MEMORANDUM

TO: David Sallee, Town Manager
FROM: Bill Spikowski
DATE: December 27, 2006
SUBJECT: Latest Update to Land Development Code for Fort Myers Beach

I am forwarding with this memo copies of replacement pages to the Fort Myers Beach Land Development Code for distribution to interested parties. These pages include all changes made by the Town Council via Ordinances 05-22, 05-24, 06-09, 06-14, and 06-18. Ordinance 06-18 was adopted on December 11, 2006, amending the floodplain regulations in Chapter 6 and related height regulations in Chapter 34.

Those holding LDC binders should use the attached pages to replace the matching pages in their code binder; obsolete pages can be discarded.

- Table of Contents: replace existing table of contents page
- Chapter 1: replace entire existing Chapter 1
- Chapter 2: replace entire existing Chapter 2
- Chapter 6: replace existing pages 19-33
- Chapter 10: replace existing pages 13-16
- Chapter 34: replace existing pages 27-36, 61-68, 127-128, and 161-162

The entire Land Development Code, including these latest revisions, can be downloaded and printed at no cost from this web page: *http://www.spikowski.com/beach.htm*

Also available on that page is a single Adobe PDF file with a compilation of the entire code that can be used for searching for words or other text strings throughout the code from most Adobe Acrobat/Reader products. In versions 5 and earlier, use “Find” on the “Edit” menu. In version 6, use “Search” on the “Edit” menu. This compilation of the entire code is available here:
http://www.spikowski.com/New_CHnn-AllChaptersThru06-18.pdf

cc: Town Attorney, Community Development Director

1617 Hendry Street, Suite 416, Fort Myers, Florida 33901-2947 • phone: (239) 334-8866 fax: (239) 334-8878
e-mail: bill@spikowski.com • web: www.spikowski.com

TOWN OF FORT MYERS BEACH, FLORIDA

LAND DEVELOPMENT CODE

Chapter	Title	History
CHAPTER 1	**General Provisions**	Adopted by Town Charter, 12/31/95 Replaced by Ord. No. 02-01, 2/4/02 Amended by Ord. No. 05-07, 4/18/05 Amended by Ord. No. 06-14, 9/18/06
CHAPTER 2	**Administration**	Adopted by Town Charter, 12/31/95 Replaced by Ord. No. 00-11, 6-29-00 Amended by Ord. No. 02-01, 2/4/02 (§§2-301– 459) Amended by Ord. No. 03-12, 12/15/03 (§§2-420–459) Amended by Ord. No. 05-07, 4/18/05 Amended by Ord. No. 06-14, 9/18/06
CHAPTER 6	**Maintenance Codes, Building Codes, and Coastal Regulations**	Adopted by Town Charter, 12/31/95 Replaced by Ord. No. 00-12, 6/29/00 Amended by Ord. No. 02-01, 2/4/02 (§§6-401–474) Amended by Ord. No. 04-09, 6/30/04 (§§6-401–474) Amended by Ord. No. 05-07, 4/18/05 Amended by Ord. No. 06-18, 12/11/06
CHAPTER 10	**Development Orders and Engineering Standards**	Adopted by Town Charter, 12/31/95 Replaced by Ord. No. 04-01, 1/5/04 Amended by Ord. No. 05-07, 4/18/05 Amended by Ord. No. 06-14, 9/18/06
CHAPTER 14	**Environment and Natural Resources**	Adopted by Town Charter, 12/31/95 Amended by Ord. No. 98-3, 4/6/98 Replaced by Ord. No. 02-01, 2/4/02 Amended by Ord. No. 02-29, 9/26/02 (§§14-6, 14-78) Amended by Ord. No. 05-24, 6/27/05 (since repealed)
CHAPTER 22	**Historic Preservation**	Adopted by Town Charter, 12/31/95 Replaced by Ord. No. 02-01, 2/4/02
CHAPTER 26	**Marine Facilities**	Adopted by Town Charter, 12/31/95 Replaced by Ord. No. 02-01, 2/4/02 Amended by Ord. No. 05-07, 4/18/05
CHAPTER 27	**Personal Watercraft and Parasailing**	Adopted by Ord. No. 96-27, 12/2/96 Replaced by Ord. No. 01-05, 9/24/01
~~**CHAPTER 28**~~	~~**Parasailing**~~	Adopted by Ord. No. 97-2, 1/21/97 Amended by Ord. No. 99-4. 4/19/99 Repealed and then integrated into Chapter 27 by Ord. No. 01-05, 9/24/01
CHAPTER 30	**Signs**	Adopted by Town Charter, 12/31/95 Amended by Ord. No. 99-1, 2/1/99 Amended by Ord. No. 99-11, 9/13/99 Amended by Ord. No. 99-14, 11/15/99 Amended by Ord. No. 03-06, 6/2/03 Amended by Ord. No. 05-07, 4/18/05
CHAPTER 34	**Zoning Districts, Design Standards, and Nonconformities**	Adopted by Town Charter, 12/31/95 Amended by Ord. No. 96-6, 7/1/96 Amended by Ord. No. 96-20, 9/3/96 Amended by Ord. No. 97-9, 8/11/97 Amended by Ord. No. 97-21, 12/15/97 Amended by Ord. No. 99-16, 12/20/99 Amended by Ord. No. 00-13, 6/29/00 Amended by Ord. No. 02-04, 6/24/02 Replaced by Ord. No. 03-03, 3/3/03 Amended by Ord. No. 03-11, 11/3/03 (§§34-3048, 51) Amended by Ord. No. 04-08, 6/30/04 (§§34-677, 678) Amended by Ord. No. 05-08, 4/18/05 Amended by Ord. No. 05-21, 6/6/05 (§34-636) Amended by Ord. No. 05-22, 9/12/05 (§34-113) Amended by Ord. No. 06-09, 3/20/06 (§34-113, 114) Amended by Ord. No. 06-14, 9/18/06 Amended by Ord. No. 06-18, 12/11/06 (§34-631)

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 1
GENERAL PROVISIONS

Sec. 1-1 Designation and citation of land development code.
Sec. 1-2 Rules of construction and definitions.
Sec. 1-3 Catchlines of sections; history notes, cross references and state law references; references to chapters, sections or articles.
Sec. 1-4 Effect of repeal of ordinances.
Sec. 1-5 General penalty; continuing violations.
Sec. 1-6 Enforcement of land development code.
Sec. 1-7 Severability of parts of land development code.
Sec. 1-8 Provisions considered continuation of existing ordinances.
Sec. 1-9 Effect of land development code on prior offenses, penalties and rights.
Sec. 1-10 Ordinances not affected by land development code.
Sec. 1-11 Fort Myers Beach Comprehensive Plan.
Sec. 1-12 Editor's notes.
Sec. 1-13 Amendments to land development code.
Sec. 1-14 Supplementation of land development code.
Sec. 1-15 Variances and appeals.
Sec. 1-16 Misrepresentation of application.

