

ORDINANCE NO. 2021-009-439

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AMENDING CHAPTER 30 "FLOODS", ARTICLE I – "GENERAL", ARTICLE II – "ADMINISTRATION", ARTICLE III – "FLOOD HAZARD REDUCTION", AND ARTICLE IV – "VARIANCES AND APPEALS", OF THE CODE OF ORDINANCES; REPEALING ALL ORDINANCES IN CONFLICT; PROVIDING A SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN CODE; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Community Rating System (CRS) program provides flood insurance discounts to residents and businesses of Cities that excel in flood protection efforts which includes the City of Miami Gardens, and

WHEREAS, in 2020, the CRS program required all cities to adopt stricter standards for elevations of new structures to match provisions in the Florida Building Code, and

WHEREAS, staff recommends that Chapter 30 "FLOODS", Article I – "General", Article II – "Administration", Article III – "Flood Hazard Reduction", and Article IV – "Variances and Appeals", of the Code of Ordinances for the City of Miami Gardens be amended to reflect the increased elevation requirement as outlined in the Florida Building Code, and

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Ordinance.

Section 2. AMENDMENT: Chapter 30 "Floods", Article I – "General" of the Code of Ordinances is hereby amended as follows:

**ARTICLE I. GENERAL**

**Sec. 30-8. Basis for establishing the areas of special flood hazard.**

The special flood hazard areas identified by the Federal Emergency Management Agency in the Flood Insurance Study (FIS) for the City, dated September 11, 2009, ~~March 2, 1994~~, and including the FIRM Index date ~~July 17, 1995~~, with the accompanying maps and other supporting data, and any subsequent revisions thereto, are adopted by reference and declared to be a part of this article. The Flood Insurance Study and Flood Insurance Rate Map are on file at the ~~public works department~~, Building Services Division

**Sec. 30-9. Designation of floodplain administrator.**

The city council of the city hereby appoints the Building Official, ~~public works director~~ or his/her designee, the floodplain administrator, to administer and implement the provisions of this article, and is herein referred to as the floodplain administrator.

**Sec. 30-16. Prohibitions.**

(a) It shall be unlawful and a violation of this article to dispose of any rainwater, stormwater runoff or other liquids by causing or allowing same to flow on, over or across any adjoining property, sidewalk, easement or right-of-way, either public or private. Such discharges shall be properly retained on the property where they originate or fall. Exceptions to this condition may be allowed on a limited basis for necessary repairs or refinishing of swimming pools, based on a case-by-case review and approval by the city department of public works.

(b) It shall be unlawful and a violation of this article to encroach on or into any secondary or private canals, canal maintenance easements, or other surface waters within the city boundaries without the review and approval of the city's department of public works.

(c) For any new construction or substantial improvement, it shall be unlawful and a violation of this article for any party to lower the elevation or otherwise cut down any existing or natural grades on a building site. An exception to this condition can consist of placement of stormwater management systems, as may be required by the city, Miami-Dade County, or South Florida Water Management District.

(d) It shall be unlawful and a violation of this article to discharge any product, waste, litter, debris, or other materials other than stormwater runoff into stormwater management systems or bodies of water within the geographical boundaries of the city, except for a one-time discharge to resurface or repair a swimming pool. Such an exception may only be granted after review and approval by the city's director of public works.

(e) The use of fill is hereby prohibited.

Section 3. AMENDMENT: Chapter 30 "Floods", Article II – "Administration" of the Code of Ordinances is hereby amended as follows:

**ARTICLE II. ADMINISTRATION**

**Sec. 30-36. Permit procedures.**

Application for a building permit shall be made to the city building department on forms furnished by the department prior to any development activities, including placement of manufactured homes, and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the locations of the foregoing. Specifically, the following information is required, but is not necessarily limited to:

- (1) *Application stage:*
  - a. Proposed elevation of the lowest floor that meets or exceeds in height the highest of the following elevations:

