

ORDINANCE NO. 2021-24

AN ORDINANCE OF THE CITY OF VENICE, FLORIDA, AMENDING THE CODE OF ORDINANCES CHAPTER 90, BUILDING AND BUILDING REGULATIONS, BY AMENDING ARTICLE I, IN GENERAL, SECTION 90-7, HURRICANE PROTECTION; ARTICLE II, ADMINISTRATION, DELETING DIVISION 1, CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS IN ITS ENTIRETY; AMENDING ARTICLE III, CONTRACTORS, DIVISION 2, CONTRACTOR REGISTRATION, SECTION 90-165, ISSUANCE OF CITATIONS FOR UNLICENSED CONTRACTING AND/OR UNPERMITTED WORK AND SECTION 90-167, APPEALS; DELETING SECTION 90-171, PROCEEDINGS BY THE CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS; AMENDING ARTICLE IV, TECHNICAL CODES, SECTION 90-202, SUPPLEMENTS TO THE FLORIDA BUILDING CODE, HOUSING; AMENDING CHAPTER 98, FLOODS, ARTICLE II, FLOODPLAIN MANAGEMENT, DIVISION 1, ADMINISTRATION, SECTION 98-35, SITE PLANS AND CONSTRUCTION DOCUMENTS AND SECTION 98-37, VARIANCES AND APPEALS; DIVISION 2, DEFINITIONS, SECTION 98-40, DEFINITIONS; DIVISION 3, FLOOD-RESISTANT DEVELOPMENT, SECTION 98-41, BUILDINGS AND STRUCTURES, SECTION 98-43, SITE IMPROVEMENTS, UTILITIES AND LIMITATIONS, SECTION 98-44, MANUFACTURED HOMES, AND SECTION 98-46, TANKS; DIVISION 4, ADMINISTRATIVE AMENDMENTS TO THE FLORIDA BUILDING CODE, BUILDING, SECTION 98-48, FLORIDA BUILDING CODE, BUILDING; DIVISION 5, TECHNICAL AMENDMENTS TO THE FLORIDA BUILDING CODE, BUILDING, EXISTING BUILDING AND RESIDENTIAL, SECTION 98-49, FLORIDA BUILDING CODE, BUILDING, AND SECTION 98-51, FLORIDA BUILDING CODE, RESIDENTIAL; TO PROVIDE A FISCAL IMPACT STATEMENT TO PROVIDE CRITERIA FOR ACCESSORY STRUCTURES IN FLOOD HAZARD AREAS; SPECIFY ELEVATION OF MANUFACTURED HOMES IN FLOOD HAZARD AREAS; PROVIDING FOR REPEAL OF ALL ORDINANCES IN CONFLICT HEREWITH; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE

WHEREAS, the Legislature of the State of Florida has, in Chapter 166 – Municipalities, Florida Statutes, conferred upon local governments the authority to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry; and

WHEREAS, the Federal Emergency Management Agency (FEMA) released FEMA Policy #104-008-03 Floodplain Management Requirements for Agricultural Structures and Accessory Structures; and the City Council has determined it appropriate to adopt regulations that are consistent with the FEMA Policy to allow issuance of permits for wet floodproofed accessory structures that are not larger than the sizes specified in the FEMA Policy; and

WHEREAS, the City of Venice participates in the National Flood Insurance Program (“NFIP”) and participates in the NFIP’s Community Rating System (CRS), a voluntary incentive program that recognizes and encourages community floodplain management activities that exceed the minimum program requirements, achieving a CRS rating of Class 6; and

WHEREAS, in 2020 the NFIP CRS established certain minimum prerequisites for communities to qualify for or maintain class ratings of Class 8 or better and to satisfy the prerequisite and for the City of Venice to maintain the current CRS rating, all manufactured homes installed or replaced in special flood hazard areas must be elevated such that the lowest floors are at or above at least the base flood elevation plus one foot, which necessitates modification of the existing requirements; and

WHEREAS, the City Council determined that it is in the public interest to amend the floodplain management regulations to better protect owners and occupants of manufactured homes and to continue participating in the CRS at the current class rating; and

WHEREAS, Chapter 553, Florida Statutes, allows for local technical amendments to the Florida Building Code (FBC) that provide for more stringent requirements than those specified in the FBC and allows adoption of local administrative and local technical amendments to the FBC to implement the NFIP and incentives; and

WHEREAS, the City Council desires to modify the City Code to apply coastal high hazard area requirements to buildings and structures in Coastal A Zones for the purpose of participating in the NFIP's CRS and, pursuant to F.S. § 553.73(5), is formatting that requirement to coordinate with the FBC; and

WHEREAS, the City Council has determined that it is in the public interest to adopt the proposed local technical amendments to the FBC and the proposed amendments are not more stringent than necessary to address the need identified, do not discriminate against materials, products or construction techniques of demonstrated capabilities, and are in compliance with F.S. § 553.73(4); and

WHEREAS, the Venice City Council also desires to abolish the City Construction Board of Adjustment and Appeals ("CBAA") due to nonuse and redistribute the powers and duties of the Board to other existing state and City entities; and

WHEREAS, the Venice City Council has determined that abolishing the CBAA is in the best interests of the public health, safety and welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA as follows:

SECTION 1. The above whereas clauses are ratified and confirmed as true and correct.

SECTION 2. Chapter 90, Buildings and Building Regulations, Article I, In General, Section 90-7, Hurricane protection, is hereby amended to read as follows:

Sec. 90-7. Hurricane protection.