Sec. 1-1. Designation and citation of land development code.

The following chapters and sections shall constitute and be designated as the "Fort Myers Beach Land Development Code."

Sec. 1-2. Rules of construction and definitions.

(a) In the construction of this code, and of all ordinances, the rules and definitions set out in this section shall be observed, unless inconsistent with the manifest intent of the town council. The rules of construction and definitions in this section do not apply to any section of this code that contains any express provisions excluding their application, or where the subject matter or context of such section may be repugnant thereto.

(b) *Generally.*
(1) All general provisions, terms, phrases and expressions contained in this code will be liberally construed in order that the true intent and meaning of the town council may be fully carried out.
(2) Terms used in this code, unless otherwise specifically provided, have the meanings prescribed by the statutes of the state for the same terms.
(3) In the event of any difference in meaning or implication between the text of this code and any caption, illustration, summary table or illustrative table, the text shall control.
(4) Any words used in the present tense shall include the future; and any words in the singular number shall include the plural, and vice versa, unless the context clearly indicates the contrary; and words of the masculine gender shall be construed to include the feminine gender and vice versa.
(5) Unless the context clearly indicates the contrary, where a regulation involves two or more items, conditions, provisions or events connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:
   a. "And" indicates that all the connected terms, conditions, provisions or events shall apply.
   b. "Or" indicates that the connected terms, conditions, provisions or events may apply singly but not in any combination.
   c. "Either . . . or" indicates that the connected terms, items, conditions, provisions or events shall apply singly but not in combination.
(6) The provisions of this code shall be liberally construed so as to effectively carry out its purpose in the interest of the public health, safety, and welfare.
(7) This code constitutes the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience, and general welfare. Where any provisions of this code conflict such that one provision causes greater restrictions to be

imposed than another provision, the provision imposing the greater restriction or regulation will control.

State law reference(s)--*Construction of statutes, F.S. ch. 1.*

(c) The following words, terms and phrases, when used in this code, will have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Board of county commissioners means the board of county commissioners of Lee County, Florida.

Building official means the same officer as appointed by the town manager through § 6-44.

Circuit court means the circuit court of the 20th Judicial Circuit in and for Lee County.

Clerk of the circuit court or ***county clerk*** means the clerk of the circuit court of the 20th Judicial Circuit in and for Lee County.

Computation of time. In computing any period of time prescribed or allowed by ordinance, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation unless otherwise specifically provided under another section of this code.

State law reference(s)--*Similar provisions, Florida Rules of Civil Procedure, rule 1.090(a).*

County means Lee County, Florida.

Delegation of authority. A provision requiring some county or town officer or employee to do some act or perform some duty is to be construed to authorize that officer to designate, delegate and authorize subordinates to perform the required act or perform the duty.

Director means the town manager or any person to whom the town manager has delegated the authority to administer any portion of this code, or that person's designee.

F.A.C. means the *Florida Administrative Code*.

F.S. means the latest edition or supplement of the *Florida Statutes*.

Fort Myers Beach Comprehensive Plan means the comprehensive plan adopted by the town council pursuant to F.S. § 163.3178.

Gender. A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships, and corporations as well as to males.

Includes. The term "includes" does not limit a term to the specified example, but its meaning shall be extended to all other instances or circumstances of like kind or similar character.

Land development code. The term "land development code" or "this code" means the Fort Myers Beach Land Development Code, as designated in § 1-1.

May. The term "may" shall be construed as being permissive and will mean "has discretion to," "is permitted to," or "is allowed to." "May not" shall be construed as being mandatory and will mean "is disallowed from," or "is not permitted to."

Month means a calendar month.

Must shall be construed as being mandatory and will mean "is required to (be)."

Nontechnical and technical words. Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

Notary, notarize(d). Whenever the terms "notarize" or "notarized" appear, they expressly include and contemplate the use of the written declaration set forth under F.S. § 92.525, so long as the cited statutory requirements are met, except that

written declarations may not include the words "to the best of my knowledge and belief" as this limitation is not permitted by the provisions of this code.

Number. Words used in the singular number include the plural. Words used in the plural number include the singular.

Oath. The term "oath" includes an affirmation in all cases in which, by law, an affirmation may be substituted for an oath; and in such cases the words "swear" and "sworn" shall be equivalent to the words "affirm" and "affirmed."

Officer and ***official***. Whenever reference is made to any officer or official, the reference shall be taken to be to such officer or official of the Town of Fort Myers Beach, unless indicated otherwise.

Owner. The term "owner," as applied to a building or land, includes any part owner, joint owner, tenant in common, tenant in partnership, joint tenant, or tenant by the entirety, of the whole or a part of such building or land.

Person. The term "person" shall extend and be applied to any individual, child, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, unincorporated association, and all other groups and legal entities or combinations thereof.

State law reference(s)--*Similar provisions, F.S. § 1.01(3).*

Property. The term "property" includes real and personal property.

Public health, safety, and welfare. The phrase "public health, safety, and welfare" shall include, but is not limited to, comfort, good order, appearance, convenience, law enforcement and fire protection, prevention of overcrowding of land, avoidance of undue concentration of population, facilitation of the adequate and efficient provision of transportation, water, sewerage, schools, parks, recreation facilities, housing, and other requirements and services; and conservation, utilization, and protection of natural resources.

Shall will be construed as being mandatory and will mean "has a duty to." "Shall not" shall be construed as being mandatory and will mean "is disallowed from," or "is not permitted to."

Sidewalk means any portion of a street between the curbline and the adjacent property line intended for the use of pedestrians.

State means the state of Florida.

Street and ***road*** includes any street, avenue, boulevard, road, alley, bridge, or other public or private highway.

Tables, illustrations, etc. In case of any difference of meaning or implication between the text of this code and any caption, illustration, summary table or illustrative table, the text shall control.

Tenant or ***occupant***. The terms "tenant" and "occupant," as applied to a building or land, include any person holding a written or oral lease of or who occupies the whole or part of such building or land, either alone or with others.

Town means the Town of Fort Myers Beach, Florida.

Town council means the town council of the Town of Fort Myers Beach, Florida.

Town manager means the town manager of the Town of Fort Myers Beach, Florida.

Used for. The term "used for" includes the term "arranged for," "designed for," "maintained for," or "occupied for."

Week means seven consecutive days.

Will shall be construed as being mandatory and will mean "has a duty to." "Will not" shall be construed as being mandatory and will mean "is disallowed from," or "is not permitted to."