1. 1. Highest adjacent crown-of-road plus ~~eight~~ twelve inches.
2. Miami-Dade County flood criteria plus ~~eight~~ twelve inches.
3. 3. Base flood elevation plus twelve inches as depicted on the current FIRM. .
  - b. Proposed elevations of all machinery, utilities and equipment servicing the structure, demonstrating compliance with the criteria established in subsection
    - (1)a. of this section;
      - c. Proposed elevation of the lowest adjacent grade of the exterior of the structure;
    - d. A sediment and erosion control plan that includes appropriate and adequate best management practices to retain sediment and stormwater runoff on a construction site, and prevent erosion at such site;
      - e. A stormwater management plan that demonstrates on-site retention of stormwater runoff;
    - f. Proposed elevation in relation to mean sea level to which any nonresidential building will be floodproofed;
      - g. Certificate from a registered professional engineer or architect that the nonresidential floodproofed building will meet the floodproofing criteria in section 30-64(2); and
      - h. Description of the extent to which any watercourse will be created, altered or relocated as a result of proposed development;
      - i. For accessory structures, the lowest floor shall be elevated to a minimum of four inches above the highest adjacent grade. For accessory structures placed in special flood hazard areas, the design requirements in section 30-64(3) shall apply.
  - (2) *Construction stage:*
    - a. Upon the start of construction, the permit holder shall have in place a sediment and erosion control plan as approved in section 30-36(1)(d) of this article. Failure to comply with conditions of this approved plan during construction shall be considered a violation of this section.
    - b. Upon placement of the lowest floor, or before pouring the columns and/or tie beam, or floodproofing by whatever construction means, it shall be the duty of the permit holder to submit to the floodplain administrator or building official a certification of the NGVD elevation of the lowest floor or floodproofed elevation, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized for a particular building said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the lowest floor and floodproofing elevation survey data submitted. The permit holder shall correct violations detected by such review immediately and prior to further progressive work being permitted. Failure to submit the

survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project, or to initiate other appropriate enforcement action as warranted.

(3) *Completion of construction phase.*

- a. Upon completion of the project, after final grading and landscaping has been completed, it shall be the duty of the permit holder to submit to the floodplain administrator a signed and sealed elevation certificate showing NGVD elevations that demonstrate compliance with all elevations proposed in the permit application, and all the elevation requirements established in this chapter. The permit holder shall correct all deficiencies noted in the certificate prior to issuance of a certificate of occupancy or temporary certificate of occupancy.
- b. For those projects with approved floodproofing designs, a signed and sealed as-built floodproofing certificate shall be submitted to the floodplain administrator. Said certificate must demonstrate compliance with this chapter and with the approved floodproofing design certificate submitted at the application phase of development. Said certificate must also include operational and maintenance plans as defined in this chapter. Correction to any deficiencies noted in this certificate must be corrected before issuance of a certificate of occupancy or temporary certificate of occupancy.

Section 4. AMENDMENT: Chapter 30 “Floods”, Article III – “Flood Hazard Reduction” of the Code of Ordinances is hereby amended as follows:

**ARTICLE III. FLOOD HAZARD REDUCTION**

**Sec. 30-63. General standards.**

In all areas of the city, all development sites including new construction and substantial improvements shall be reasonably safe from flooding, and meet the following provisions:

(1) New construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(2) Manufactured homes shall be anchored to prevent flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors;

(3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage for all areas below the base flood elevation;

(4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage, both to the proposed structure and surrounding properties. Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

(5) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters or groundwaters;

(7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;

(8) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this article shall meet the requirements of "new construction" as contained in this article;

(9) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this article, shall be undertaken only if said nonconformity is not furthered, extended, or replaced;

(10) All applicable additional federal, state, and local permits shall be obtained and submitted to the city's building department. Copies of such permits shall be maintained on file with the building permit. State of Florida permits may include, but not be limited to the following:

- a. South Florida Water Management District(s): in accordance with F.S. § 373.036(2)(a), flood protection and floodplain management.
- b. ~~Department of community affairs: in accordance with F.S. § 380.05, areas of critical state concern, and F.S. ch. 553, part IV, Florida Building Code.~~
- c. Department of health: in accordance with F.S. § 381.0065, onsite sewage treatment and disposal systems.
- d. Department of Environmental protection, coastal construction control line: in accordance with F.S. 161.053, coastal construction and excavation.

(11) Standards for subdivision proposals and other proposed development (including manufactured homes):

- a. Such proposals shall be consistent with the need to minimize flood damage, both within the site and to properties adjacent to the site;
- b. Subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;
- c. Proposals shall have adequate drainage provided to retain stormwater runoff within the project site, to reduce exposure to flood hazards for the proposed structures and adjacent properties;
- d. Require base flood elevation data from the Applicant for subdivision proposals greater than 50 lots or five acres.

