

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY HOLLYWOOD, FLORIDA, AMENDING CHAPTER 150 OF THE CODE OF ORDINANCES ENTITLED "BEACH AND SHORELINE PROTECTION; RETAINING WALLS" TO ESTABLISH TIDAL FLOOD PROTECTION REGULATIONS, AND CREATING SECTION 150.30 TO ESTABLISH CONSTRUCTION AND INFRASTRUCTURE STANDARDS FOR SEAWALLS AND TIDAL FLOODING BARRIERS THAT ACCOUNT FOR PROJECTED SEA LEVEL RISE.

WHEREAS, sea level rise is currently increasing the frequency, depth, and spatial extent of tidal flooding across tidally influenced areas of Broward County; and

WHEREAS, seawalls and shorelines that are below rising water levels allow the trespass of water onto adjacent properties, causing flooding threats to infrastructure, public health, and safety; and

WHEREAS, on June 4, 2019, the Broward County Board of Commissioners approved Item 39, a motion to draft an amendment to Chapter 39 of the Broward County Code of Ordinances to establish regionally consistent minimum seawall and top-of-bank elevation standards for tidally influenced areas, excluding oceanfront beaches, in the unincorporated area of Broward County to improve flood protection under conditions of sea level rise; and

WHEREAS, on January 7, 2020, the Broward County Board of Commissioners enacted an amendment to the Broward County Land Use Plan creating Policy 2.21.7, requiring tidally influenced municipalities to enact regionally consistent elevations for seawalls, banks and berms, and other appurtenant infrastructure (i.e., boat ramps) consistent with the findings and recommendations of the United States Army Corps of Engineers/Broward County Flood Risk Management Study for Tidally Influenced Coastal Areas within two years; and

WHEREAS, these standards shall be consistent with Chapter 39, Article XXV-Resiliency Standards for Flood Protection of the Broward County Code of Ordinances, which shall serve as the model ordinance, and shall not be applicable to oceanfront beaches or shorelines seaward of the Coastal Construction Control Line; and

Coding: Words in ~~struck-through~~ type are deletions from existing text; underscored words are additions to existing text.

WHEREAS, Broward County's Code Amendment to its Chapter 39 and Policy 2.21.7 are to serve as a model code and planning foundation for municipal adoption of regionally consistent minimum standards and a basis for resilience investments across the community; and

WHEREAS, the proposed changes in this Ordinance provide for effective natural measures to protect and stabilize the City's waterfronts by permitting living shorelines; and

WHEREAS, living shorelines can provide a natural alternative to "hard" shoreline stabilization methods like rip-rap or bulkheads and provide numerous benefits including nutrient pollution remediation, essential fish habitat structure, and buffering of shorelines from waves and storms; and

WHEREAS, City staff along with City's consultant have reviewed and evaluated the County's ordinance and Policy 2.21.7 in conjunction with the City's analysis of such standards for areas within the City, and recommend the adoption of this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF HOLLYWOOD, FLORIDA:

Section 1: That the foregoing "WHEREAS" clauses are ratified and confirmed as being true and correct and are incorporated into this Ordinance.

Section 2: That Chapter 150 of the Code of Ordinances entitled "Beach and Shoreline Protection; Retaining Walls" is hereby amended as follows:

TITLE XV: LAND USAGE

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CHAPTER 150. BEACH AND SHORELINE PROTECTION; RETAINING WALLS; AND TIDAL FLOOD PROECTION

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TIDAL FLOOD PROTECTION

§150.30 RESILIENCY STANDARDS FOR TIDAL FLOOD BARRIERS.

(A) **Purpose and Intent.** The purpose of this Section is to establish a consistent minimum elevation for tidal flood barriers that will:

(1) Provide a standard for tidal flood mitigation infrastructure that serves as a barrier to tidal flooding, not groundwater seepage, by accounting for water levels predicted under combined conditions of sea level rise, high tides, and high frequency (25-year return interval) storm surge through year 2070; and

(2) Ensure new shoreline structures and major shoreline improvements are designed for use as tidal flood barriers through application of consistent standards that account for future predicted tidal flood conditions and coastal water levels associated with sea level rise in accordance with current sea level rise projections, as updated and adopted by the Broward County Board of Commissioners.

(3) Re-evaluate the 5ft NAVD elevation requirement in 2034 or before with consideration of updated sea level rise projections and models developed since adoption of this Ordinance to assess whether the minimum elevations set forth herein remain adequate to provide tidal flood mitigation.

(B) **Applicability.** This subchapter applies to all new tidal flood barriers, substantial repair or substantial rehabilitation to shorelines and shoreline structures, and the installation of any fixed infrastructure attached to tidal flood barriers (such as mooring structures). This subchapter is not applicable to oceanfront beaches or shorelines seaward of the Coastal Construction Control Line.