(a) It shall be unlawful for any person to allow construction related materials (including but not limited to, roof tiles, lumber scaffolding and debris) to remain loose or otherwise unsecured at a construction site from 24 hours after a hurricane watch has been issued until the hurricane watch or warning has been lifted. All such materials shall be either removed from the construction site or secured in such a manner as to minimize the danger of such materials causing damage to persons or property from high winds.

(b) Any person who violates this section shall be guilty of a second-degree misdemeanor and subject to a fine of up to \$500.00 or imprisonment for a term not to exceed 60 days.

~~(c) In addition to the above, a licensed contractor who violates this section shall be subject to discipline or license revocation proceedings before the city construction board of adjustment and appeals.~~

SECTION 3. Chapter 90, Buildings and Building Regulations, Article II, Administration, Division 1, Construction Board of Adjustment and Appeals, is hereby deleted and reserved:

ARTICLE II. ADMINISTRATION

DIVISION 1. RESERVED CONSTRUCTION BOARD OF ADJUSTMENT AND APPEALS

Secs. 90-31—90-~~580~~. - Reserved.

~~Sec. 90-51. Established; membership.~~

~~There is hereby established a board to be called the construction board of adjustment and appeals, which shall consist of seven members and three alternates. The members need not be city residents.~~

~~Sec. 90-52. Appointment, qualifications and term of members.~~

~~(a) Appointments to the construction board of adjustment and appeals shall be made by the mayor with the advice and consent of the city council. The membership should consist of individuals with knowledge and experience in the technical codes, such as design professionals, contractors or building industry representatives. In addition to the regular members, there shall be three alternate members, to serve as consumer representatives in hearings involving certificates of competency, licenses and discipline. The consumer representatives shall not be, or ever have been, members or practitioners of a trade or profession regulated by the board or a member of any closely related trade or profession. A board member shall not act in a case in which the member has a personal or financial interest.~~

~~(b) The terms of members of the board and alternates shall be three years.~~

~~Sec. 90-53. Vacancies; absence of members from meetings.~~

~~Vacancies on the construction board of adjustment and appeals shall be filled for an unexpired term in the manner in which original appointments are required to be made. Continued absence of any member from required meetings of the board shall, at the discretion of the city~~

~~council, render any such member subject to immediate removal from office.~~

~~Sec. 90-54. Quorum and voting.~~

~~The regular members (seven person board) shall hear appeals of decisions and interpretations of the building official and applications for variances. The regular members and alternate members (ten person board) shall hear all cases involving certificates of competency, licenses and discipline. A simple majority of the construction board of adjustment and appeals shall constitute a quorum. In varying any provision of this chapter, the affirmative votes of the majority present, but not less than three affirmative votes, shall be required. In modifying a decision of the building official, not less than four affirmative votes, but not less than a majority of the board, shall be required.~~

~~Sec. 90-55. Meetings.~~

~~All meetings shall conform to the Florida Open Meetings Law, F.S. ch. 286.~~

~~Sec. 90-56. Powers.~~

~~The construction board of adjustment and appeals shall have the power to hear appeals of decisions and interpretations of the building official, consider variances of the technical codes, conduct hearings regarding certificates of competency, licenses, discipline and such other powers as authorized in the city code or state law.~~

~~Sec. 90-57. Appeals and variances.~~

~~(a) Conditions for appeals. The owner of a building, structure or service system, or his duly authorized agent, may appeal a decision of the building official to the construction board of adjustment and appeals whenever any one of the following conditions are claimed to exist:~~

~~(1) The building official rejected or refused to approve the mode or manner of construction proposed to be followed or materials to be used in the installation or alteration of a building, structure or service system.~~

~~(2) The provisions of this chapter do not apply to this specific case.~~

~~(3) An equally good or more desirable form of installation can be employed in any specific case.~~

~~(4) The true intent and meaning of this chapter or any of the regulations thereunder have been misconstrued or incorrectly interpreted.~~

~~(b) Variances.~~

~~(1) The construction board of adjustment and appeals, when so appealed to and after a hearing, may vary the application of any provision of this chapter to any particular case when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of this chapter or the technical codes or the public interest, and also finds all of the following:~~

~~a. Special conditions and circumstances exist which are peculiar to the building, structure or service system involved and which are not applicable to others.~~

~~b. The special conditions and circumstances do not result from the action or inaction of the applicant.~~

~~c. Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other buildings, structures or service systems.~~

~~d. The variance granted is the minimum variance that will make possible the reasonable use of the building, structure or service system.~~

~~e. The grant of the variance will be in harmony with the general intent and purpose of this chapter and will not be detrimental to the public health, safety and general welfare.~~

~~(2) In granting the variance, the board may prescribe a reasonable time limit within which the action for which the variance is required shall be commenced or completed or both. In addition, the board may prescribe appropriate conditions and safeguards in conformity with this chapter. Violation of the conditions of a variance shall be deemed a violation of this chapter.~~

~~(c) Notice of appeal. Notice of appeal shall be in writing and filed within 30 calendar days after the decision is rendered by the building official. Appeals shall be in a form acceptable to the building official.~~

~~(d) Unsafe or dangerous buildings or service systems. In the case of a building, structure or service system which, in the opinion of the building official, is unsafe, unsanitary or dangerous, the building official may, in his order, limit the time for such appeals to a shorter period.~~

~~Sec. 90-58. Rules of procedure; meetings.~~

~~The construction board of adjustment and appeals shall establish rules and regulations for its own procedures, not inconsistent with the provisions of this chapter. The board shall meet on call of the chair. The board shall meet within 30 calendar days after notice of appeal has been received.~~

