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 turn-around.

For additional assistance and to have your draft ordinance reviewed, email Technical Support at flood.ordinance@em.myflorida.org (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/lobe_resources.htm.

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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)). This means the flood provisions of the FBC that govern the flood-resistant design of buildings in mapped 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 275 have elected to modify their existing regulations (as of mid-November 2014).

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

No. 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.

5. **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 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 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 when ordinances are codified in Municode (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.

6. **What are the six most common mistakes communities make when customizing the model ordinance?**

The most common mistakes likely are made because communities 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.

**Mistake #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.

**Mistake #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.

**Mistake #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 (especially to determine whether the county’s regulations are current).

**Mistake #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).

**Mistake #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.

**Mistake #6.** Modifying definitions to try to capture higher standards. Instructions for some higher standards have been prepared. Technical Support will help you incorporate higher standards.

7. **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 those higher standards (Technical Support will not do that for
you). 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. Please see the General Instructions for Adding Higher Standards and instructions for specific higher standards: 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.

8. **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.

9. **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 SFHAs may remove requirements for SFHAs 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.

10. **Why is it necessary in Sec. 104.2.1 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 hazard areas. 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/lobe_resources.htm.

11. What about agricultural structures (nonresidential farm buildings on farms) that are exempt from the FBC?
Nonresidential farm buildings on farms (agricultural structures) in SFHAs 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.

12. 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.

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

14. 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 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.

15. 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;”
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.

16. 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.

17. Why does the model ordinance include a fiscal impact statement at the end?
The fiscal impact statement can be removed if your community is not adopting any local technical amendments.

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.”

18. If our draft ordinance has already been reviewed, should I 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.
19. 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. 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. Most communities do this by sending the entire ordinance, identifying the pages where the code amendments are located. Please contact the Florida Building Commission’s Office of Codes & Standards by calling (850) 487-1824. Alternatively, you may email the ordinance to the Commission (please identify the pages on which the local code amendments appear): mo.madani@dbpr.state.fl.us

ADDITIONAL FAQS FOR COMMUNITIES ADOPTING BEFORE JUNE 30, 2015 (effective date of the FBC 5th Edition)

20. What are “local administrative code amendments” and how do they relate to the Model Administrative Chapter prepared by the Building Officials Association of Florida (BOAF)?

FBC, Building, Chapter 1 contains provisions for the administration and enforcement of the codes. In general, Chapter 1 does not contain technical specifications that govern the design of buildings. Section 553.73(4), F.S., provides that “Local governments may adopt amendments to the administrative provisions of the Florida Building Code, subject to the limitations of this paragraph.” However, section 553.73 (5), F.S., was added in 2010 to explicitly allow administrative amendments related to the flood requirements of the code. This was done because administrative amendments are necessary in order to implement the NFIP requirements or incentives.

BOAF prepares a Model Administrative Chapter “as a tool to facilitate the uniform and consistent application of local amendments to the administrative provisions of the code.” Many communities use this model to replace or augment FBC Chapter 1. The basis for BOAF’s model is Chapter 1 of the FBC, Building, with added recommended administrative amendments. Many of BOAF’s recommended amendments appear in the International Building Code that is the foundation of the Florida Building Code. BOAF members can access the Model Administrative Chapter by logging into www.boaf.net and going to Resources/BOAF Document Exchange.

21. Please explain the suggested local administrative code amendment for a new section 104.10.1.

Please read the Instructions and Notes that go with the model ordinances. DEM believes most Florida communities do not need to adopt this provision. Check with Technical Support for help deciding which of the three situations applies to your community:

a. If you do not use BOAF’s Model Administrative Chapter and thus do not have a Section 104.10 that grants authority to the building official to approve modifications, then you do
not need the local administrative amendment to add Section 104.10.1 (nor do you need Ordinance Section 103.5).

b. If you use BOAF’s Model Administrative Chapter that, as approved by the BOAF board on March 10, 2012, includes Section 104.10 with the underlined phrase shown here, then you do not need to adopt local administrative amendment Section 104.10.1 (nor do you need Ordinance Section 103.5). The following is taken from the BOAF model: “. . . to grant modifications for individual cases (except in a Special Flood Hazard Area), upon application . . . “

c. If you’re using a version of BOAF’s Model Admin Chapter that pre-dates the BOAF board’s modification of March 10, 2012 (i.e., it doesn’t have the underlined phrase shown in (b) above), then you must adopt the local admin code amendment Section 104.10.1 (and keep Ordinance Section 103.5).

22. The Model Ordinance has SECTION 3, which includes administrative amendments to the FBC, Building. What is meant by {current insert citation, if any}?

The intent is that if your community already has a section in its local code that contains administrative amendments to Chapter 1 of the FBC, Building, you would insert the citation of that regulation here because you’re adding these administrative amendments to those already adopted. Alternatively, if you are separately adopting administrative amendments to the FBC at the same time as the floodplain management ordinance, the administrative code amendments shown can be included in that adopting ordinance (and removed from this package). However, if your community does not already have administrative amendments to the FBC, then this statement should be changed to “SECTION 3. The Florida Building Code, Building is hereby amended by the following administrative amendments.”

Links:

State Floodplain Management Office
www.floridadisaster.org/Mitigation/SFMP/Index.htm

DEM Local Ordinance & Building Code Resources:
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