Written or ***in writing***. The terms "written" and "in writing" include any representation of words, letters or figures, whether by printing or otherwise.

Year means a calendar year.

Sec. 1-3. Catchlines of sections; history notes, cross references and state law references; references to chapters, sections or articles.

(a) The catchlines of the several sections of this code printed in boldface type are intended as mere catchwords to indicate the contents of the section and are not titles of such sections, or of any part of the section, nor, unless expressly so provided, shall they be so deemed when any such section, including the catchline, is amended or reenacted.

(b) The history or source notes appearing in parentheses after any sections in this code are not intended to have any legal effect, but are merely intended to indicate the source of matter contained in the section. Cross references and state law references which appear after sections or subsections of this code or which otherwise appear in footnote form are provided for the convenience of the user of this code and have no legal effect.

(c) All references to chapters, articles, or sections are to chapters, articles, and sections of this code unless otherwise specified.

Sec. 1-4. Effect of repeal of ordinances.

(a) The repeal or amendment of an ordinance will not revive any ordinance or part thereof that was not in force before or at the time the ordinance repealed or amended took effect.

(b) The repeal or amendment of any ordinance shall not affect any punishment or penalty incurred before the repeal took effect, or any suit, prosecution, or proceeding pending at the time of the repeal, for an offense committed under the ordinance repealed or amended.

(c) Notwithstanding a more recent ordinance's express repeal of a pre-existing ordinance, the reenactment of any previously existing provisions, including any amendments, through the use of similar or identical provisions in the repealing ordinance will continue the reenacted provisions in full force and effect from their original effective date. Only those provisions of the previously existing ordinance that are not reenacted will be considered void and without further effect. Any new provisions of the repealing ordinance will operate as amendments to the reenacted, previously existing text and become effective as part of the repealing ordinance.

Sec. 1-5. General penalty; continuing violations.

(a) In this section, the phrase "violation of this code" means any of the following:

(1) Doing an act that is prohibited or made or declared unlawful, an offense or a misdemeanor by ordinance or by rule or regulation authorized by ordinance.
(2) Failure to perform an act that is required to be performed by ordinance or by rule or regulation authorized by ordinance.
(3) Failure to perform an act if the failure is declared a misdemeanor or an offense or unlawful by ordinance or by rule or regulation authorized by ordinance.

(b) In this section, the phrase "violation of this code" does not include the failure of a town or county officer or town or county employee to perform an official duty unless it is provided that failure to perform the duly is to be punished as provided in this section.

(c) Except as otherwise provided, a person convicted of a violation of this code shall be punished by a fine not exceeding $500.00 per offense, by imprisonment in the county jail for a term not exceeding 60 days, or by both such fine and imprisonment.

(d) In addition to the criminal penalties and enforcement procedures provided in this code, the violation of any provision of this code may be:

(1) restricted by injunction, including a mandatory injunction;
(2) enforced by action of the code enforcement special magistrate, in accordance with §§ 2-421–2-429;
(3) enforced by citation, in accordance with §§ 2-430; and
(4) otherwise abated in any manner provided by law, including other equitable or civil relief.

Any such suit or action may be instituted and maintained by the town council, by any citizen of the town, or by any person affected by the violation of this code.

(e) Upon notice from the director, activities contrary to the provisions of this code shall be immediately stopped. Such notice shall be in writing and shall be given to the owner of the property, his

agent, or the person doing the work, or shall be posted on the property, and shall state the conditions under which work may be resumed. Where an emergency exists or irreversible damage may be occurring, written notice shall not be required.

(f) Persons who may be charged with a violation of this code include:

(1) Owners, agents, lessees, tenants, contractors, and any other person using the land or structure where the violation has been committed or currently exists.
(2) Any person who knowingly commits or assists in such violation.
(3) Rental agents who fail to take adequate steps to prevent such violations on property they manage.

(g) With respect to violations of this land development code that are continuous with respect to time, each day the violation continues constitutes a separate offense in the absence of provisions to the contrary.

(h) The imposition of a penalty does not prevent revocation or suspension of a license, permit, or franchise; the imposition of civil penalties; equitable relief; or other administrative actions.

(i) Any violation of this code that arose from provisions that are subsequently repealed and reenacted will continue to be a violation of this code and any penalties imposed for those violations will continue to exist unless the subsequent amendment or repeal of the violated provisions clearly intends to make previous violations legal and expressly voids any penalties imposed for those violations.

State law reference(s)--*Penalty for ordinance violations, F.S. § 162.21 and 166.0415.*

Sec. 1-6. Enforcement of land development code.

(a) Enforcement of the provisions of this code is the responsibility of the town manager unless otherwise provided by this code. Whenever the town council contracts with another governmental entity or entities and/or third party vendor(s) to provide services related to administration and enforcement of specific portions of this code, such other part(ies) shall administer and enforce such specific portion(s) on behalf of the Town of Fort Myers Beach.

(b) Except where otherwise provided by this code, the director will have the discretion to interpret and apply these provisions, using accepted rules of statutory construction.

Sec. 1-7. Severability of parts of land development code.

It is declared to be the intent of the town council that, if any section, subsection, sentence, clause, phrase, or portion of this code or any ordinance is for any reason held or declared to be unconstitutional, inoperative, or void, such holding or invalidity shall not affect the remaining portions of this code or any ordinance. It shall be construed to have been the legislative intent to pass this code or such ordinance without such unconstitutional, invalid, or inoperative part therein, and the remainder of this code or such ordinance after the exclusion of such part or parts shall be deemed and held to be valid as if such part or parts had not been included in this code or ordinance. If this code or any ordinance or any provision thereof is held inapplicable to any person, group of persons, property or kind of property, or circumstances or set of circumstances, such holding shall not affect the applicability of this code to any other person, property, or circumstance.

Sec. 1-8. Provisions considered continuation of existing ordinances.

The provisions of this code, insofar as they are substantially the same as legislation previously adopted relating to the same subject matter, shall be construed as restatements and continuations thereof and not as new enactments.

Sec. 1-9. Effect of land development code on prior offenses, penalties and rights.

(a) Nothing in this code or the ordinance adopting this code shall affect any offense or act committed or done, any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this code.

(b) The adoption of this code shall not be interpreted as authorizing any use or the continuance of any use of a structure or premises in violation of any ordinance of the town in effect on the date of adoption of this code.

Sec. 1-10. Ordinances not affected by land development code.