~~Sec. 90-59. Decisions.~~

~~The construction board of adjustment and appeals shall, in every case, reach a decision without unreasonable or unnecessary delay. Each decision of the board shall also include the reasons for the decision. If a decision of the board reverses or modifies a refusal, order or disallowance of the building official or varies the application of any provision of this chapter, the building official shall immediately take action in accordance with such decision. A copy of the decision shall be sent by mail or otherwise to the appellant and a copy shall be kept publicly posted in the office of the building official for two weeks after filing. Every decision of the board shall be final, subject, however, to such remedy as any aggrieved party might have at law or in equity.~~

~~Secs. 90-60—90-80. Reserved.~~

SECTION 4. Chapter 90, Buildings and Building Regulations, Article III, Contractors, Division 2, Contractor Registration, Section 90-165, Issuance of citations for unlicensed contracting and/or unpermitted work, is hereby amended to read as follows:

Sec. 90-165. Issuance of citations for unlicensed contracting and/or unpermitted work.

(a) – (d) No change.

(e) *Administrative remedies.* The person charged with the violation shall elect either to correct the violation and pay the civil penalty in the manner indicated on the citation or, within ten days of receipt of the citation, exclusive of weekends and legal holidays, request an

administrative hearing before the special magistrate construction board of adjustment and appeals to appeal the issuance of the citation by the enforcement officer.

(f) ~~Conduct during construction board of adjustment and appeals H~~hearings. Special magistrate construction board of adjustment and appeals hearings shall be conducted in the following manner:

- (1) Hearings shall be ~~held before the construction board of adjustment and appeals and shall be~~ conducted pursuant to the requirements of F.S. §§ 162.07 and 162.08 and subsection ~~2-32890-171(b)~~ of this Code.
- (2) Failure of a violator to appeal the citation within the time period set forth above shall constitute a waiver of the violator's rights to an administrative hearing. A waiver of the right to an administrative hearing shall be deemed an admission of the violation and penalties may be imposed accordingly.
- (3) If the person issued the citation, or his designated representative, shows that the citation is invalid or that the violation has been corrected prior to appearing before the special magistrate construction board of adjustment and appeals, the special magistrate construction board of adjustment and appeals may dismiss the citation unless the violation is irreparable or irreversible.
- (4) If the special magistrate construction board of adjustment and appeals finds that a violation exists, the special magistrate construction board of adjustment and appeals may order the violator to pay a civil penalty of not less than the amount set forth in the citation, but not more than \$2,500.00 per day for each violation. Monies collected pursuant to this section shall be retained and set aside in a specific fund to support future enforcement activities against unlicensed contractors.

In determining the amount of the penalty, the special magistrate construction board of adjustment and appeals shall consider the following factors:

- a. The gravity of the violation;
 - b. Any actions taken by the violator to correct the violation; and
 - c. Any previous violations committed by the violator.
- (g) *Failure to contest the citation.* Upon written notification from the enforcement officer that a violator has not contested the citation or paid the civil penalty within the time frame allowed in the citation, the special magistrate construction board of adjustment and appeals shall enter an order ordering the violator to pay the civil penalty set forth on the citation. A hearing shall not be necessary for the issuance of such order.

- (h) *Order imposing fine shall constitute a lien.* A certified copy of an order imposing a civil penalty pursuant to this section may be recorded in the public records and thereafter shall constitute a lien against any real or personal property owned by the violator in the county of recordation. Upon petition to the circuit court, such order may be enforced in the same manner as a court judgment by the sheriffs of this state, including a levy against personal property. A civil penalty imposed hereunder shall continue to accrue until the violator comes into compliance or until judgment is rendered in a suit to foreclose on such lien, whichever occurs first. After three months from the filing of any such lien which remains unpaid, the city attorney is authorized to foreclose on the lien. No such lien may be foreclosed on real property which is a homestead under section 4, article X of the state Constitution.
- (i) *Appeal of special magistrate ~~construction board of adjustment and appeals~~ order.* An aggrieved party, including the city, may appeal a final administrative order of the special magistrate ~~construction board of adjustment and appeals~~ to the circuit court pursuant to F.S. ch. 162. Such an appeal shall not be a hearing de novo, but shall be limited to appellate review of the record created before the special magistrate. An appeal shall be filed within 30 days of the execution of the order to be appealed.

(j) - (k) No change.

SECTION 5. Chapter 90, Buildings and Building Regulations, Article III, Contractors, Division 2, Contractor Registration, Section 90-167, Appeals, is hereby amended to read as follows:

Sec. 90-167. Appeals.

(a) Any applicant for a contractor registration under this division who is denied such registration by the building division may appeal the decision to the special magistrate ~~construction board of adjustment and appeals~~; provided, however, that such appeal shall be filed in writing with the building division within 15 days of receipt of notification in writing of the denial of the contractor registration. ~~The appeal procedure shall be substantially the same as is set forth in section 90-171.~~

(b) Appeal procedure.

- (1) The special magistrate shall hold a public hearing after proper notice. Notice of the hearing shall be given, in writing, by the building division, to the contractor not less than ten days prior to the date set for the hearing. The notice shall specifically set forth the grounds for the proposed action and the time and place for the hearing. When proper notice of the hearing has been provided to the contractor, a hearing may proceed even in the absence of the contractor.
- (2) At the hearing, the burden of proof shall be upon the contractor to show by the greater weight of the evidence that the contractor registration should be issued.

