

# Sea Level Rise Basis for Municipal Regulations

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# Home Rule

- \* The guiding home rule principle: To determine the home rule power of a county or municipality to legislate by ordinance, the search is not for specific legislative authorization. The search is for general or special law that is inconsistent with the subject matter of the proposed ordinance. Absent an inconsistent law or a charter limitation, a county or municipality has the complete power to legislate by ordinance for any public purpose not constitutionally limited.
- \* *See, Florida Home Rule Green Book, Robert L. Nabors (2011)*

# Constitutional Grant of Home Rule

- \* Article VIII, Sec. 1(f), Counties operating under county charters shall have all powers of local self-government not inconsistent with general law, or with special law approved by a vote of the electors.
- \* Article VIII, Sec 2, Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law.

# Statutory Home Rule Authority

- \* **County Home Rule:** Section 125.01(b) The provisions of this section shall be liberally construed in order to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution
- \* **Municipal Home Rule:** Section 166.021(1) As provided in s.2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

# Limitations on Home Rule

- \* An example of where the Florida Constitution and Florida Legislature have preempted both the County and the Municipality's Home Rule Authority is with respect to:
  - \* Firearms – 790.33, Fla.Stat.
  - \* Signage for gas stations – 553.79(20)(a), Fla.Stat.
  - \* Taxation – millage limitation, Article VII, Section 9(b), Fla. Const.
- \* Absent a preemption or prohibition under state law, the City or County has the right to legislate.

# Seawall Ordinances

- \* Serves a public purpose.
- \* Interest in protecting the community's health, safety, and welfare
- \* Mitigation of impacts of sea level rise
- \* Municipalities have enacted new seawall construction ordinances
- \* Ordinances must contain specific findings related to the impacts of sea level rise on a community and the impact of construction of new sea walls will have on the community.

# City of Fort Lauderdale's Requirements to Raise a Seawall

- \* The property owner must meet the City's minimum seawall requirements when:
  - \* Owner is installing a new seawall
  - \* Owner comes in for a repair permit and it is determined that repair will cost at least 50% of the value of the structure
  - \* Citation issued for seawall in disrepair
  - \* Allowing tidal waters to enter property which impact adjacent properties or the right-of-way

# Enforcement for Failure to Improve Seawall

- \* Chapter 162, Florida Statutes provides for the code enforcement process in which a municipality may enforce its codes against a property owner
- \* Citation to property owner citing violation with opportunity to come into compliance;
- \* Failure to comply will result in the City bringing the matter to the special magistrate;
- \* Special magistrate can provide additional time to bring violation into compliance, and impose a fine, with a lien being placed on the property if property owner fails to comply
- \* City could complete work, if necessary, and charge costs and expenses to property owner



# Town of Hillsboro Beach

- \* The Hillsboro Beach Seawall Ordinance will typically provide for the maximum allowable seawall elevation of in relation to NAVD88 (4 to 5 feet)
- \* Protect from the projected seasonal high tides during the next 40 years
- \* Prior to adopting the ordinance, evidence presented to Town Commission includes reports, Miami Beach Flooding Mitigation Committee Meetings; Max Seawall Heights for Coastal Cities in Broward County

# Town of Hillsboro Beach

- \* Specific Findings:

- \* Construction of new seawalls is necessary to protect the health, safety, and welfare of Town residents;
- \* Town's interest in preventing the closure of State Road A-1-A due to tidal waters flowing overland from the Intracoastal Waterway

# Town of Hillsboro Beach

<u>Property's FEMA Flood Insurance Rate Map Location</u>	<u>Minimum Allowable Seawall Elevation</u>	<u>Maximum Allowable Seawall or Dock Elevation</u>
<u>In a floodplain with a base flood elevation greater than or equal to 5.0 feet NAVD88</u>	<u>4.0 feet NAVD88</u>	<u>Base Flood elevation of the property</u>
<u>In a floodplain with a base flood elevation equal to 4.0 feet NAVD88</u>	<u>4.0 feet NAVD88</u>	<u>5 feet NAVD88</u>
<u>In an X zone, not in a floodplain</u>	<u>4.0 feet NAVD88</u>	<u>Meet the definition of grade as defined herein.</u>

# Town of Hillsboro Beach

- \* The seawall must be impermeable – prevent tidal waters from flowing through the seawall;
- \* Some adjustment to allow for relief valves may be installed in certain circumstances, subject to review by the City Engineer
- \* Attach fixed docks at an elevation less than the elevation of the seawall, but no more than 10 inches above the seawall

# Adaptation Action Areas

- \* An Adaptation Action Areas (“AAA”) is an optional designation within the coastal management element of a local government’s comprehensive plan which identifies one or more areas that experience coastal flooding due to extreme high tides and storm surge, and that are vulnerable to the related impacts of rising sea levels for the purpose of prioritizing funding for infrastructure needs and adaptation planning.
- \* See 166.3164(1), Fla.Stat. and 163.3177(6)(g)(10), Fla.Stat.

# Adaptation Action Areas Minimum Criteria

- \* Minimum AAA qualifying criteria may include, but are not limited to the following:
  - \* Areas experiencing coastal flooding; and
  - \* Areas experiencing or projected to be experiencing tidal flooding; or
  - \* Areas with hydrological connections to coastal waters; or
  - \* Areas below, at, or near mean higher high water; or
  - \* Storm Surge evacuation zones; or
  - \* Areas with other related impacts of sea level rise

# Goals of AAA's

- \* Increase a municipality's resiliency to the impacts of climate change and sea level rise by providing the foundation and framework for the development and implementation of adaptation strategies and measures in order to reduce risk to the impacts.
- \* Provides for a commitment of public dollars for infrastructure projects

# Sample AAA Projects

- \* Stormwater improvements
- \* Improved drainage systems
- \* Seawall replacement
- \* Bridge replacement
- \* Increase road elevation
- \* Installation of Tidal Valves
- \* Focus on improvements to natural system environment (beaches, mangroves, rivers)



# Finished Floor Elevations

- \* As a result of adjusted FEMA Flood Maps the finished floor elevation of residential property may need to be adjusted. This has required municipalities to review their land development regulations related to the maximum height of structures
- \* The typical adjustment is to raise the finished floor elevation to a height up to 18” above the crown of the road
- \* The adjustment of the finished floor elevation has impacted a municipalities’ maximum height regulations as related to residential structures

# City of Lighthouse Point

- \* Adopted an ordinance to provide that building height limitations for structures in different residential districts needs to be adjusted in the event the finished floor elevation must be raised more than 18” above the crown of the road.
- \* Standard maximum height of building is not more than 34.5 feet above the crown of the adjoining road right of way.
- \* Where FEMA requires the finished floor elevation to be raised more than 18” above the crown of the road, the maximum height shall be no more than 33 feet above the finished floor elevation.
- \* Different height of building at setback line or setback area
- \* Different maximum height for chimneys or spires

# Impact of Raising Finished Floor Elevation

- \* Concern of unequal heights of homes, and neighbors ability to see into adjacent structures
- \* Caused the evaluation of height of hedges, fences, and walls
- \* Need to provide for the increase in height of hedges, fences, and walls for homes that are required to raise the finished floor elevation
- \* If the finished floor elevation exceeds 18” above the crown of the road, then the hedge may be increased by six inches in height to a maximum of 8’6”.
- \* Increases monitoring costs of planning and development of residential properties in coastal cities

# THE END

QUESTIONS?