(a) Nothing in this code or the ordinance adopting this code, unless otherwise provided in this code or such ordinance, shall affect any ordinance or portion of an ordinance:

(1) Promising or guaranteeing the payment of money for the town, or authorizing the issuance of any bonds of the town or any evidence of the town's indebtedness, or any contract or obligation assumed by the town.
(2) Granting any right or franchise or conveying any oil, gas, or mineral rights.
(3) Dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, etc., any street or public way.
(4) Making any appropriation.
(5) Levying or imposing taxes or fees not codified in this code.
(6) Amending any local law, i.e., special act which has been converted to an ordinance.
(7) Providing for local services or improvements and assessing taxes or other charges therefor.
(8) Dedicating, accepting or vacating any plat or subdivision.
(9) Rezoning specific property.
(10) Which is temporary, although general in effect.
(11) Which is special, although permanent in effect.
(12) The purpose of which has been accomplished.
(13) Which is included in the town's code of ordinances.

(b) The ordinances designated in subsection (a) of this section are recognized as continuing in full force and effect to the same extent as if set out at length in this code.

Sec. 1-11. Fort Myers Beach Comprehensive Plan.

(a) This section is enacted to carry out the purpose and intent of, and exercise the authority set out in, the Local Government Comprehensive Planning and Land Development Regulation Act, F.S. § 163.3161 through 163.3217 and Chapter 166, as amended.

(b) The town's comprehensive plan is entitled the "Fort Myers Beach Comprehensive Plan" and became effective January 1, 1999, pursuant to Ordinance No. 98-14 and later amendments.

(1) The Town of Fort Myers Beach shall publish a single-volume document that contains the adopted portions of the Fort Myers Beach Comprehensive Plan and much of the extensive research upon which this plan was based. This volume shall be organized into 15 chapters, as follows:
Chapter 1, Introduction,
Chapter 2, "Envisioning Tomorrow's Fort Myers Beach"
Chapter 3, Community Design Element
Chapter 4, Future Land Use Element
Chapter 5, Coastal Management Element
Chapter 6, Conservation Element
Chapter 7, Transportation Element
Chapter 8, Utilities Element
Chapter 9, Stormwater Management Element
Chapter 10, Recreation Element
Chapter 11, Capital Improvements Element
Chapter 12, Housing Element
Chapter 13, Historic Preservation Element
Chapter 14, Intergovernmental Coordination Element
Chapter 15, Procedures and Monitoring
(2) Only the following specific portions of this volume were adopted as the town's new comprehensive plan under F.S. § 163.3161 through 163.3217, as amended:
a. *All of Chapters 1, 2, and 15.*
b. *All goals, objectives, and policies found in Chapters 3 through 14.*
c. *The "Future Land Use Map" (Figure 16 in the Future Land Use Element).*
d. *The "Future Transportation Map" (Figure 18 in the Transportation Element).*
e. *The five-year schedule of capital improvements (Table 11-7 in the Capital Improvements Element)*
(3) The published volume shall provide, in its opening chapter, this same description of which portions of the volume have been formally adopted by the town.
(4) The published volume, including future amendments, is incorporated by this reference as an integral part of this code and it shall be placed on file with the town clerk. It shall remain available for inspection by the

public at town hall, and a copy shall be placed at the reference desk of the Fort Myers Beach Public Library. Additional copies shall also be sold at town hall for a reasonable publication charge.

(c) The applicability and effect of the Fort Myers Beach Comprehensive plan shall be as provided by its specific terms, by the Local Government Comprehensive Planning and Land Development Regulation Act, F.S. § 163.3161 through 163.3217, and by this section.

(1) No public or private development shall be permitted except in conformity with the Fort Myers Beach Comprehensive Plan, and all development orders and building permits shall be consistent with this plan.
(2) Whenever the requirements or provisions of this comprehensive plan are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

(d) The town council anticipates that this comprehensive plan will be revised in the future through amendments adopted pursuant to state law. Sections of this comprehensive plan may be renumbered or relettered and typographical and grammatical errors can be corrected where authorized by the town manager without requiring a public hearing, provided the changes do not affect the intent or application of this comprehensive plan. Any such changes will be reflected in the town's next publication of this comprehensive plan or portion thereof.

Sec. 1-12. Editor's notes.

References and editor's notes following certain sections of this code are inserted as an aid and guide to the reader, and are not controlling or meant to have any legal effect.

Sec. 1-13. Amendments to land development code.

(a) All ordinances passed subsequent to this code which amend, repeal, or in any way affect this code may be numbered in accordance with the numbering system of this code and printed for inclusion in the code, or, in the case of repealed chapters, sections, and subsections or any part thereof repealed by subsequent ordinances, such repealed portions may be excluded from this code by omission from reprinted pages affected thereby, and such subsequent ordinances, as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time that this code and subsequent ordinances numbered or omitted are readopted as a new land development code by the town council.

(b) Amendments to any of the provisions of this code may be made by amending such provisions by specific reference to the section or subsection number of this code in the following language: "That section ________ of the Fort Myer Beach Land Development Code, is hereby amended to read as follows . . . ." The new provisions shall then be set out in full as desired.

(c) If a new section or subsection not heretofore existing in the land development code is to be added, the following language may be used: "That the Fort Myer Beach Land Development Code, is hereby amended by adding a section to be numbered ________, which section or subsection shall read as follows: . . . ." The new section shall then be set out in full as desired.

(d) Repeal of any of the provisions of this code may be effected by repealing such provisions by specific reference to the section or subsection number of this code in the following language: "That section ________ of the Fort Myer Beach Land Development Code, is hereby repealed in its entirety."

(e) Every ordinance introduced which proposes to amend or repeal any portion of this code shall show, by proper reference, the chapter, article, and section proposed to be amended; or, if it proposes to add to this code a new chapter, article, or section, it shall indicate, with reference to the arrangement of this code, the proper number of such chapter, article, or section.

Sec. 1-14. Supplementation of land development code.

(a) By contract or by town personnel, supplements to this code shall be prepared and printed whenever authorized or directed by the town. A supplement to this code shall include all substantive permanent and general parts of ordinances affecting land use passed by the town council during the period covered by the supplement and all changes made thereby in this code. The pages of a supplement shall be so numbered that they will fit properly into this code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, this code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this code, all portions of the code which have been repealed shall be excluded from this code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this code, the codifier, meaning the person, agency, or organization authorized to prepare the supplement, may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

(1) Organize the ordinance material into appropriate subdivisions;
(2) Provide appropriate catchlines, headings, and titles for sections and other subdivisions of this code printed in the supplement, and make changes in catchlines, headings, and titles;
(3) Assign appropriate numbers to sections and other subdivisions to be inserted in this code and, where necessary to accommodate new material, change existing section or other subdivision numbers;
(4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections ________ through ________." The inserted section numbers will indicate the sections of this code which embody the substantive sections of the ordinance incorporated into this code; and
(5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into this code, but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in this code.