- (3) All testimony shall be under oath and shall be recorded. The formal rules of evidence shall not apply, but fundamental due process should be observed and govern the proceedings. Upon determination of the special magistrate, immaterial or unduly repetitious evidence may be excluded. The special magistrate may consider testimony presented by the contractor, the city or any other witnesses.
- (4) The special magistrate shall render a decision based upon the evidence entered into the record.
- (5) The special magistrate's decision shall be entered in writing, including findings of fact and conclusions of law, and be sent by certified mail to the contractor.
- (6) Any aggrieved party, including the city, may appeal an order of the special magistrate entered pursuant to this section to the circuit court of the county. Such appeal shall not be a hearing de novo but shall be a petition for a writ of certiorari, and the court shall be limited to appellate review of the record created before the special magistrate. Any appeal shall be considered timely if it was filed within 30 days after the written order filed with the city clerk. The city may assess a reasonable charge for the preparation of the record, to be paid by the appellant in accordance with F.S. § 119.07.
- (7) All notices required by this section shall be by certified mail, return receipt requested, or, when mail is not effective, by hand delivery by a sheriff's deputy or other authorized person pursuant to rule 1.410(c), Florida Rules of Civil Procedure, or by public notice in an appropriate newspaper.

SECTION 6. Chapter 90, Buildings and Building Regulations, Article III, Contractors, Division 2, Contractor Registration, Section 90-171, Proceedings by the construction board of adjustment and appeals, is hereby deleted in its entirety and reserved:

Sec. 90-171. ~~Proceedings by the construction board of adjustment and appeals~~ Reserved.

~~(a) The construction board of adjustment and appeals shall have the following powers:~~

~~(1) To hear appeals from the actions of the building division in issuing, refusing to issue, or failing to renew a city contractor registration.~~

~~(2) To conduct hearings and issue orders to discipline a locally registered contractor. The board is authorized to revoke, suspend or deny issuance or renewal of the registration, require financial restitution to a consumer, impose an administrative fine not to exceed \$5,000.00 per violation, or any combination thereof, and assess costs associated with investigation and prosecution, if the holder of a contractor registration is found guilty of any of the acts set forth in F.S. §§ 489.127, 489.129, 489.132(1), 489.531 and 489.533. The city shall not issue or renew a contractor registration to any person who has been assessed a fine or costs associated with~~

investigation or prosecution until such fine or costs associated with investigation and prosecution are paid in full.

~~(3) To conduct hearings and issue cease and desist orders to prohibit any person from engaging in the business of contracting who does not hold the required registration for the work being performed.~~

~~(4) To conduct hearings and enter orders which deny the issuance of a building permit to a state certified contractor if the board finds that the contractor is guilty of fraud or a willful building code violation. The building department shall issue a notice of noncompliance as its first response to a minor violation of a regulatory law in any instance in which it is reasonable to assume that the violator was unaware of such a law or unclear as to how to comply with it. The initial notice of noncompliance shall not be accompanied with a fine or other disciplinary penalty.~~

~~(b) Notice and hearing.~~

~~(1) Prior to taking any of the actions authorized above, the board shall hold a public hearing after proper notice. Notice of the hearing shall be given, in writing, by the building division, to the contractor not less than ten days prior to the date set for the hearing. The notice shall specifically set forth the grounds for the proposed action and the time and place for the hearing. When proper notice of the hearing has been provided to the contractor, a hearing may proceed even in the absence of the contractor.~~

~~(2) At the hearing, the burden of proof shall be upon the petitioner to show by the greater weight of the evidence that the alleged violation was committed by the contractor.~~

~~(3) All testimony shall be under oath and shall be recorded. The formal rules of evidence shall not apply, but fundamental due process should be observed and govern the proceedings. Upon determination of the chair, immaterial or unduly repetitious evidence may be excluded. The board may consider testimony presented by the petitioner, the contractor, the city or any other witnesses. Any member of the board, its secretary, its attorney, the petitioner or his attorney, or the contractor or his attorney may inquire of any witness.~~

~~(4) The board shall render its decision based upon the evidence entered into the record.~~

~~(5) The board's decision shall be entered in writing, including findings of fact and conclusions of law.~~

~~(6) The orders shall be sent by certified mail to the contractor.~~

~~(7) The board shall have the power to:~~

~~a. Adopt rules and regulations to carry out the provisions of this section and for the conduct of its hearing.~~

~~b. Subpoena alleged violators and witnesses to compel attendance at its hearings. Subpoenas shall be issued by the city clerk and may be served by a sheriff, police officer or other authorized person as provided for by rule 1.410(c), Florida Rules of Civil Procedure.~~

~~c. Subpoena records, surveys, drawings, contracts and other documentary materials.~~

~~d. Issue orders having full force and effect of law. Such orders may be enforced in the circuit court of the county and injunctive relief may be pursued.~~

~~e. Take testimony under oath.~~

~~(8) If the board takes disciplinary action against a locally registered contractor, the board, shall, in addition to any action against the registered contractor's local license, issue a recommended penalty for action by the state construction industry licensing board pursuant to F.S. §~~

~~489.131(7)(c), or the state electrical contractors' licensing board pursuant to F.S. § 489.531(6)(b), as amended. This recommended penalty may include a recommendation for no further action, or a recommendation for suspension, revocation or restriction of the registration, or a fine to be levied by the state licensing board, or a combination thereof. The board shall inform the disciplined contractor and the petitioner of the penalty recommended, his right to appeal the recommended penalty to the state licensing board and the consequences should he decide not to appeal.~~

