

1 | WHEREAS, together, Policy 2.21.7 and this proposed amendment creating
2 | Article XXV within Chapter 39 of the Code will serve as a model code and planning
3 | foundation for municipal adoption of regionally consistent minimum standards and a
4 | basis for resilience investments across the community,

5 |
6 | BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF
7 | BROWARD COUNTY, FLORIDA:

8 |
9 | Section 1. Article XXV of Chapter 39 of the Broward County Code of
10 | Ordinances is hereby created to read as follows:

11 | [Underlining omitted]

12 | **ARTICLE XXV. RESILIENCY STANDARDS FOR TIDAL FLOOD PROTECTION**

13 | **Sec. 39-404. Purpose and intent.**

14 | The purpose of this article is to establish a consistent minimum elevation for tidal
15 | flood barriers that will:

16 | (a) Provide a standard for flood mitigation infrastructure that serves as a
17 | barrier to tidal flooding, not seepage, by accounting for water levels predicted under
18 | combined conditions of sea level rise, high tides, and high frequency storm surge
19 | through the year 2070; and

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

1 | **Sec. 39-405. Applicability.**

2 | This article applies to all new tidal flood barriers, substantial repair or substantial
3 | rehabilitation to shorelines and shoreline structures, and the installation of any fixed
4 | infrastructure attached to tidal flood barriers (such as mooring structures). This article is
5 | not applicable to oceanfront beaches or shorelines seaward of the Coastal Construction
6 | Control Line.

7 | **Sec. 39-406. Definitions.**

8 | For the purposes of this article, the following terms, phrases, words, and their
9 | derivation shall have the meanings given herein, except when the context clearly
10 | indicates a different meaning. In the interpretation and application of this article, the
11 | definitions provided for herein shall control over definitions that may be included in other
12 | documents or manuals, including, but not limited to, the Florida Building Code. Words
13 | used in the present tense include the future tense, words in the plural number include
14 | the singular number, and words in the singular number include the plural number. The
15 | word "shall" is mandatory and the word "may" is permissive.

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

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

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

23 | *Mooring structure* means a boat dock, slip, davit, hoist, lift, floating vessel
24 | platform, mooring pile, or similar structure attached to land or to a seawall, to which a
 | vessel can be moored.

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

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

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

11 | *Seawall* means a vertical or near vertical (often interlocking) structure placed
12 between an upland area and a waterway or waterbody for erosion control.

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

15 | *Shoreline* means a tidally influenced area where land meets water.

16 | *Substantial repair or substantial rehabilitation* means:

17 | (a) Any modification to the shoreline or a shoreline structure along more than
18 fifty percent (50%) of the length of the property's shoreline; or

19 | (b) Any modification, alteration, or installation of an appurtenant structure
20 (such as a mooring structure) that exceeds fifty percent (50%) of the cost of a tidal flood
21 barrier along the property's shoreline.

22 | *Tidal flood barrier* means any structure or shoreline feature including, but not
23 limited to, banks, berms, green-grey infrastructure, seawalls, seawall caps, upland stem
24 walls, or other infrastructure that impedes tidal waters from flowing onto adjacent
property or public right-of-way, and located within or along a tidally influenced area. This

1 | definition is not meant to include rip-rap, derelict erosion control structures, or
2 permeable earthen mounds that do not provide an impermeable water barrier to tidal
3 flooding.

4 | *Tidally influenced area* means the real property adjacent to, or affected by, a
5 waterway with water level changes in response to the daily tide.

6 **Sec. 39-407. Minimum elevations for coastal infrastructure within tidally**
7 **influenced areas.**

8 | (a) All new or substantially repaired or substantially rehabilitated banks,
9 berms, green-grey infrastructure, seawalls, seawall caps, upland stem walls, or other
10 similar infrastructure shall be designed and constructed to perform as tidal flood
11 | barriers. Tidal flood barriers shall have a minimum elevation of five (5) feet NAVD88.
12 Applications for new or substantially repaired or substantially rehabilitated tidal flood
13 barriers submitted prior to January 1, 2035, may be permitted a minimum elevation of
14 four (4) feet NAVD88, if designed and constructed to accommodate a minimum
15 elevation of five (5) feet NAVD88 by January 1, 2050.

16 | (b) All property owners must maintain a tidal flood barrier in good repair. A
17 tidal flood barrier is presumed to be in disrepair if it allows tidal waters to flow
18 unimpeded through or over the barrier and onto adjacent property or public right-of-way.
19 Failure to maintain a tidal flood barrier in good repair shall be a citable offense. The
20 owner of the tidal flood barrier shall demonstrate progress towards repairing the cited
21 | defect within
22 sixty (60) days after receiving a citation and shall complete repairs within
23 three hundred sixty-five (365) days after receipt of the citation. If the required repair or
24 rehabilitation meets the substantial repair or substantial rehabilitation threshold, no later
than three hundred sixty-five (365) days after receipt of the citation, the property owner

Coding: Words in ~~struck-through~~ type are deletions from existing text. Words in
underscoring type are additions.

