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ORDINANCE NO. 2020-05

AN ORDINANCE OF THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA, AMENDING CHAPTER 12 ENTITLED "LAND DEVELOPMENT CODE", BY SPECIFICALLY AMENDING SECTION 12-268 ENTITLED "SEAWALLS" BY AMENDING SECTION 12-268 (D) TO PROVIDE FOR A MINIMUM ALLOWABLE SEAWALL ELEVATION OF 5.0 FEET NAVD88 BY 2035; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town Commission recognizes the impact of climate change on the Town of Hillsboro Beach and determines that specific measures must be undertaken in order to protect properties within the Town impacted by tidal waters; and

WHEREAS, the Town Commission recognizes and determines that seawalls are an effective tool to protect properties within the Town impacted by periodic King Tides effects; and

WHEREAS, in order to comply with Broward County Land Use Policy 2.21.7, the Town must adopt an ordinance to amend its Code providing for consistent top elevations of seawalls with that of Chapter 39, Article XXV – Resiliency Standards for Flood Protection - of the Broward County Code of Ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF HILLSBORO BEACH, FLORIDA THAT:

Section 1. The foregoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a part of this Ordinance.

Section 2. Chapter 12 of the Code of Ordinances entitled "Land Development Code" is amended by specifically amending Section 12-268 as follows:

Sec. 12-268. - Seawalls.

(A) *Purpose.* It is the purpose of this section to prevent flooding in the town caused by rising sea levels and the periodic King Tide effect that results in portions of State Road A-1-A becoming impassable and closed to vehicular traffic resulting in a risk to the health, safety and welfare of the residents of Hillsboro Beach. In order to protect the health, safety, and welfare of the citizens of the town and to prevent the adverse impacts on the State Road A-1-A caused by tidal waters from the Intracoastal Waterway, this section is intended to require improvements to one's real property to impede tidal waters flowing on to private and public property and causing damage to adjacent properties.

1 (B) *Findings.* Based on evidence associated with rising sea levels and King Tides presented in
2 hearings, studies, and reports made available to the Town Commission and the resultant
3 adverse impacts on municipalities located in South Florida including, but not limited to,
4 "Leveraging Catastrophe Bonds : As a Mechanism for Resilient Infrastructure Project
5 Finance"; "A Research Paper Reviewing Issues and Unintended Consequences related to
6 Raising Minimum Building Finish Floor Elevations" prepared for City of Miami Beach; "City
7 of Fort Lauderdale Frequently Asked Questions: Proposed Sea Wall Ordinance"; Miami
8 Beach Flooding Mitigation Committee meetings minutes of July 9, 2014; City of Miami
9 Beach memorandum dated February 18, 2015 relative to discussion regarding seawall height
10 standards and its impact on single-family home development; and "Max Seawall Heights for
11 Coastal Cities in Broward County"; a Powerpoint presentation entitled "King Tides, Sea Level
12 Rise, and Seawalls in SE Florida" presented by Dr. Nancy Gassman; "King Tide 2016: A
13 Glimpse at what South Florida's Future Could Look Like" Briefing Book for U.S.
14 Congressman Ted Deutch; "Climate Change and Sea-Level Rise in Florida" prepared by the
15 Florida Oceans and Coastal Council, Tallahassee, Florida; USACE/Broward County Flood
16 Risk Management Study for Tidally Influenced Coastal Areas, presentation dated September
17 4, 2018 from the Jacksonville District of the U.S. Army Corps of Engineers and the 2019
18 Unified Southeast Florida Regional Compact Climate Change Sea Level Rise Projection , the
19 Town Commission finds:

20 (1) The construction of new seawalls or the repair to existing seawalls to prevent tidal
21 waters from flowing overland and leaving one's property is necessary to protect the
22 health, safety, and welfare of the town residents; and

23 (2) The town has a substantial interest in attempting to prevent the closure of State Road
24 A-1-A due to tidal waters flowing overland from the Intracoastal waterway onto the state
25 road;

26 (C) The following words when used in this section shall have the following meaning:

27 (1) NGVD 29 or the National Geodetic Vertical Datum of 1929 means the vertical control
28 datum established for vertical control surveying in the United States of America by the
29 General Adjustment of 1929.

30 (2) NAVD88 or the North American Vertical Datum means the vertical control datum of
31 orthometric height established for vertical control surveying in the United States of
32 America based upon the General Adjustment of the North American Datum of 1988. This
33 vertical datum replaces the NGVD 29 datum and most surveys reference this datum.

34 (3) Seawall means vertical or near vertical structures placed between an upland area and a
35 waterway. For the purposes of the Land Development Code, rip rap is not considered a
36 seawall.