Sec. 1-15. Variances and appeals.

Requests for variances and appeals from the terms of this code shall be administered and decided in conformance with the requirements for variances and appeals which are set forth in ch. 34, except where a provision in this code explicitly disallows variances or appeals or provides different procedures or standards for variances or appeals.

Sec. 1-16. Misrepresentation of application.

The town may revoke a permit or approval issued under the provisions of this code if there has been any false statement or misrepresentation in the application or plans upon which the permit or approval was based.

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 2 ADMINISTRATION

ARTICLE I. IN GENERAL

Sec. 2-1. Requests for interpretation of a code provision.
Sec. 2-2. Compliance agreements.
Secs. 2-3--2-40 Reserved.

ARTICLE II. CONCURRENCY MANAGEMENT SYSTEM

Sec. 2-41. Statutory authority.
Sec. 2-42. Applicability of article.
Sec. 2-43. Intent of article.
Sec. 2-44. Purpose of article.
Sec. 2-45. Definitions.
Sec. 2-46. Applicability and exemptions.
Sec. 2-47. Annual concurrency assessment.
Sec. 2-48. Measuring the capacity of public facilities for additional development.
Sec. 2-49. Concurrency timing.
Sec. 2-50. Vested rights.
Sec. 2-51. Variances.
Sec. 2-52. Appeals.
Sec. 2-53. Revocation of concurrency certificates.
Sec. 2-54. Nonliability of director.
Sec. 2-55. Furnishing false information.
Secs. 2-56--2-90. Reserved.

ARTICLE III. DEVELOPMENT AGREEMENTS

Sec. 2-91. Statutory authority.
Sec. 2-92. Applicability of article.
Sec. 2-93. Intent of article.
Sec. 2-94. Purpose of article.
Sec. 2-95. Definitions.
Sec. 2-96. Applications for development agreements.
Sec. 2-97. Minimum requirements of a statutory development agreement.
Sec. 2-98. Notices and hearings.
Sec. 2-99. Amendment or cancellation of development agreement by mutual consent.
Sec. 2-100. Reservation of home rule authority.
Sec. 2-101. Conflicts between development agreement and other land development regulations.
Sec. 2-102. Appeals.
Secs. 2-103--2-300. Reserved.

ARTICLE IV. IMPACT FEES

Sec. 2-301. Statutory authority.
Sec. 2-302. Applicability of article.
Sec. 2-303. Intent and purpose of article
Sec. 2-304. Definitions and rules of construction.
Sec. 2-305. Imposition.
Sec. 2-306. Computation of amount.
Sec. 2-307. Payment.
Sec. 2-308. Reserved.
Sec. 2-309. Trust accounts.
Sec. 2-310. Use of funds.
Sec. 2-311. Refund of fees paid.
Sec. 2-312. Exemptions.
Sec. 2-313. Credits.
Sec. 2-314. Appeals.
Sec. 2-315. Enforcement of article; penalty; furnishing false information.
Secs. 2-316--2-419. Reserved.

ARTICLE V. CODE ENFORCEMENT

Division 1. Generally
Sec. 2-420. Intent and purpose.

Division 2. Special Magistrate
Sec. 2-421. Creation of position of special magistrate.
Sec. 2-422. Applicability.
Sec. 2-423. Definitions.
Sec. 2-424. Enforcement procedure.
Sec. 2-425. Conduct of hearing.
Sec. 2-426. Powers of the code enforcement special magistrate.
Sec. 2-427. Administrative fines, costs, and liens.
Sec. 2-428. Request for rehearing and appeals.
Sec. 2-429. Notices.

Division 3. Citations
Sec. 2-430. Citation procedures; penalties.
Sec. 2-431. Conflict.
Secs. 2-432--2-459. Reserved.

ARTICLE VI. IMPLEMENTING PUBLIC CAPITAL IMPROVEMENTS

Sec. 2-460. Applicability.
Sec. 2-461. Purpose and intent.
Sec. 2-462. Procedures.

ARTICLE I. IN GENERAL

Sec. 2-1. Requests for interpretation of a code provision.

Where a question arises as to the meaning or intent of a section or subsection of this code, a written request for an interpretation may be filed with the director as provided in §§ 34-90 or 34-265.

Sec. 2-2. Compliance agreements.

(a) ***Authority.*** The director has the authority to enter into compliance agreements to facilitate compliance with the terms and conditions of this code. However, the town manager is under no obligation to enter into such an agreement.

(b) ***Purpose.*** The purpose of a compliance agreement is to provide an alternative means to reach compliance with the terms of this code in the event a violation is discovered.

(c) ***Timeframe for entry.*** Compliance agreements may only be entered into prior to the violator's receipt of a notice of hearing of code enforcement action before the special magistrate.

(d) ***Procedure.*** The compliance agreement must be in writing, signed by all parties, and executed in recordable form, after review and approval by the town attorney. At a minimum, the agreement must specifically set forth the terms and obligations necessary for the violator to comply with the code, indicate that the violator must pay all costs incurred in enforcing the agreement, and provide a specific time frame for the violator to comply. The violator must comply with all terms of the agreement, within the stated time frame, for the violation to be deemed abated.

(e) ***Recording in Public Records.*** The town may, at its option, record the compliance agreement in the public records of Lee County. Upon fulfillment of its terms, the town will record a satisfaction or release of the agreement, if recorded. The violator must pay all costs of recording the original agreement and any satisfaction or release thereof.

(f) ***Enforcement.*** If the violator fails to comply with the compliance agreement, the Town may (i) pursue code enforcement action, in which case the compliance agreement will automatically deemed to be null and void, will have no further effect on the parties, and will not be binding on the special magistrate; or (ii) enforce the terms and conditions of the compliance agreement in a court of competent jurisdiction by injunction or an action for specific performance, in the town's sole discretion. The special magistrate is not responsible for the enforcement of compliance agreement obligations.

Secs. 2-3--2-40. Reserved.

ARTICLE II. CONCURRENCY MANAGEMENT SYSTEM

Sec. 2-41. Statutory authority.

The Town of Fort Myers Beach has authority to adopt this article pursuant to article VIII of the constitution of the state, and F.S. chs. 163, 166, and 380.

Sec. 2-42. Applicability of article.

This article shall apply to the entire incorporated area of the town.

Sec. 2-43. Intent of article.

This article is intended to implement the concurrency requirements imposed by Rule 9J-5.0055, Florida Administrative Code; objective 11-B and policies 11-B-1 through 11-B-10 of the Fort Myers Beach Comprehensive Plan; and F.S. §§ 163.3177(10)(h), 163.3202(1) and (2)(g), 163.3167(8), and 163.3180.

