



**FEMA**

23 OCT 2018

International Code Council  
International Codes Governmental Member Voting Representatives  
2018 Public Comment Hearings, Group A  
Richmond, Virginia

International Codes Governmental Member Voting Representatives:

FEMA Floodplain Management Division appreciates the opportunity to comment on the proposed code change being offered by the Florida Department of Emergency Management (FDEM) and Building Officials Association of Florida (BOAF) related to public restroom construction in beach areas.

Over 22,300 communities currently participate in the National Flood Insurance Program (NFIP). This number represents over 90 percent of all US communities that have land use authority and identified flood hazards. By law, FEMA can only provide flood insurance via the NFIP to those States or communities that adopt and vigorously enforce floodplain management regulations that meet or exceed minimum NFIP requirements. These minimum requirements are detailed in the Code of Federal Regulations in Title 44, Emergency Management and Assistance, and are primarily within Part 60, Subpart A - Requirements for Flood Plain Management Regulations. The requirements focus on buildings and other development that is occurring in identified Special Flood Hazard Areas (SFHAs) also commonly referred to as the base or regulatory floodplain. A primary tenant of these regulations is to require that all new construction (and substantial improvements) of non-residential structures either be elevated above the elevation associated with the base or regulatory floodplain (BFE or base flood elevation) or be dry floodproofed to this elevation and capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Dry floodproofing is not, however, permissible in coastal flood hazard areas labeled as V zones, nor is it advisable in areas subject to any type of wave action.

The Public Restroom Proposal submitted by FDEM and BOAF is not consistent with floodplain management regulations that communities must adopt and enforce to remain in good standing with the NFIP. The proposal includes provisions to allow the lowest floor of restrooms to be constructed below the BFE. This is in direct conflict with the minimum floodplain management requirements of the NFIP. While the proposal does include additional provisions to address potential flood damage, including the use of flood-resistant materials and the placement of mechanical and electrical systems and plumbing fixtures above the BFE, it is still in direct conflict with current NFIP floodplain management requirements.

Should the International Building Code be changed to incorporate this proposal, it would no longer be consistent with minimum NFIP floodplain management regulations. This change would signify the first time in 15 years that an inconsistency would exist between the International Codes and the NFIP representing a significant departure in our shared goals of community resilience. Furthermore, should states and communities adopt this provision, their floodplain management regulations would no longer

meet minimum NFIP floodplain management requirements. If states and communities implement this provision, they will be permitting NFIP violations to occur and it would be incumbent on NFIP State Coordinators and FEMA Staff to identify these violations and hold communities accountable for them. When violations in NFIP-participating communities are identified by the State or FEMA and not addressed by the community, enforcement actions—including community probation and ultimately suspension—are taken against the community.

Communities put on probation are expected to resolve identified noncompliance actions or face suspension. Probation has no effect on the continued availability of flood insurance, but a \$50 surcharge is added to premiums for new and renewed policies for each year the community is on probation. Suspension is the removal of a community from the program.

The NFIP is a voluntary program. However, it's worth noting that the NFIP can only provide flood insurance coverage in participating states and communities. Furthermore, when a community is sanctioned (i.e., it has identified flood hazard areas but does not participate in the NFIP), Federal officers and agencies are prohibited from approving any financial assistance for acquisition or construction purposes in an area of special flood hazard in the community. This restriction applies to Federal disaster assistance under the Stafford Act if the assistance is in connection with a flood.

FEMA Floodplain Management recognizes that the State of Florida is interested in identifying alternate means of public restroom construction in Special Flood Hazard Areas. We are willing to continue to explore how to address this interest and are currently working with our Office of Chief Counsel, Office of Environmental and Historic Preservation and Building Science Branch colleagues to identify a potential resolution that could be implemented while still abiding by the laws and regulations that govern our programs.

As you consider whether to approve this code change proposal, we respectfully request that you consider the impact it would have on the States and communities that would adopt and enforce this provision in the future should it become part of the International Building Code.

1. If the State or FEMA identifies community violations, there is a notable burden in terms of time, effort, coordination and stress that is placed on community officials to remedy those violations in order for the community to remain in good standing with the NFIP.
2. There would be significant ramifications in terms of NFIP flood insurance policy availability for communities that either knowingly or unknowingly permit violations, particularly if they are unable to remedy them. Additionally, there is a \$50 surcharge placed on all NFIP policy holders within a community when that community is placed on probation.
3. Federal disaster assistance is limited in floodprone areas for those communities that are sanctioned from the NFIP. Many communities rely heavily on federal disaster assistance in the wake of flood disasters to recover and become fully functional again.

FEMA Floodplain Management Division appreciates the opportunity to be heard by the voting representatives and we thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rachel Sears', with a long horizontal flourish extending to the right.

Rachel Sears  
Floodplain Management Division Director  
Federal Insurance and Mitigation Administration  
Resilience