(C) **Definitions.** For the purposes of this subchapter, the following terms, phrases, words, and their derivation shall have the meanings given below, except when the context clearly indicates a different meaning. In the interpretation and application of this subchapter, the definitions provided herein shall control over the definitions that may be included in other documents, manuals, and regulations, including but not limited to, the Florida Building Code. The word “shall” is mandatory and the word “may” is permissive.

Bank means the level space separating a waterway from an inland area, often elevated and constructed of compacted soil.

Berm means an earthen mound designed with impermeability to resist the flow of tidal waters through it to an adjacent property or public right-of-way.

Coastal Construction Control Line (CCCL) or “Control Line” means the line established pursuant to Section 163.053, Florida Statutes, and recorded in the official records of the County, which defines that portion of the beach-dune system subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions.

Green-grey infrastructure or green-grey materials means a combination of engineered and natural features that provide environmental qualities and ecosystem value.

Living shoreline means a green infrastructure technique using native vegetation alone or in combination with low elevation sills to stabilize the shoreline as a natural enhancement to “hard” shoreline stabilization methods like seawalls. Living shorelines add resiliency to shorelines by attenuating waves and diminishing the effects of hurricanes. A living shoreline may have its waterside face consist of plants and other natural elements that improve water quality, provide essential fish habitat, and foster increased biodiversity, provided the landside interface of a living shoreline be substantially impermeable and constructed to a finished elevation that meets the minimum elevation for tidal flood barriers set forth in this Code. The landside interface may be located anywhere on an existing property fronting the living shoreline, as long as it is constructed in a manner and location that ensures any habitable structures on that property are protected from flooding from tidal waters and it prevents tidal flooding of adjacent properties and the public right-of-way.

Mooring structure means a boat dock, slip, davit, hoist, lift, floating vessel platform, mooring pile, or similar structure attached to land or to a seawall, to which a vessel can be moored, lifted, or stored upon.

North American Vertical Datum (NAVD88) means the vertical control for datum of orthometric height established for vertical control surveying in the United States of America based upon the General Adjustment of the North American Datum of 1988.

Public nuisance means a condition injurious to the public health or safety of the community or neighborhood, or injurious to any considerable number of persons, or a condition that obstructs the free passage or use, in the customary manner, of any public right-of-way.

Rip-rap means a foundation of unconsolidated boulders, stone, rubble, concrete without protruding rebar, or similar materials placed on or near a shoreline to mitigate wave impacts and prevent erosion.

Seawall (a/k/a bulkhead) means a vertical or near vertical (often interlocking) structure placed between an upland area and a waterway or waterbody for erosion and/or tidal flood control.

Seawall cap means a concrete box structure (usually reinforced) that connects seawall panels, piles, and anchoring system (if present) together at the top.

Shoreline means a tidally influenced area where land meets water.

Substantial repair or substantial rehabilitation means a single and complete project, which is the total project proposed or accomplished by one owner/developer, partnership, or other association of owners/developers, and where major shoreline improvement triggers either of the following: (a) Any modification to the shoreline or a shoreline structure along more than 50% of the length of the property’s shoreline; or (b) Any modification, alteration, or installation of an appurtenant structure (such as a

mooring structure) that exceeds 50% of the cost of a new tidal flood barrier along the property's shoreline as determined by the City Engineer.

Tidal flood barrier means any structure or shoreline feature including, but not limited to, banks, berms, green-grey infrastructure, seawalls, seawall caps, upland stem walls, or other infrastructure that impedes tidal surface waters from flowing onto adjacent property or public right-of-way, and located within or along a tidally influenced area. This definition is not meant to include rip-rap, derelict erosion control structures, or permeable earthen mounds that do not provide an impermeable water barrier to surface tidal flooding.

Tidally influenced area means the real property adjacent to, or affected by, a waterway with water level changes in response to the daily tides.

(D) Minimum elevations for Tidal Flood Barriers.

(1) All new or substantially repaired or substantially rehabilitated banks, berms, green-grey infrastructure, seawalls, seawall caps, upland stem walls, or other similar infrastructure shall be designed and constructed to perform as tidal flood barriers. Tidal flood barriers shall have a minimum elevation of five feet NAVD88. Applications for new or substantially repaired or substantially rehabilitated tidal flood barriers submitted prior to January 1, 2035, may be permitted at a minimum elevation of four feet NAVD88, if designed and constructed to accommodate a minimum elevation of five feet NAVD88 by January 1, 2050.