Sec. 2-44. Purpose of article.

The purpose of this article is to ensure that public facilities and services needed to support development are available concurrent with the impacts of such development by providing that certain public facilities and services meet or exceed the standards established in the capital improvements element in the Fort Myers Beach Comprehensive Plan and required by F.S. §§ 163.3177 and 163.3180, and are available when needed for the development, while protecting the vested rights of persons guaranteed them by the Constitution of the United States of America, the state constitution and the laws of the state, and acknowledged by the state legislature in F.S. § 163.3167(8).

Sec. 2-45. Definitions.

The following words, terms, and phrases, when used in this article, will have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Building permit means an official document or certification which authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving or repair of a building or structure.

Concurrency variance certificate means the certification issued by the director pursuant to § 2-51. This certification means that the director has determined that a variance from the strict concurrency requirements of the Fort Myers Beach Comprehensive Plan must be granted with respect to a specific development permit so as to avoid the unconstitutional taking of property without due process of law.

Developer means any person, including a governmental agency, undertaking any development.

Development means the carrying out of any building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels. It is intended to have the same meaning given in F.S. § 380.04.

Development order means any order granting or granting with conditions an application for a development permit.

Development permit means any building permit, subdivision approval, certification, variance, or any other official action of local government having the effect of permitting the development of land. This definition conforms to that set forth in F.S. § 163.3164(7), except that it does not include zoning permits, zoning variances, rezoning, and special exceptions which, by themselves, do not permit the development of land.

Director means the town manager or any other person designated by the town manager to exercise the authority or assume the responsibilities given the director in this article.

Fort Myers Beach Comprehensive Plan means the town's comprehensive plan which was adopted pursuant to F.S. ch. 163, and all subsequent amendments thereto.

Level-of-service standard means the minimum acceptable level of service as set forth in the Fort Myers Beach Comprehensive Plan, summarized in policies 11-B-1 through 11-B-4.

Rule 9J-5.0055 means the rule and any subpart thereof published in the Florida Administrative Code.

Cross reference(s)--*Definitions and rules of construction generally, § 1-2.*

Sec. 2-46. Applicability and exemptions.

(a) Certain development permits can be expected to create zero or insignificant impacts on public facilities and are therefore exempt from the concurrency requirements of this article:

(1) Residential building permits for remodeling, minor additions, and accessory structures that do not result in additional dwelling units or attract additional vehicular traffic.

(2) Commercial building permits for interior remodeling or other minor improvements that are not for the purpose of changing the use of the buildings and do not increase its floor area.

(3) Marine permits for seawalls, riprap, docks, boathouses, davits, and similar improvements

that will not attract additional vehicular traffic.

(4) Permits for signs, vegetation, and repairs that will not attract additional vehicular traffic.

(b) Certain other types of development permits, such as special exceptions, variances, and rezonings (conventional or planned development), are not immediately measured against concurrency standards because they do not contain a specific plan for development or authorize any actual development. The concurrency tests shall be applied to such development activities when further development permits are requested that will authorize actual development, such as development order pursuant to ch. 10 or building permits pursuant to ch. 6. Nonetheless, the town council may evaluate the probable concurrency impacts of such proposed development activities at these earlier stages as one factor in their determination whether or not to approve such activities.

(c) Development permits for activities other than those exempted by subsection (a) or deferred by subsection (b) shall not be issued if they would cause public facilities and services to fall below the minimum level-of-service standards established in the Fort Myers Beach Comprehensive Plan. Standards have been established for potable water, sanitary sewer, solid waste, stormwater management, recreation, and transportation (see policies 11-B-1 through 11-B-4). The Fort Myers Beach Comprehensive Plan contains a financially feasible plan for maintaining these standards.

Sec. 2-47. Annual concurrency assessment.

(a) The current status of the adopted level-of-service standards shall be evaluated by the director, who shall annually compile and publish an assessment of public facilities for which level-of-service standards have been established, including a summary of available, committed, and uncommitted capacity:

(1) Available capacity shall be analyzed in accordance with § 2-48(a), with additional relevant information that is available to the director.

(2) Any portion of the available capacity that is committed to previously permitted development shall be identified. At a minimum, this shall include development orders for new development within the Town of Fort Myers Beach, in accordance with § 2-48(b). The director may include additional expected development that has not yet been issued development orders or building permits. The director is not responsible for assessing development commitments outside the town limits, but shall include such information if it is reasonably available from Lee County, the Metropolitan Planning Organization, or other sources.

(3) The assessment shall also report any additional public facilities that are being planned; or any known facilities that have not been operating properly (such as water pressure falling below the minimum standard of 20 pounds per square inch anywhere in the distribution system).

(b) Based on the assessment in subsection (a), the director shall recommend to the town council whether there is any cause to withhold or condition building permits or development orders during the following year. The town council shall review the director's report and recommendation at a public meeting and, by approving or modifying the report, shall establish the availability and capacity of each facility to accommodate impacts from expected levels of further development. This action, as updated periodically by the town council, shall serve to bind the town to the estimates of available capacity described in the report. Once approved by the town council, these estimates shall empower the issuance of development permits where such estimates reasonably demonstrate that sufficient infrastructure capacity will be available to serve all developments which are reasonably expected to occur during the period of time approved by the town council.

Sec. 2-48. Measuring the capacity of public facilities for additional development.

(a) The available capacity of public facilities and services shall be measured as follows:

(1) ***For potable water,*** available capacity is based on the difference between the total permitted plant design capacity of the Florida Cities Water Company's water system south of the Caloosahatchee and the peak daily flow through this system during the previous calendar year. This difference, measured in

gallons per day, is available to serve new development in the service area.

(2) ***For sanitary sewer,*** available capacity is based on the difference between the total permitted plant design capacity of the Lee County Utilities' Fort Myers Beach/Iona-McGregor service area and the peak month's flow during the previous calendar year (divided by the number of days in that month). This difference, measured in gallons per day, is available to serve new development in the service area.

(3) ***For solid waste,*** available capacity is based on the difference between the current capacity of Lee County's waste-to-energy plant and current peak usage of that facility. This difference, measured in tons per day, is available to serve new development county-wide.

(4) ***For stormwater management,*** available capacity is based on the reported depth that evacuation routes, emergency shelters, and essential services were flooded during or after storms of varying intensities. Depths of flooding shall be as reported by emergency services personnel, town, or county officials, or other reliable sources.

(5) ***For recreation,*** available capacity is based on the existence of specified park facilities, including a recreation complex, ballfields, tennis courts, basketball courts, play equipment, gymnasium, community meeting spaces, and programming of activities.