(12) The following disclosure shall be required to be included in contracts for sale of real estate. In any contract for the sale of improved real estate located in the city that is in a special flood hazard area, the seller shall include in the contract or a rider to the contract the following disclosure in not less than ten-point bold-faced type:

THIS HOME OR STRUCTURE IS LOCATED IN A SPECIAL FLOOD HAZARD AREA. IF THIS HOME OR STRUCTURE IS BELOW THE APPLICABLE FLOOD ELEVATION LEVEL AND IS

SUBSTANTIALLY DAMAGED OR SUBSTANTIALLY IMPROVED, AS DEFINED IN THE CITY OF MIAMI GARDENS FLOODPLAIN MANAGEMENT ORDINANCE, IT MAY, AMONG OTHER REQUIREMENTS, BE REQUIRED TO BE RAISED TO THE CURRENT FLOOD ELEVATION LEVEL AS DEPICTED IN SAID ORDINANCE.

(13) For all proposed development, when the proposal falls within a special flood hazard area having more than one BFE, the most stringent of the BFE's shall be used, as referenced in section 30-36.

(14) For all proposed development, and when the city provides flood hazard information to the public, it is a city determination that when any portion of a proposed structure falls within a special flood hazard area (SFHA), the entire structure is considered to be within the SFHA, and must comply with the standards specified for that SFHA.

#### **Sec. 30-64. Specific standards.**

In all A-zones where base flood elevation data have been provided (Zones AE, A1—30, and AH), as set forth in section 30-8, and in addition to section 30-63, the following provisions shall apply:

(1) *Residential construction.* All new construction and substantial improvement of any residential building, including manufactured home shall at a minimum have the lowest floor, including basement, elevated to the base flood elevation plus twelve inches, and in accordance with the standards of section 30-36. Should solid foundation perimeter walls be used to elevate a structure, for those enclosed areas below the base flood elevation there must be a minimum of two openings on different sides of each enclosed area sufficient to facilitate automatic equalization of flood hydrostatic forces in accordance with standards of section 30-8(3).

(2) *Nonresidential construction.* All new construction or substantial improvement of any commercial, industrial, or nonresidential building (including manufactured home) shall have the lowest floor, including basement, elevated to the base flood elevation plus twelve inches, and in accordance with the standards of section 30-36. All nonresidential buildings located in the city may be floodproofed, in lieu of being elevated, provided that all areas of the building components below the base flood elevation plus one foot, and as required in section 30-36 are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied by using the FEMA floodproofing certificate. Such certification along with the corresponding engineering data, and the operational and maintenance plans shall be provided to the floodplain administrator.

(3) *Elevated buildings.* New construction or substantial improvements of elevated buildings that include fully enclosed areas formed by foundation and other exterior walls below the lowest floor elevation shall be designed to preclude finished living space for the enclosed areas, and shall be designed to allow for the entry and exit of floodwaters to equalize hydrostatic flood forces on exterior walls.

a. Designs for complying with this requirement must either be certified by a professional engineer or architect or meet or exceed the following minimum criteria:

1. Provide a minimum of two openings on different sides of each enclosed area having a total net area of not less than one square inch for every square foot of enclosed area;
2. The bottom of all openings shall be no higher than one foot above adjacent interior grade (which must be equal to or higher in elevation than the adjacent exterior grade);
3. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they provide the required net area of the openings and permit the automatic flow of floodwaters in both directions;
4. Electrical, plumbing and other utility connections are prohibited below the base flood elevation; and
5. The interior portion of such enclosed area shall not be partitioned or finished into separate rooms.
  - b. Fully enclosed areas below the base flood elevation shall be used solely for parking of vehicles, storage, and building access. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door), or entry to the living area (stairway, foyer or elevator);
  - c. A non-conversion agreement will be required to be signed by the property owner for all new construction that includes enclosed areas below the base flood elevation. This agreement shall include but not be limited to the following: "I hereby understand and agree as the owner of this property that enclosed areas that are below the base flood elevation are to be used only for parking, access and storage. I agree not to improve, finish or otherwise convert any enclosed areas below the required elevation to habitable or living space. I understand and agree that the City of Miami Gardens reserves the right to inspect such enclosures for compliance with this provision. I understand that this Agreement will be recorded with the Clerk of the Courts of Miami-Dade County."
    - (4) Standards for manufactured homes and recreational vehicles.
      - a. All manufactured homes that are placed, or substantially improved within Zones A1-30, AH, and AE, on sites: (i) outside of an existing manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, (iv) in an existing manufactured home park, or (v) in a subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, shall have the lowest floor elevated on a permanent foundation to the base flood elevation plus twelve inches and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
      - b. All recreational vehicles placed on sites within Zones A1-30, AH, and AE must either:
        1. Be on the site for fewer than 180 consecutive days;
        2. Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions); or
        3. Meet all the requirements for new construction, including anchoring and elevation requirements in accordance with sections 30-36 and 30-63.