37 (D) The top surface of a newly constructed seawall shall have a minimum elevation of 5.0 feet
38 NAVD88 (see table). The elevation shall not exceed a maximum of the base flood elevation
39 (BFE) as identified in the most recent FEMA Flood Insurance Rate Map (FIRM) for the
40 property, except as specifically set forth herein. For properties with a BFE of 5.0 feet
41 NAVD88, the minimum seawall elevation shall meet 5.0 feet NAVD88 and the maximum

seawall elevation shall be 7.0 feet NAVD88. For waterfront properties with a habitable finished floor elevation of less than 5.0 feet NAVD88, a seawall may be constructed at less than the stated minimum elevation if a waiver is granted by the Town Commission. For properties within an X zone, the minimum seawall elevation shall meet 5.0 feet NAVD88 and the maximum shall meet the definition of grade defined as the base flood elevation requirement for the lowest floor as shown on the flood insurance rate map published by the Federal Emergency Management Agency (FEMA). All new or substantially repaired seawalls or seawall caps shall be designed and constructed to perform as tidal flood barriers on or before January 1, 2035 and shall have a minimum elevation of five (5) feet NAVD88.

Property's FEMA Flood Insurance Rate Map Location	Minimum Allowable Seawall Elevation	Maximum Allowable Seawall or Dock Elevation
In a floodplain with a base flood elevation greater than or equal to 5.0 feet NAVD88	5.0 feet NAVD88	Base Flood elevation of the property
In a floodplain with a base flood elevation equal to 5.0 feet NAVD88	5.0 feet NAVD88	7 feet NAVD88
In an X zone, not in a floodplain	5.0 feet NAVD88	Meet the definition of grade as defined herein.

- (1) Seawalls shall be designed and built in a substantially impermeable manner to prevent tidal waters from flowing through the seawall while still allowing for the release of hydrostatic pressure from the upland direction. To effectuate the release of hydrostatic pressure, if needed because of insufficient structural strength of the seawall, seawalls shall be designed to provide for "seepage holes" with adequate back-flow prevention or a valve with backflow preventer. Additionally, the design of seawalls shall take into account the existing historic storm water runoff patterns and provide for maintaining those patterns so as not to cause flooding of adjacent roadways.
- (2) Fixed docks may be constructed at an elevation less than the elevation of the adjacent seawall to which it is attached but shall not be constructed at an elevation more than 10 inches above the adjacent seawall's elevation. Floating docks shall be allowed and must be permitted and permanently attached to a marginal dock, finger pier, mooring pilings, or seawall.
- (3) Seawalls improvements constituting substantial repair at the time of permit application shall meet the minimum elevation and consider the design recommendations as set forth in this section for the continuous seawall for the length of the property. For the purposes of this section, substantial repair threshold shall mean any improvement to a structure as defined as follows:
 - (a) If more than fifty percent (50%) of the total gross floor area of the building or more than fifty percent (50%) of a structure or more than fifty percent (50%) of its

1 replacement value west of State Road A1A is damaged, destroyed or removed for
2 any reason the entire building, structure or use thereof shall be required to meet the
3 Town's Land Development Code. This shall be defined to include any and all new
4 construction of single family residences and multi family buildings which shall be
5 required to comply with section 12-268 as set forth herein and as amended from time
6 to time.