(6) ***For transportation,*** available capacity is based on actual traffic counts from Lee County's permanent count station on Estero Boulevard near Donora Boulevard. The total counts in both directions for the seven hours between 10:00 A.M. and 5:00 P.M. shall be summed for all days in each month. These sums shall be divided by seven and by the number of days in that month, yielding an average traffic flow (measured in vehicles per hour) during the peak period for that month. The amount that each month's average is below the level-of-service standard of 1,300 vehicles per hour is the amount of capacity available to serve additional demand.

(b) Part or all of the available capacity of public facilities may already be committed to other developments. Prior commitments shall be assessed as follows:

(1) ***For potable water, sanitary sewer, and solid waste***, the level-of-service standards in the Fort Myers Beach Comprehensive Plan shall be applied to new development that has received building permits and development orders pursuant to ch. 6 and 10 but that was not occupied at the time that measurements of available capacity were made in accordance with §§ 2-48(a) (1), (2), and (3). The available capacity shall be reduced by those amounts.

(2) ***For stormwater management,*** new development is required to meet drainage requirements of the South Florida Water Management District (SFWMD). For purposes of this article, the adequacy of a surface water management system shall be conclusively demonstrated upon the issuance of a SFWMD surface water construction permit, or if a project is exempted from SFWMD permits, equivalent approval under ch. 10 of this code.

(3) ***For recreation,*** the level-of-service standard has concluded that additional development within the town will be adequately served by the existing level of recreation services. For purposes of this article, the continuation of that level of service shall be deemed adequate for concurrency purposes.

(4) ***For transportation,*** additional development within the town will reduce the level of service on Estero Boulevard unless the town's strategies for alternate travel modes are successfully implemented. There is less of a direct numerical correlation between new development and traffic levels on Estero Boulevard (compared to the direct correlation for potable water, sanitary sewer, and solid waste); and in the peak season, traffic congestion worsens due to high levels of traffic from outside the town. However, for purposes of this article, tabulations shall be maintained of expected traffic generation from previously approved development. This shall include building permits and development orders issued pursuant to ch. 6 and 10 of this code but not yet been occupied at the time that measurements of available capacity were made in accordance with § 2-48 (a)(6).

Sec. 2-49. Concurrency timing.

(a) Development permits can be issued when public facilities that provide potable water, sanitary sewer, solid waster, stormwater management, and recreation are in place and available to serve new development at the adopted levels of service. If one or more of these standards are not currently met but improvements are funded and scheduled, then development permits can be issued only if they are subject to the condition that a certificate of occupancy will not be granted until all necessary facilities and services are in place and available to serve the development at the adopted levels of service.

(b) Development permits can be issued when transportation facilities sufficient to serve new development at the adopted level of service are in place or are under construction. If this standard is not currently met, development permits can only be issued if:

(1) improvements to remedy the deficiency are included in a fully funded capital improvements program contained in the Fort Myers Beach Comprehensive Plan and are scheduled for completion no more than three years after issuance of a certificate of occupancy (provided that the comprehensive plan complies with the requirements of 9J-5.055(3)(c)2.); or

(2) improvements to remedy the deficiency are the subject of an enforceable development agreement, or an agreement or development order pursuant to F.S. ch. 380, which ensures that improvements will be in place and available to serve the development at the adopted level of service not more than three years after issuance of a certificate of occupancy.

Sec. 2-50. Vested rights.

(a) Persons holding valid building permits or development orders issued pursuant to ch. 6 or 10 shall be vested to complete their developments in accordance with the precise terms of those development orders as approved in writing or shown on accompanying plans without having to comply with the concurrency level of service requirements of the Fort Myers Beach Comprehensive Plan, provided that development has commenced prior to January 1, 1999, and is continuing in good faith. A determination of vesting pursuant to this subsection does not exempt a developer from submission of project data required by the director. Submission of project data assists the town in monitoring impacts on infrastructure as development progresses. Any development order vested pursuant to this subsection which is amended on or after January 1, 1999, shall be subject to full concurrency requirements as to those portions of the development which are being approved or changed. However, if an amendment to a development order vested pursuant to this subsection results in a reduction of anticipated impacts on public facilities and services, the director, in his discretion, may find that the proposed amendment does not impair the overall vested status of the development.

(b) Persons owning developed property for which ch. 15 of the Fort Myers Beach Comprehensive Plan provides guaranteed rebuilding rights shall be vested to rebuild to the extent so guaranteed them without having to comply with the concurrency level of service requirements of the Fort Myers Beach Comprehensive Plan.

(c) A determination of vested rights shall be valid for a period equal to the original maximum possible duration of a development order, but without extensions. The town shall not grant the extension of a final development order absent review by the director and a finding of continuing concurrency eligibility.

Sec. 2-51. Variances.

(a) To provide for a reasonable economic use of land in those rare instances where a strict application of the concurrency requirements of this article would constitute an unconstitutional taking of property without due process of law, the director may issue a concurrency variance certificate. This certificate may be issued only if the director finds all of the following circumstances to be true:

(1) There are not sufficient facilities available to serve the development without violating the minimum concurrency requirements of this article;

(2) No reasonable economic use can be made of the property unless a development permit is issued;

(3) No reasonable economic use can be made of the property by conditioning the development

permit upon sufficient facilities becoming available, as provided for in this article; and

(4) The request to vary from the concurrency requirements of this article is the minimum variance which would allow any reasonable economic use of the property in question.

The director may require the applicant to substantiate the circumstances set forth in subsections (a)(2) through (4) of this section by submitting a report prepared by a professional appraiser. Upon verifying the existence of each of the circumstances set forth in subsections (a)(2) through (4) of this section, the director may issue his concurrency variance certificate with such conditions as he believes are reasonably necessary to protect the public health, safety, and welfare and give effect to the purpose of this article while allowing the minimum reasonable use necessary to meet constitutional requirements. If the director has reason to question the truth of such circumstances as set forth in the appraiser's report, the director may hire an independent professional appraiser to verify whether reasonable economic use can be made of the property without the issuance of the permit requested by the applicant. Where the reports of the individual appraisers are inconsistent, the town council shall decide which appraiser's report will establish the minimum reasonable use of the property in question.

(b) Any development order which is issued based upon a concurrency variance certificate shall be consistent with it and incorporate all of the conditions placed on the certificate by the director.

(c) Concurrency variance certificates shall be valid for the lesser of three years from the date of issuance or the normal duration of the development permit.

