**Requiring Declaration of Land Restriction (Nonconversion Agreement)** **for** **Enclosures Under Elevated Buildings – local administrative code amendments (FBC, R and FBC, B)**

**Description:** The NFIP regulations and the *Florida Building Code* (FBC) allow areas under elevated buildings to be enclosed with walls. Any enclosed area must be limited to use for parking of vehicles, storage, and building access. The NFIP regulations do not require any form of owner agreement regarding modification or conversion of enclosures. Walls of enclosed areas must meet specific requirements depending on the flood zone:

* In Zone A, walls are required to have flood openings; and
* In Zone V[[1]](#footnote-1), walls are required to break away under certain flood loads.

NFIP flood insurance coverage (structure and contents) is more expensive if buildings have enclosed areas and coverage of enclosures is limited. In Zone V, buildings with enclosures larger than 300 square feet in area are charged more than buildings with smaller enclosures.

**Related Higher Standards:** See instructions for these other higher standards related to enclosures:

* Limiting the size of enclosed spaces below elevated buildings;
* Prohibiting partitions or prohibiting enclosures.

**Declarations of Land Restriction (Nonconversion Agreement)**: Communities may elect to require nonconversion agreements for all enclosures. Such a requirement may be imposed independent of the other alternatives described above or combined with these alternatives. The objective is to reduce the likelihood that owners, including future owners, might convert enclosures to uses other than permitted uses. Please see the model agreement developed by DEM: <http://www.floridadisaster.org/Mitigation/SFMP/lobc_resources.htm>. This model agreement is written to apply to specific enclosures and non-elevated accessory structures, garages, and certain agricultural buildings on farms.

DEM’s model is called a Declaration of Land Restriction because recordation on the deed is specified. If you elect to not require recordation, call it a Nonconversion Agreement and modify the form.

*CRS NOTE:* DEM cannot advise how many CRS points may be available. According to the 2013 CRS Coordinator’s Manual, to qualify for the most CRS credits, nonconversion agreements must include a statement that the owner agrees the property can be entered and inspected at any time (more points are available if the form specifies annual inspections). The DEM model nonconversion agreement has optional language to specify inspections. Some CRS credits are provided for requiring nonconversion agreements even if the agreement does not include a statement regarding inspections.

**How the FBC, Residential addresses enclosures:** The FBC, Residential includes the basic, NFIP-consistent requirements for enclosed areas and walls below elevated dwellings. Requirements for all flood zones are in R322.1, requirements for Zone A are in R322.2, and requirements for Zone V are in R322.3. The 6th Edition FBC, R will treat CAZ like Zone V.

**How the FBC, Building addresses enclosures by reference to ASCE 24:** The FBC, Building, by reference to ASCE 24, includes the basic, NFIP-consistent requirements for enclosed areas and walls below elevated buildings. Requirements for enclosures under buildings in Zone A are in ASCE 24 Section 2.6 and requirements for Zone V and CAZ are in ASCE 24 Section 4.6.

**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.***

*If your intent is to apply the requirement ONLY to dwellings, then where you see {select one: buildings / dwelling}, pick “dwellings” and then show only the code amendment(s) for the FBC, Residential.*

**Use these changes to require Declarations of Land Restriction (Nonconversion Agreements) for enclosures below elevated buildings/dwellings. This is drafted to apply to all buildings/dwellings in flood hazard areas that have enclosures.** Variations might include requiring the agreement only for enclosures that are more than a specific height, or not requiring it for crawlspace foundations.

***Step 1.*** *See the General Instructions to select the appropriate Whereas clause(s). Insert the following brief description of the higher standard:*

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| require declarations of land restriction (nonconversion agreements) for enclosures below elevated **{select one: buildings / dwellings}** |

***Step 2.*** *Add the following definition to Sec. 202 of the Floodplain Management Ordinance:*

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| **Declaration of Land Restriction (Nonconversion Agreement).** A form provided by the Floodplain Administrator to be signed by the owner and recorded on the property deed in Official Records of the Clerk of Courts, for the owner to agree not to convert or modify in any manner that is inconsistent with the terms of the building permit and these regulations, enclosures below elevated **{select one: buildings / dwellings}**. |

***Step 3a.*** *Add a new item to Model Ordinance Section 104.4 Application for a permit. [Note: some communities decide this is sufficient; others decide FBC, B Chapter 1, must be changed – see Step 3b.]*

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| (8) For projects proposing to enclose areas under elevated buildings, include signed Declaration of Land Restriction (Nonconversion Agreement); the agreement shall be recorded on the property deed prior to issuance of the Certificate of Occupancy. |

***Step 3b.*** *Add a new SECTION 3 to the ordinance for local administrative amendments to the FBC. Note that requiring nonconversion agreements adds to items required to be submitted with permit applications which are reviewed by building officials. If the intent is to require nonconversion agreements only for dwellings, do not include the change to the list of plan review criteria for commercial buildings. Maintain strikethrough and underlining to denote changes to the FBC.*

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| **SECTION 3. The *Florida Building Code, Building*, is hereby amended by the following administrative amendments*.***  Modify Sec. 107.3.5 as follows:  **107.3.5 Minimum plan review criteria for buildings.**  **Commercial Buildings: Building**  8. Structural requirements shall include:  Flood requirements in accordance with Section 1612, including lowest floor elevations, enclosures, declaration of land restriction (nonconversion agreement), flood damage-resistant materials. |
| **Residential (one- and two-family)**  6. Structural requirements shall include:  Flood hazard areas, flood zones, design flood elevations, lowest floor elevations, enclosures, declaration of land restriction (nonconversion agreement), equipment, and flood damage-resistant materials. |

1. The 6th Edition FBC will treat Coastal A Zone like Zone V if the FIRM has a LiMWA or the community designates the CAZ; flood openings will be required in all walls, including those in Zone V and CAZ. [↑](#footnote-ref-1)