~~(9)The board shall, upon having reached an adjudication or having accepted a plea of nolo contendere, immediately inform the state construction board of adjustment and appeals of its action and the recommended penalty.~~

~~(10)If the board denies the issuance of a permit to a state certified contractor or state certified electrical contractor, the board shall immediately notify the state construction industry licensing board or the state electrical contractors' licensing board of its action.~~

~~(11)Any aggrieved party, including the city, may appeal an order of the board entered pursuant to this section to the circuit court of the county. Such appeal shall not be a hearing de novo but shall be a petition for a writ of certiorari, and the court shall be limited to appellate review of the record created before the construction board of adjustment and appeals. Any appeal shall be considered timely if it was filed within 30 days after the written order filed with the city clerk. The city may assess a reasonable charge for the preparation of the record, to be paid by the appellant in accordance with F.S. § 119.07.~~

~~(12)All notices required by this section shall be by certified mail, return receipt requested, or, when mail is not effective, by hand delivery by a sheriff's deputy or other authorized person pursuant to rule 1.410(c), Florida Rules of Civil Procedure, or by public notice in an appropriate newspaper.~~

SECTION 7. Chapter 90, Buildings and Building Regulations, Article IV, Technical Codes, Section 90-202, Supplements to the Florida Building Codes; housing, is hereby amended as follows:

Sec. 90-202. Supplements to the Florida Building Codes, housing.

(a) No change.

(b) *Unsafe buildings.* All buildings or structures which are unsafe, unsanitary or not provided with adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use constitute a hazard to safety or health by reason of inadequate maintenance, dilapidation, obsolescence or abandonment, are declared to be unsafe buildings. All such unsafe buildings are hereby declared to be public nuisances and illegal and may be abated by repair and rehabilitation or by demolition in accordance with the following procedure:

(1) – (3) No change.

(4) The owner, agent or person in control shall have the right to appeal from the decision of

the building official, ~~as provided in this chapter,~~ and to appear before the city council ~~construction board of adjustment and appeals~~ at a specified time and place to show cause why he should not comply with the notice.

(5) – (6) No change.

~~(c) Violations of this section may be enforced by proceedings before the city code enforcement board. Where an owner has failed to comply with an order of the code enforcement board, the city shall not be prohibited from also seeking judicial relief pursuant to the provisions of this section.~~

SECTION 8. Chapter 98, Floods, Article II, Floodplain Management, Division 1, Administration, Section 98-35, Site plans and construction documents, is hereby amended as follows:

Sec. 98-35. Site plans and construction documents.

(a) *Information for development in flood hazard areas.* The site plan or construction documents for any development subject to the requirements of this article shall be drawn to scale and shall include, as applicable to the proposed development:

(1) - (3) No change.

(4) Location of the proposed activity and proposed structures, and locations of existing buildings and structures; in coastal high hazard areas and coastal A zones, new buildings shall be located landward of the reach of mean high tide.

(5) - (9) No change.

The floodplain administrator is authorized to waive the submission of site plans, construction documents, and other data that are required by this article but that are not required to be prepared by a registered design professional if it is found that the nature of the proposed development is such that the review of such submissions is not necessary to ascertain compliance with this article.

(b) No change.

(c) *Additional analyses and certifications.* As applicable to the location and nature of the proposed development activity, and in addition to the requirements of this section, the applicant shall have the following analyses signed and sealed by a Florida licensed engineer for submission with the site plan and construction documents:

(1) - (3) No change.

- (4) For activities that propose to alter sand dunes or mangrove stands in coastal high hazard areas (Zone V) and coastal A zones, an engineering analysis that demonstrates that the proposed alteration will not increase the potential for flood damage.

(d) No change.

SECTION 9. Chapter 98, Floods, Article II, Floodplain Management, Division 1, Administration, Section 98-37, Variances and appeals, is hereby amended as follows:

Sec. 98-37. Variances and appeals.

(a) *General.* The special magistrate construction board of adjustments and appeals shall hear and decide on requests for appeals and requests for variances from the strict application of this article. Pursuant to F.S. § 553.73(5), the special magistrate construction board of adjustments and appeals shall hear and decide on requests for appeals and requests for variances from the strict application of the flood-resistant construction requirements of the Florida Building Code. This section does not apply to section 3109 of the Florida Building Code, Building.

(b) *Appeals.* The special magistrate construction board of adjustments and appeals shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the administration and enforcement of this article. Any aggrieved party, including the city, may appeal an order of the special magistrate construction board of adjustments and appeals entered pursuant to this section to the circuit court of the county, as provided by Florida Statutes. Such appeal shall not be a hearing denovo but shall be a petition for writ of certiorari, and the court shall be limited to appellate review of the record created before the special magistrate construction board of adjustments and appeals. Any appeal shall be considered timely if it was filed within 30 days after the written order filed with the city clerk. The city may assess a reasonable charge for the preparation of the record, to be paid by the appellant in accordance with F.S. § 119.07.

(c) *Limitations on authority to grant variances.* The special magistrate construction board of adjustments and appeals shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in subsection 98-37(g), the conditions of issuance set forth in subsection 98-37(h), and the comments and recommendations of the floodplain administrator and the building official. The special magistrate construction board of adjustments and appeals has the right to attach such conditions as it deems necessary to further the purposes and objectives of this article.

(d) *Restrictions in floodways.* A variance shall not be issued for any proposed development in a floodway if any increase in base flood elevations would result, as evidenced by the applicable analyses and certifications required in subsection 98-35(c).