(5) Adequate drainage, including on site retention and proper disposal of stormwater runoff, and paths around structures shall be provided to guide water away from structures.

Section 5. AMENDMENT: Chapter 30 “Floods”, Article IV – “Variances and Appeals” of the Code of Ordinances is hereby amended as follows:

#### **ARTICLE IV. VARIANCES AND APPEALS**

##### **Sec. 30-85. Variance and appeals board—Designation.**

The city council hereby designates itself as the variance and appeals board. The board shall hear and decide appeals of final decisions of the ~~public works director~~ building official or floodplain administrator, and variances from the requirements of this chapter.

##### **Sec. 30-86. Same—Duties.**

(a) The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the ~~public works director~~ building official or floodplain administrator in the enforcement or administration of this article.

(b) Any person aggrieved by any action of decision of the director of public works or floodplain administrator may appeal that decision by filing a written notice of appeal within 15 days after the date of the board action or decision. This notice shall set forth concisely the action or decision appealed and the reasons or grounds for the appeal.

(c) The city clerk, or his or her designee, shall serve as the clerk of the board. Upon receipt of a timely filed appeal, the clerk of the board shall set such appeal for hearing at the earliest possible date, and cause notice thereof to be served upon the appellant and the building official. The board shall hear and consider all facts material to the appeal and render a decision promptly. The decision shall be in writing and shall be promptly mailed to the appellant. The board may affirm, reverse or modify the action of decision appealed, provided that the board shall not take any action, which conflicts with or nullifies any of the provisions of this article. The words "action" and "decision" as used in the subsection shall not include the filing of any action by the city in any court.

(d) The board shall not have jurisdiction to reconsider the subject matter of any appeal after its' final determination unless the board determines that:

- (1) There has been a material and substantial change in the circumstances;
- (2) There is newly discovered evidence that could not have been discovered through the use of due diligence prior to the original hearing and that will probably change the result if a re-hearing is granted; or
- (3) The board has overlooked or failed to consider something that renders the decision issued erroneous.

The ~~director of public works~~ building official or floodplain administrator may reconsider at any time any action or decision taken by him/her, and therefore may modify such an action or decision.

(e) The decision of the board shall constitute final administrative review, and no hearing or reconsideration shall be considered except as provided in subsection (d) of this section.

**Sec. 30-89. Variance notification.**

(a) Any applicant or owner to whom a variance is granted shall be given written notice from the ~~director of public works~~ floodplain administrator certifying that:

(1) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25.00 for \$100.00 of insurance coverage, and

(2) Such construction below the base flood level or other non-compliance with provisions of this article increases risks to life and property.

(b) A copy of the variance shall be recorded by the floodplain administrator in the office of the clerk of the court, and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

Section 6. CONFLICT: All ordinances or Code provisions in conflict herewith are hereby repealed.

Section 7. SEVERABILITY: If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Ordinance.

Section 8. INCLUSION IN CODE: It is the intention of the City Council of the City of Miami Gardens that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Miami Gardens and that the section of this Ordinance may be renumbered or relettered and the word "Ordinance" may be changed to "Chapter," "Section," "Article" or such other appropriate word or phrase, the use of which shall accomplish the intentions herein expressed.

Section 9. EFFECTIVE DATE: This Ordinance shall become effective immediately upon its final passage.

PASS ON FIRST READING ON THE 10TH DAY OF NOVEMBER, 2021.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON DECEMBER 8, 2021.

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RODNEY HARRIS, MAYOR

ATTEST:

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MARIO BATAILLE, CMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, CITY ATTORNEY

SPONSORED BY: CAMERON BENSON, CITY MANAGER

Moved by: Vice Mayor Leon  
Seconded by: Councilman Stephens

**VOTE: 7-0**

<i>Mayor Harris</i>	<b>Yes</b>
<i>Vice Mayor Leon</i>	<b>Yes</b>
<i>Councilwoman Campbell</i>	<b>Yes</b>
<i>Councilwoman Ighodaro</i>	<b>Yes</b>
<i>Councilwoman Julien</i>	<b>Yes</b>
<i>Councilman Stephens, III</i>	<b>Yes</b>
<i>Councilwoman Wilson</i>	<b>Yes</b>