(2) All property owners must maintain a tidal flood barrier in good repair. A tidal flood barrier is presumed to be in disrepair if it allows tidal surface waters to flow unimpeded through or over the barrier and onto adjacent property or public right-of-way. Failure to maintain a tidal flood barrier in good repair shall be a citable offense. The owner of the tidal flood barrier shall demonstrate progress towards repairing the cited defect within 60 days after receiving a citation and shall complete repairs within 365 days after receipt of the citation. If the required repair or rehabilitation meets the substantial repair or substantial rehabilitation threshold, no later than 365 days after receipt of the citation, the property owner shall design, obtain permits, cause to be constructed, and obtain final inspection approval of seawall improvements that meet the minimum elevation and design requirements.

(3) Tidal flood barriers below a minimum of five feet NAVD88 elevation shall be improved, designed, and constructed so as to prevent tidal surface waters from impacting adjacent property or public right-of-way. Causing, suffering, or allowing the trespass of tidal surface waters onto adjacent property or public right-of-way is hereby declared a public nuisance and a citable offense requiring abatement. The owner shall demonstrate progress toward addressing the cited concern within 60 days after receipt of the citation and complete the construction of an approved remedy no later than 365 days after receipt of the citation.

(4) Tidal flood barriers shall be designed and constructed to prevent tidal waters from flowing through the barrier, while still allowing for the release of upland hydrostatic pressure, to the extent practicable.

(5) To the extent practicable, tidal flood barriers shall be designed and constructed to adjoin immediately proximate tidal flood barriers to close gaps and prevent trespass of tidal water.

(6) All tidal flood barriers undergoing substantial repair or substantial rehabilitation shall be constructed along the property's entire tidally influenced shoreline. If it is not practicable to adjoin immediately proximate tidal flood barriers, return structures shall be constructed sufficient to prevent flanking under design storm conditions and prevent tidal waters from otherwise entering the property.

(7) All tidal flood barriers shall be faced with a minimum of one cubic yard per linear foot of natural limerock rip-rap, or other approved habitat enhancement, at the waterward face of the structure.

(8) Property owners are encouraged to consider approaches and materials that enhance the biological value of traditional (flat surface) seawalls and flood barriers with the incorporation of living shoreline features, use of hybrid green-grey materials, and the use of biological forms, where practicable. A living shoreline may have its waterside face consisting of plants and other natural elements to improve water quality, provide essential fish habitat, and foster increased biodiversity, provided the landside interface of a living shoreline is substantially impermeable and constructed to a finished elevation that meets the minimum elevation for tidal flood barriers set forth in this section. The landside interface may be located anywhere on an existing property fronting the living shoreline, as long as it is constructed in a manner and location that ensures any habitable structures on that property are protected from flooding from tidal waters and it prevents tidal flooding of adjacent properties and the public rights-of-way.

(9) This section shall not be construed to require the installation of a seawall where other surface flood protection measures serve as an equally effective tidal flood barrier.

(10) Tidal flood barriers capable of automatically being elevated in advance of high tides to prevent tidal flooding are permissible, provided that automation does not require daily human intervention.

(E) **Required disclosure in contracts for sale of real estate.** In any contract for the sale of real estate located in tidally influenced areas within the City of Hollywood, executed after the effective date of this Ordinance, the seller shall include in the contract or a rider to the contract the following disclosure in not less than fourteen point, capitalized, bold-face type:

THIS REAL ESTATE IS LOCATED IN A TIDALLY INFLUENCED AREA. THE OWNER MAY BE REQUIRED BY BROWARD COUNTY OR HOLLYWOOD CODE OF ORDINANCE TO MEET MINIMUM TIDAL FLOOD BARRIER ELEVATION STANDARDS DURING CONSTRUCTION OR SUBSTANTIAL REPAIR OR SUBSTANTIAL REHABILITATION OF SEAWALLS, BANKS, BERMS, AND SIMILAR INFRASTRUCTURE OR WHEN REQUIRED TO ABATE NUISANCE FLOODING.

Section 3: That it is the intention of the City Commission and it is ordained that the provisions of this Ordinance shall be made a part of the Code of Ordinances of the City of Hollywood, Florida, and the sections of the Code may be renumbered to such intention.

Section 4: That all sections or parts of sections of the Code of Ordinances, all ordinances or parts of ordinances, and all resolutions or parts of resolutions in conflict are repealed to the extent of such conflict.

Section 5: That if any word, phrase, clause, subsection or selection of this Ordinance is for any reason held unconstitutional or valid, such invalidity shall not affect the validity of any remaining portions of this Ordinance.

Section 6: That this Ordinance shall be in full force and effect immediately upon its passage and adoption.

ADVERTISED on _____ day of _____, 2022.

PASSED on first reading this _____ day of _____, 2022.

PASSED AND ADOPTED on second reading this _____ day of _____ 2022.

JOSH LEVY, MAYOR

ATTEST:

PATRICIA A. CERNY, MMC, CITY CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY for the use and reliance of the City of Hollywood, Florida, only.

DOUGLAS R. GONZALES, CITY ATTORNEY