(e) *Historic buildings.* A variance is authorized to be issued for the repair, improvement, or rehabilitation of a historic building that is determined eligible for the exception to the flood-

resistant construction requirements of the Florida Building Code, Existing Building, ~~chapter 11~~ Historic Buildings, upon a determination that the proposed repair, improvement, or rehabilitation will not preclude the building's continued designation as a historic building and the variance is the minimum necessary to preserve the historic character and design of the building. If the proposed work precludes the building's continued designation as a historic building, a variance shall not be granted and the building and any repair, improvement, and rehabilitation shall be subject to the requirements of the Florida Building Code.

(f) *Functionally dependent uses.* A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in this article, provided the variance meets the requirements of subsection 98-37(d), is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.

(g) *Considerations for issuance of variances.* In reviewing requests for variances, the special magistrate ~~construction board of adjustments and appeals~~ shall consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this article, and the following:

(1) - (10) No change.

(h) *Conditions for issuance of variances.* Variances shall be issued only upon:

(1) Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of this article or the required elevation standards;

(2) Determination by the special magistrate ~~construction board of adjustments and appeals~~ that:

- a. Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;
- b. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public or conflict with existing local laws and articles; and
- c. The variance is the minimum necessary, considering the flood hazard, to afford relief.

(3) – (4) No change.

SECTION 10. Chapter 98, Floods, Article II, Floodplain Management, Division 2, Definitions, Section 98-40, Definitions, is hereby amended as follows:

Sec. 98-40. Definitions.

Accessory structure means a structure on the same parcel of property as a principal structure and the use of which is incidental to the use of the principal structure. For floodplain management purposes, the term includes only accessory structures used for parking and storage.

~~Existing manufactured home park or subdivision~~ means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before July 30, 1971.

~~Expansion to an existing manufactured home park or subdivision~~ means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Historic structure means any structure that is determined eligible for the exception to the flood hazard area requirements of the Florida Building Code, Existing Building, ~~and ch. 11~~ Historic Buildings.

Limit of Moderate Wave Action means a line shown on FIRMs to indicate the inland limit of the one and one-half foot breaking wave height during the base flood.

Market value means the ~~price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in this article, the term refers to the market value of buildings and structures, excluding the land and other improvements on the parcel. Market value may be established by a qualified independent appraiser, actual cash value (like-kind replacement cost depreciated for age, wear and tear, neglect, and quality of construction) determined by a qualified independent appraiser, or tax assessment value adjusted to approximate market value by a factor provided by the property appraiser.~~

~~New manufactured home park or subdivision~~ means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after July 30, 1971.

SECTION 11. Chapter 98, Floods, Article II, Floodplain Management, Division 3, Flood-Resistant Development, Section 98-41, Buildings and structures, is hereby amended as follows:

Sec. 98-41. Buildings and structures.

(a) – (b) No change.

(c) Accessory structures are permitted below the base flood elevation provided the accessory structures are used only for parking or storage and:

(1) If located in special flood hazard areas (Zone A/AE) other than coastal high hazard areas, are one-story and not larger than 600 sq. ft. and have flood openings in accordance with Section R322.2 of the Florida Building Code, Residential.

(2) If located in coastal high hazard areas (Zone V/VE and Coastal A), are not located below elevated buildings and are not larger than 100 sq. ft.

(3) Are anchored to resist flotation, collapse or lateral movement resulting from flood loads.

(4) Have flood damage-resistant materials used below the base flood elevation plus one foot.

(5) Have mechanical, plumbing and electrical systems, including plumbing fixtures, elevated to or above the base flood elevation plus one foot.

SECTION 12. Chapter 98, Floods, Article II, Floodplain Management, Division 3, Flood-Resistant Development, Section 98-43, Site improvements, utilities and limitations, is hereby amended as follows:

Sec. 98-43. Site improvements, utilities and limitations.

(a) – (e) No change.

(f) *Limitations on sites in coastal high hazard areas (Zone V) and coastal A zone.* In coastal high hazard areas and coastal A zones, alteration of sand dunes and mangrove stands shall be permitted only if such alteration is approved by the Florida Department of Environmental Protection and only if the engineering analysis required by subsection 98-35(c)(4), demonstrates that the proposed alteration will not increase the potential for flood damage. Construction or restoration of dunes under or around elevated buildings and structures shall comply with subsection 98-47(h)(3).

SECTION 13. Chapter 98, Floods, Article II, Floodplain Management, Division 3, Flood-Resistant Development, Section 98-44, Manufactured homes, is hereby amended as follows:

Sec. 98-44. Manufactured homes.

(a) – (c) No change.

(d) *Elevation.* All manufactured homes that are placed, replaced, or substantially improved in flood hazard areas shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the *Florida Building Code, Residential* Section R322.2 (Zone A) or R322.3 (Zone V and Coastal A Zone). ~~Manufactured homes that are placed, replaced, or substantially improved shall comply with subsection 98-44(e) or subsection 98-44(f), as applicable.~~

~~(e) *General elevation requirement.* Unless subject to the requirements of subsection 98-44(f), all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; (b) in a new manufactured home park or subdivision; (c) in an expansion to an existing manufactured home park or subdivision; or (d) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the *Florida Building Code, Residential* section R322.2 (Zone A) or section R322.3 (Zone V).~~

~~(f) *Elevation requirement for certain existing manufactured home parks and subdivisions.* Manufactured homes that are not subject to subsection 98-44(e), including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, shall be elevated such that either the:~~

~~(1) Bottom of the frame of the manufactured home is at or above the elevation required, as applicable to the flood hazard area, in the *Florida Building Code, Residential* section R322.2 (Zone A) or section R322.3 (Zone V); or~~

~~(2) Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 48 inches in height above grade.~~

~~(e)(g)~~ *Enclosures.* Enclosed areas below elevated manufactured homes shall comply with the requirements of the *Florida Building Code, Residential* section R322 for such enclosed areas, as applicable to the flood hazard area.