1 | shall design, obtain permits, cause to be constructed, and obtain final inspection
2 | approval of seawall improvements that meet the minimum elevation and design
3 | requirements.

4 | (c) Tidal flood barriers below a minimum five (5) feet NAVD88 elevation shall
5 | be improved, designed, and constructed so as to prevent tidal waters from impacting
6 | adjacent property or public right-of-way. Causing, suffering, or allowing the trespass of
7 | tidal waters onto adjacent property or public right-of-way is hereby declared a public
8 | nuisance and a citable offense requiring abatement. The owner shall demonstrate
9 | progress toward addressing the cited concern within sixty (60) days after receipt of the
10 | citation and complete the construction of an approved remedy no later than three
11 | hundred sixty-five (365) days after receipt of the citation.

12 | (d) Tidal flood barriers shall be designed and constructed to prevent tidal
13 | waters from flowing through the barrier, while still allowing for the release of upland
14 | hydrostatic pressure.

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

18 | (f) All tidal flood barriers undergoing substantial repair or substantial
19 | rehabilitation shall be constructed along the property's entire shoreline.

20 | (g) All tidal flood barriers shall be constructed with natural limerock rip-rap, or
21 | other approved habitat enhancement, at the waterward face of the structure.

22 | (h) Property owners are encouraged to consider approaches and materials
23 | that enhance the biological value of traditional (flat surface) seawalls and flood barriers
24 | with the incorporation of living shoreline features, use of hybrid green-grey materials,
| and the use of biological forms, where practicable.

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

3 | (j) Tidal flood barriers capable of automatically being elevated in advance of
4 | high tides to prevent tidal flooding are permissible, provided that automation cannot
5 | require daily human intervention.

6 | **Sec. 39-408. Required disclosure in contracts for sale of real estate.**

7 | In any contract for the sale of real estate located in tidally influenced areas of
8 | Broward County executed after December 31, 2020, the seller shall include in the
9 | contract or a rider to the contract the following disclosure in not less than fourteen-point,
10 | capitalized, bold-faced type:

11 | **THIS REAL ESTATE IS LOCATED IN A TIDALLY INFLUENCED AREA. THE**
12 | **OWNER MAY BE REQUIRED BY COUNTY OR MUNICIPAL ORDINANCE TO MEET**
13 | **MINIMUM TIDAL FLOOD BARRIER ELEVATION STANDARDS DURING**
14 | **CONSTRUCTION OR SUBSTANTIAL REPAIR OR SUBSTANTIAL**
15 | **REHABILITATION OF SEAWALLS, BANKS, BERMS, AND SIMILAR**
16 | **INFRASTRUCTURE OR WHEN REQUIRED TO ABATE NUISANCE FLOODING.**

17 | Section 2. Severability.

18 | If any portion of this Ordinance is determined by any court to be invalid, the
19 | invalid portion will be stricken, and such striking will not affect the validity of the
20 | remainder of this Ordinance. If any court determines that this Ordinance, in whole or in
21 | part, cannot be legally applied to any individual, group, entity, property, or circumstance,
22 | such determination will not affect the applicability of this Ordinance to any other
23 | individual, group, entity, property, or circumstance.

24 |

1 Section 3. Inclusion in the Broward County Code of Ordinances.

2 It is the intention of the Board of County Commissioners that the provisions of
3 this Ordinance become part of the Broward County Code of Ordinances as of the effective
4 date. The sections of this Ordinance may be renumbered or relettered and the word
5 "ordinance" may be changed to "section," "article," or such other appropriate word or
6 phrase to the extent necessary in order to accomplish such intention.

7 Section 4. Effective Date.

8 This Ordinance is effective as of the date provided by law.

9

10 ENACTED March 31, 2020

11 FILED WITH THE DEPARTMENT OF STATE April 1, 2020

12 EFFECTIVE April 1, 2020

13 Approved as to form and legal sufficiency:
14 Andrew J. Meyers, County Attorney

15 By /s/ Michael C. Owens 03/31/2020
16 Michael C. Owens (date)
17 Senior Assistant County Attorney

18 By /s/ Maite Azcoitia 03/31/2020
19 Maite Azcoitia (date)
20 Deputy County Attorney

21 MCO/gmb
22 Tidal Flood Protection Ordinance.doc
23 03/31/2020
24 #41039-0001

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