards at* [*http://www.floridadisaster.org/Mitigation/SFMP/lobc\_resources.htm*](http://www.floridadisaster.org/Mitigation/SFMP/lobc_resources.htm) *or contact Technical Support for help drafting other higher standards.*

***Step 4.***  *Sec. 553.73(4)(b)(9) requires a fiscal impact statement. Add the following statement at the end of the Model Ordinance (above APPLICABILITY):*

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| **SECTION 4. FISCAL IMPACT STATEMENT.**In terms of design, plan application review, construction and inspection of buildings and structures, the cost impact as an overall average is negligible in regard to the local technical amendments because all development has been subject to the requirements of the local floodplain management ordinance adopted for participation in the National Flood Insurance Program. In terms of lower potential for flood damage, there will be continued savings and benefits to consumers. |

**Florida Statutes, sec. 553.73 Florida Building Code.—**

(4)(a) All entities authorized to enforce the Florida Building Code pursuant to s. [553.80](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0500-0599/0553/Sections/0553.80.html) shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations of this paragraph. Local amendments shall be more stringent than the minimum standards described herein and shall be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this paragraph for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

(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. A local government may adopt technical amendments that address local needs if:

1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.

2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

3. Such additional requirements may not introduce a new subject not addressed in the Florida Building Code.

4. The enforcing agency shall make readily available, in a usable format, all amendments adopted pursuant to this section.

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**Florida Statutes, sec. 553.73 Florida Building Code.—**

5. Any amendment to the Florida Building Code shall be transmitted within 30 days by the adopting local government to the commission. The commission shall maintain copies of all such amendments in a format that is usable and obtainable by the public. Local technical amendments shall not become effective until 30 days after the amendment has been received and published by the commission.

6. Any amendment to the Florida Building Code adopted by a local government pursuant to this paragraph shall be effective only until the adoption by the commission of the new edition of the Florida Building Code every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment pursuant to the provisions of this paragraph.

 (4)(a) All entities authorized to enforce the Florida Building Code pursuant to s. [553.80](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0500-0599/0553/Sections/0553.80.html) shall comply with applicable standards for issuance of mandatory certificates of occupancy, minimum types of inspections, and procedures for plans review and inspections as established by the commission by rule. Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations of this paragraph. Local amendments shall be more stringent than the minimum standards described herein and shall be transmitted to the commission within 30 days after enactment. The local government shall make such amendments available to the general public in a usable format. The State Fire Marshal is responsible for establishing the standards and procedures required in this paragraph for governmental entities with respect to applying the Florida Fire Prevention Code and the Life Safety Code.

(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. A local government may adopt technical amendments that address local needs if:

1. The local governing body determines, following a public hearing which has been advertised in a newspaper of general circulation at least 10 days before the hearing, that there is a need to strengthen the requirements of the Florida Building Code. The determination must be based upon a review of local conditions by the local governing body, which review demonstrates by evidence or data that the geographical jurisdiction governed by the local governing body exhibits a local need to strengthen the Florida Building Code beyond the needs or regional variation addressed by the Florida Building Code, that the local need is addressed by the proposed local amendment, and that the amendment is no more stringent than necessary to address the local need.

2. Such additional requirements are not discriminatory against materials, products, or construction techniques of demonstrated capabilities.

3. Such additional requirements may not introduce a new subject not addressed in the Florida Building Code.

4. The enforcing agency shall make readily available, in a usable format, all amendments adopted pursuant to this section.

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6. Any amendment to the Florida Building Code adopted by a local government pursuant to this paragraph shall be effective only until the adoption by the commission of the new edition of the Florida Building Code every third year. At such time, the commission shall review such amendment for consistency with the criteria in paragraph (9)(a) and adopt such amendment as part of the Florida Building Code or rescind the amendment. The commission shall immediately notify the respective local government of the rescission of any amendment. After receiving such notice, the respective local government may readopt the rescinded amendment pursuant to the provisions of this paragraph.

7. Each county and municipality desiring to make local technical amendments to the Florida Building Code shall by interlocal agreement establish a countywide compliance review board to review any amendment to the Florida Building Code, adopted by a local government within the county pursuant to this paragraph, that is challenged by any substantially affected party for purposes of determining the amendment’s compliance with this paragraph. If challenged, the local technical amendments shall not become effective until time for filing an appeal pursuant to subparagraph 8. has expired or, if there is an appeal, until the commission issues its final order determining the adopted amendment is in compliance with this subsection.

8. If the compliance review board determines such amendment is not in compliance with this paragraph, the compliance review board shall notify such local government of the noncompliance and that the amendment is invalid and unenforceable until the local government corrects the amendment to bring it into compliance. The local government may appeal the decision of the compliance review board to the commission. If the compliance review board determines such amendment to be in compliance with this paragraph, any substantially affected party may appeal such determination to the commission. Any such appeal shall be filed with the commission within 14 days of the board’s written determination. The commission shall promptly refer the appeal to the Division of Administrative Hearings by electronic means through the division’s website for the assignment of an administrative law judge. The administrative law judge shall conduct the required hearing within 30 days, and shall enter a recommended order within 30 days of the conclusion of such hearing. The commission shall enter a final order within 30 days thereafter. The provisions of chapter 120 and the uniform rules of procedure shall apply to such proceedings. The local government adopting the amendment that is subject to challenge has the burden of proving that the amendment complies with this paragraph in proceedings before the compliance review board and the commission, as applicable. Actions of the commission are subject to judicial review pursuant to s. [120.68](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0100-0199/0120/Sections/0120.68.html). The compliance review board shall determine whether its decisions apply to a respective local jurisdiction or apply countywide.

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9. An amendment adopted under this paragraph shall 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. The fiscal impact statement may not be used as a basis for challenging the amendment for compliance.

10. In addition to subparagraphs 7. and 9., the commission may review any amendments adopted pursuant to this subsection and make nonbinding recommendations related to compliance of such amendments with this subsection.

(c) Any amendment adopted by a local enforcing agency pursuant to this subsection shall not apply to state or school district owned buildings, manufactured buildings or factory-built school buildings approved by the commission, or prototype buildings approved pursuant to s. [553.77](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0500-0599/0553/Sections/0553.77.html)(3). The respective responsible entities shall consider the physical performance parameters substantiating such amendments when designing, specifying, and constructing such exempt buildings.

(5) Notwithstanding subsection (4), counties and municipalities may adopt by ordinance an administrative or technical amendment to the Florida Building Code relating to flood resistance in order to implement the National Flood Insurance Program or incentives. Specifically, an administrative amendment may assign the duty to enforce all or portions of flood-related code provisions to the appropriate agencies of the local government and adopt procedures for variances and exceptions from flood-related code provisions other than provisions for structures seaward of the coastal construction control line consistent with the requirements in 44 C.F.R. s. 60.6. A technical amendment is authorized to the extent it is more stringent than the code. A technical amendment is not subject to the requirements of subsection (4) and may not be rendered void when the code is updated if the amendment is adopted for the purpose of participating in the Community Rating System promulgated pursuant to 42 U.S.C. s. 4022, the amendment had already been adopted by local ordinance prior to July 1, 2010, or the amendment requires a design flood elevation above the base flood elevation. Any amendment adopted pursuant to this subsection shall be transmitted to the commission within 30 days after being adopted.