~~(f)(h)~~ *Utility equipment.* Utility equipment that serves manufactured homes, including electric, heating, ventilation, plumbing, and air conditioning equipment and other service facilities, shall comply with the requirements of the *Florida Building Code, Residential* section R322, as applicable to the flood hazard area.

SECTION 14. Chapter 98, Floods, Article II, Floodplain Management, Division 3, Flood-Resistant Development, Section 98-46, Tanks, is hereby amended as follows:

Sec. 98-46. Tanks.

(a) *Underground tanks.* Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty.

(b) *Above ground tanks, not elevated.* Above ground tanks that do not meet the elevation requirements of subsection 98-46(c) shall:

(1) Be permitted in flood hazard areas (Zone A) other than coastal high hazard areas and coastal A zones, provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.

(2) Not be permitted in coastal high hazard areas (Zone V) and coastal A zones.

(c) – (d) No change.

SECTION 15. Chapter 98, Floods, Article II, Floodplain Management, Division 4, Administrative Amendments to the Florida Building Code, Building, Section 98-48, Florida Building Code, Building, is hereby amended as follows:

Sec. 98-48. Florida Building Code, Building

The following amendments to the Florida Building Code, Building are hereby adopted:

Section 104, subsection 104.10.1 Florida Building Code, Building.

Add a new section 104, subsection 104.10.1 as follows:

Reserved.

Add a new section 107, subsection 107.3.5 as follows:

107.3.5 Minimum plan review criteria for buildings.

Commercial Buildings:

Buildings:

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.

~~Section 107, subsection 107.6.1, Florida Building Code, Building.~~

~~Add a new Section 107, subsection 107.6.1 as follows:~~

~~107.6.1 Building permits issued on the basis of an affidavit. Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. sections 59 and 60), the authority granted to the building official to issue permits, to rely on inspections, and to accept plans and construction documents on the basis of affidavits and plans submitted pursuant to section 105, subsection 105.14 and section 107, subsection 107.6, shall not extend to the flood load and flood resistance construction requirements of the Florida Building Code.~~

~~Section 117, Florida Building Code, Building.~~

~~Add a new Section 117 as follows:~~

~~117 VARIANCES IN FLOOD HAZARD AREAS.~~

~~117.1 Flood hazard areas. Pursuant to F.S. § 553.73(5), the variance procedures adopted in the local floodplain management article shall apply to requests submitted to the building official for variances to the provisions of section 1612 and subsection 1612.4 of the Florida Building Code, Building or, as applicable, the provisions of section R322 of the Florida Building Code, Residential. This section shall not apply to section 3109 of the Florida Building Code, Building.~~

SECTION 16. Chapter 98, Floods, Article II, Floodplain Management, Division 5, Technical Amendments to the Florida Building Code, Building, Existing Building and Residential, Section 98-49, Florida Building Code, Building, is hereby amended as follows:

Sec. 98-49. Florida Building Code, Building.

The following amendments to the Florida Building Code are hereby adopted:

(a) Section 1612, subsection 1612.2, Florida Building Code, Building.

Modify a definition as follows:

Substantial improvement. Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a one-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. For each building or structure, the one-year period begins on the date of the first improvement or repair of that building or structure subsequent to July 11, 1972. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a building required to correct existing health, sanitary or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
2. Any alteration of a historic structure provided that the alteration will not preclude the structure's continued designation as a historic structure.

(b) Section 1612, subsection 1612.4, Florida Building Code, Building.

Modify as follows:

1612.4.1 Modification of ASCE 24. Reserved.

~~Table 6-1 and Section 6.2.1 in ASCE 24 shall be modified as follows:~~

~~1. The title of Table 6.1 shall be "Minimum Elevation of Floodproofing, Relative to Base Flood Elevation (BFE) or Design Flood Elevation (DFE), in Coastal A Zones and in Other Flood Hazard Areas that are not High Risk Flood Hazard Areas."~~

~~2. Section 6.2.1 shall be modified to permit dry floodproofing in Coastal A Zones, as follows: "Dry floodproofing of nonresidential structures and nonresidential areas of mixed-use structures shall not be allowed unless such structures are located outside of High Risk Flood Hazard areas and Coastal High Hazard Areas. Dry floodproofing shall be permitted in Coastal A Zones provided wave loads and the potential for erosion and local scour are accounted for in the design. Dry floodproofing of residential structures or residential areas of mixed-use structures shall not be permitted."~~

1612.4.3 Modification of ASCE 24 (Coastal A Zone). Stem walls shall not be permitted in Coastal A Zones.

SECTION 17. Chapter 98, Floods, Article II, Division 5, Technical Amendments to the Florida

Building Code, Building, Existing Building and Residential, Section 98-51, Florida Building Code, Residential, is hereby amended as follows:

Sec. 98-51. - Florida Building Code, Residential.