- 7 (4) All property owners shall maintain their seawalls in good repair. A seawall is presumed
8 to be in disrepair if it allows for upland erosion, transfer of material through, around or
9 over the seawall or allows tidal waters to flow unimpeded through the seawall to adjacent
10 properties or public right-of-way or the seepage of water is restricted such that water
11 remains on the land side of the seawall and intrudes on neighboring property or public
12 facilities or right-of-way. Property owners failing to maintain their seawalls may be cited.
13 The owner of the property on which the seawall is constructed is required to initiate a
14 process, including, but not limited to, hiring a contractor or as an owner applying for a
15 building permit, and be able to demonstrate progress toward repairing the cited defect
16 within 60 days of receiving notice from the town and complete the repair within 365 days
17 of citation or as extended by the Town Commission. The property owner shall insure that
18 the seawall is designed and constructed to meet the minimum elevation requirement and
19 design requirement as set forth in this section.
- 20 (5) Property owners with seawalls below the minimum elevation, or permeable erosion
21 barriers, or a land/water interface of another nature shall not allow tidal waters entering
22 their property to impact adjacent properties or public rights-of-way or other public
23 facilities. Property owners failing to prevent tidal waters from flowing overland and
24 leaving their property may be cited. The owner of the property is required to initiate a
25 process, including, but not limited to, hiring a contractor or as an owner submitting a
26 building permit, and be able to demonstrate progress toward addressing the cited concern
27 within 60 days of receiving notice from the town and complete the proposed remedy
28 within 365 days of citation.
- 29 (6) Any property owner required to install or repair a seawall or an existing structure or rip-
30 rap under the Code of Ordinances may submit an alternative design including existing
31 rip-rap to that specified in this section to be reviewed by the town's consulting engineer.
32 If determined by the Town's Consulting Engineer that the functional requirements stated
33 herein are satisfied, the Town's Manager shall submit the alternate design to the Town
34 Commission for its review and approval with or without conditions or denial.
- 35 (7) A property owner may construct an alternate tidal barrier only after filing an application
36 for a variance and having the application for a variance approved by the Town
37 Commission. In addition to proving a hardship the applicant shall be required to prove
38 that the alternate tidal barrier shall not allow any tidal water to flow unto adjacent
39 properties.
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1 (8) Predictions and guidance relative to Sea Level Rise (SLR) will continue to be updated in
2 Broward County and are subject to change based on new scientific and engineering
3 recommendations as well as observed water level measurements with statistics. To account
4 for this variability, seawalls shall be designed with the ability to be raised a minimum of 24
5 inches in the future should the Town deem necessary for adaptation to SLR. The seawall will
6 need to be designed for the cap, with adjacent backfill, to be raised this height above the
7 current established minimum elevation. Engineering drawings and calculations will be
8 required for submittal as part of the building permit processing to demonstrate this required
9 adaptation measure.
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13 **Section 3.** If any section, subsection, sentence, clause or provision of this Ordinance is
14 held invalid, the remainder of this Ordinance shall not be affected by such invalidity.
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16 **Section 4.** That all ordinances or parts of ordinances and all resolutions or parts of
17 resolutions in conflict with this Ordinance are repealed to the extent of such conflict.
18

19 **Section 5.** It is the intention of the Town Commission of the Town of Hillsboro Beach,
20 that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances
21 of Town of Hillsboro Beach, Florida, and the Sections of this ordinance may be renumbered,
22 re-lettered and the word "Ordinance" may be changed to "Section," "Article," or such other word
23 or phrase in order to accomplish such intention.
24

25 **Section 6.** Severability. In the event that any word(s), phrase(s), portion(s), sub-sub-
26 section(s), sub-section(s), or section(s) of this section, is contrary to law, or against public policy,
27 or shall for any reason whatsoever held to be invalid, illegal or unconstitutional, by any court of
28 competent jurisdiction, such word(s), phrase(s), portion(s), sub-sub-section(s), sub-section(s), or
29 section(s) of this section shall be null and void, and shall be deemed severed, and a separate,
30 distinct, and independent provision from the remaining provisions of this section, and such holding
31 shall in no manner affect the validity of the remaining words, phrases, portions, sub-sub-sections,
32 sub-sections, or sections of this section, which shall remain in full force and effect. This section
33 shall be construed in a manner to accomplish, to the greatest extent legally possible, the purposes
34 of this section as expressed herein.
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36 **Section 7.** This Ordinance shall be effective fifteen (15) days upon passage and adoption
37 by the Town Commission of the Town of Hillsboro Beach.
38

1 PASSED AND ADOPTED BY THE TOWN COMMISSION OF THE TOWN OF
2 HILLSBORO BEACH, FLORIDA, ON FIRST READING, THIS 7th DAY OF JULY, 2020.

PASSED ADOPTED BY THE TOWN COMMISSION OF THE TOWN OF HILLSBORO
BEACH, FLORIDA, ON SECOND AND FINAL READING, THIS 1st DAY OF SEPTEMBER,
2020.

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5 By: Deborah L. Tarrant
6 Deborah L. Tarrant, Mayor
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8 ATTEST:

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10 By: Sherry D. Henderson
11 Sherry D. Henderson, CMC
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15 APPROVED AS TO FORM:

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17 Donald J. Doody
18 Donald J. Doody Town Attorney
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ORDINANCE NO. 2020-05

RECORD OF TOWN COMMISSION VOTE:

	<u>YES</u>	<u>NO</u>
MAYOR D. TARRANT	<input checked="" type="checkbox"/>	<input type="checkbox"/>
VICE MAYOR I. KIRDAHY <i>Motion</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
COMMISSIONER V. FEAMAN	<input checked="" type="checkbox"/>	<input type="checkbox"/>
COMMISSIONER B. BALDASARRE <i>Second</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
COMMISSIONER A. BROWN	<input checked="" type="checkbox"/>	<input type="checkbox"/>