~~Section 322, subsection 322.2, Florida Building Code, Residential.~~

~~Add new section R322, subsection R322.2.1 and renumber and modify the subsequent section, as follows:~~

~~R322.2.1 Coastal A Zones. Buildings and structures in flood hazard areas designated as Coastal A Zones shall be designed and constructed in accordance with section R322.3.~~

~~R322.2.2 Elevation requirements.~~

- ~~1. Buildings and structures in flood hazard areas not designated as Coastal A Zones shall have the lowest floors elevated to or above the design flood elevation.~~
- ~~2. In areas of shallow flooding (AO Zones), buildings and structures shall have the lowest floor (including basement) elevated at least as high above the highest adjacent grade as the depth number specified in feet on the FIRM, or at least two feet (610 mm) if a depth number is not specified.~~
- ~~3. Basement floors that are below grade on all sides shall be elevated to or above the design flood elevation.~~

~~Exception: Enclosed areas below the design flood elevation, including basements whose floors are not below grade on all sides, shall meet the requirements of section R322.2.2.~~

~~Section 322, subsection 322.3.4, Florida Building Code, Residential.~~

~~Modify section R322, subsection R322.3.4 as follows:~~

~~R322.3.4 Walls below design flood elevation. Walls and partitions are permitted below the elevated floor, provided that such walls and partitions are not part of the structural support of the building or structure and:~~

- ~~1. Electrical, mechanical, and plumbing system components are not to be mounted on or penetrate through walls that are designed to break away under flood loads; and~~
- ~~2. Are constructed with insect screening or open lattice; or~~
- ~~3. Are designed to break away or collapse without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting foundation system. Such walls, framing and connections shall have a design safe loading resistance of not less than ten (470 Pa) and no more than 20 pounds per square foot (958 Pa); or~~
- ~~4. Where wind loading values of this code exceed 20 pounds per square foot (958 Pa), the construction documents shall include documentation prepared and sealed by a registered design professional that:~~
 - ~~4.1. The walls and partitions below the design flood elevation have been designed to collapse from a water load less than that which would occur during the design flood.~~
 - ~~4.2. The elevated portion of the building and supporting foundation system have been designed to withstand the effects of wind and flood loads acting simultaneously on all building components (structural and nonstructural).~~

~~Water loading values used shall be those associated with the design flood. Wind loading values used shall be those required by this code.~~

~~5. If located in flood hazard areas designated as Coastal A Zones, the walls are provided with flood openings that meet the criteria in section R322.2.2. Section R322, subsection R322.3, Florida Building Code, Residential:~~

Modify section R322.3.3, as follows:

R322.3.3 Foundations. Buildings and structures erected in coastal high-hazard areas and Coastal A Zones shall be supported on pilings or columns and shall be adequately anchored to such pilings or columns. The space below the elevated building shall be either free of obstruction or, if enclosed with walls, the walls shall meet the requirements of Section R322.3.5. Pilings shall have adequate soil penetrations to resist the combined wave and wind loads (lateral and uplift). Water-loading values used shall be those associated with the design flood. Wind-loading values shall be those required by this code. Pile embedment shall include consideration of decreased resistance capacity caused by scour of soil strata surrounding the piling. Pile systems design and installation shall be certified in accordance with Section R322.3.9. Spread footing, mat, raft or other foundations that support columns shall not be permitted where soil investigations that are required in accordance with Section R401.4 indicate that soil material under the spread footing, mat, raft or other foundation is subject to scour or erosion from wave-velocity flow conditions. If permitted, spread footing, mat, raft or other foundations that support columns shall be designed in accordance with ASCE 24.

~~**Exception:** In Coastal A Zones, stem wall foundations supporting a floor system above and backfilled with soil or gravel to the underside of the floor system shall be permitted provided the foundations are designed to account for wave action, debris impact, erosion and local scour. Where soils are susceptible to erosion and local scour, stem wall foundations shall have deep footings to account for the loss of soil.~~

SECTION 18. Fiscal Impact Statement. In terms of design, plan application review, construction and inspection of buildings and structures, the cost impact as an overall average is negligible in regard to the local technical amendments because all development has been subject to the requirements of the local floodplain management ordinance adopted for participation in the National Flood Insurance Program. In terms of lower potential for flood damage, there will be continued savings and benefits to consumers.

SECTION 19. All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 20. If any part, section, subsection or other portion of this ordinance or any application thereof to any person or circumstance is declared void, unconstitutional or invalid

for any reason, such part, section, subsection or other portion, or the prescribed application thereof, shall be severable and the remaining provisions of this ordinance, and all applications thereof not having been declared void, unconstitutional or invalid, shall remain in full force and effect. The city council specifically declares that no invalid or prescribed provision or application was an inducement to the enactment of this ordinance and that it would have enacted this ordinance regardless of the invalid or prescribed provision or application.

SECTION 21. This Ordinance shall become effective immediately upon its approval and adoption, as provided by law.

PASSED BY THE CITY COUNCIL OF THE CITY OF VENICE, FLORIDA THIS 13TH DAY OF JULY 2021.

First Reading: June 22, 2021

Final Reading: July 13, 2021

Adoption: July 13, 2021

Ron Feinsod, Mayor

ATTEST:

Lori Stelzer, MMC, City Clerk

I, Lori Stelzer, MMC, City Clerk of the City of Venice, Florida, a municipal corporation in Sarasota County, Florida, do hereby certify that the foregoing is a full and complete, true and correct copy of an Ordinance duly adopted by the Venice City Council, at a meeting thereof duly convened and held on the 13th day of July 2021, a quorum being present.

WITNESS my hand and the official seal of said City this 13th day of July, 2021

Lori Stelzer, MMC, City Clerk

Approved as to form:

Kelly Fernandez, City Attorney