(d) Except for building permits, development permits which have been issued based upon a valid concurrency variance certificate shall be valid for the period of three years from the date when the permit is granted or the normal duration of the development permit, whichever is less, thereby enabling the developer to begin the work permitted or to apply for additional development permits not inconsistent with the permit issued, using the concurrency certificate from the issued permit to satisfy the concurrency review requirements for such additional permits. Building permits issued based upon a valid concurrency variance certificate shall be valid for the normal duration of the building permit; however, the original permit shall not be extended more than twice without triggering new concurrency review.

Sec. 2-52. Appeals.

Except for challenges to development orders controlled by the provisions of F.S. § 163.3215, any decision made by the director in the course of administering this article may be appealed in accordance with those procedures set forth in ch. 34 for appeals of administrative decisions.

Sec. 2-53. Revocation of concurrency certificates.

The director may revoke a concurrency approval or variance for cause where it has been issued based on substantially inaccurate information supplied by the applicant, or where revocation of the certificate is essential to the health, safety, or welfare of the public.

Sec. 2-54. Nonliability of director.

The director shall not be held personally liable for any incorrect decisions he may make in administering this article. The town shall, at its cost, defend the director in any action involving such decisions and shall indemnify the director for any personal judgments which may be rendered against him.

Sec. 2-55. Furnishing false information.

Knowingly furnishing false information to the director, or any town or county official, on any matter relating to the administration of this article shall be punishable in accordance with § 1-5.

Secs. 2-56--2-90. Reserved.

ARTICLE III. DEVELOPMENT AGREEMENTS

Sec. 2-91. Statutory authority.

The Town of Fort Myers Beach has the authority to adopt this article pursuant to article VIII, § 1(f), of the constitution of the state and F.S. §§ 163.3220(5), 163.3223, and 166.021.

Sec. 2-92. Applicability of article.

This article shall apply to the entire incorporated area of the town.

Sec. 2-93. Intent of article.

This article is intended to enable the Town of Fort Myers Beach to invoke the provisions of the Florida Local Government Development Agreement Act while retaining all of the home rule authority given it pursuant to article VIII of the constitution of the state and F.S. chs. 163, 166, and 380, to enter into other similar agreements beyond the provisions of the Florida Local Government Development Agreement Act, and to establish specific notice and hearing procedures when it makes certain such similar agreements pursuant to its home rule authority.

Sec. 2-94. Purpose of article.

(a) The purpose of this article is to invoke the authority recognized in the town by the state in F.S. § 163.3223, to enter into development agreements with any and all persons having legal or equitable interests in real property located in the incorporated area of the town pursuant to the provisions of the Florida Local Government Development Agreement Act. Vendees under a specifically enforceable contract for the sale of real property shall be recognized as having a sufficient equitable interest so as to have legal capacity to become a party to a development agreement made pursuant to the Florida Local Development Agreement Act, but persons having only a mere option to purchase real property shall not be so recognized.

(b) It is also the purpose of this article to establish notice and hearing procedures similar to those set forth in the Florida Local Development Agreement Act when the town makes agreements pursuant to its home rule authority in those type of agreements which are defined in this article as home rule development agreements. Development agreements made pursuant to this article, whether they are home rule development agreements as defined in this article or agreements made pursuant to the Florida Local Government Development Agreement Act, are intended to protect and further the public health, safety and welfare by providing certain guarantees to land developers in exchange for their agreement to provide specified public facilities or services which are related to and consistent with the town's capital improvement planning and financing.

Sec. 2-95. Definitions.

(a) The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

Development agreement means either a home rule development agreement or a statutory development agreement.

Home rule development agreement means an agreement made by the town pursuant to its home rule powers, and not pursuant to the Florida Local Government Development Agreement Act, but only in those cases where development, as defined in F.S. § 163.3221(3), is to be undertaken by a person who is not a local government, as defined in F.S. § 163.3221(9), or an agency of the state or the United States of America. Moreover, home rule development agreements specifically do not mean agreements made between the town and other parties where the purpose of the agreement is exclusively to provide or pay for the construction, improvement, maintenance, or other alteration of land or personalty by third parties where the property in question is owned or is to be owned by the town or some other governmental agency.

Statutory development agreement means any agreement made specifically pursuant to the Florida Local Government Development Agreement Act.

(b) All other terms which are used in any statutory development agreement made by the town pursuant to the Florida Local Government Development Agreement Act, as such act may be amended from time to time, shall be defined as set

forth in F.S. § 163.3221, unless otherwise specifically defined in a particular statutory development agreement. Terms not so defined shall be given their ordinary and customary meanings.

Cross reference(s)--*Definitions and rules of construction generally, § 1-2.*

Sec. 2-96. Applications for development agreements.

No person shall have the right to apply for or receive development agreement approval, unless such right is so provided in an appropriate administrative code which establishes procedures for such applications. Should such an administrative code be adopted, then the town shall establish a schedule of fees and charges which shall be imposed for the filing and processing of each such application. Unless otherwise provided by administrative code, development agreements shall be considered by the town council only upon the recommendation of the town manager, who may submit a proposed development agreement, in written form, for consideration by the town council pursuant to the public hearing requirements of F.S. § 163.3225 and § 2-98. Each such proposed development agreement so submitted shall include the town manager's recommendation as to whether the council should become or decline to become a party to the agreement, or a modified form of the agreement, with such information as the town manager deems necessary to support his recommendation.

Sec. 2-97. Minimum requirements of a statutory development agreement.

Statutory development agreements shall include, at a minimum, all of the items enumerated in F.S. § 163.3227, plus such conditions, terms, restrictions, or other requirements which the parties to the agreement may desire to include and which are not otherwise prohibited by law or which exceed the authority of the parties. If a statutory development agreement provides that any public facilities are to be designed or constructed by the developer, then the agreement shall require that the design and construction be in compliance with all applicable federal, state, and town standards and requirements, including but not to be limited to guarantees of performance and quality and project controls, including scheduling, quality, and quality assurance. When public facilities are to be designed or constructed by the developer, or when the developer agrees to dedicate land to the town, the statutory development agreement shall specifically state the extent to which such design or construction or dedication shall be eligible for impact fee credits pursuant to such impact fee ordinances as the town may have in effect at the time when the statutory development agreement is to become effective. Statutory development agreements also shall incorporate the administrative appeal process set forth in § 2-102.

Sec. 2-98. Notices and hearings.

No statutory development agreement shall be made pursuant to this article unless and until all of the requirements of F.S. § 163.3225 relating to the agreement have been satisfied. To that end, an affected property owner, as the term is used in F.S. § 163.3225, means all owners of property, as reflected on the current year's tax roll, lying within 375 feet in every direction of the subject property. The town council, by adopting an appropriate administrative code, may prescribe more stringent notice requirements. In addition, if a statutory development agreement is intended to rezone property, grant variances, or accomplish any other approval which otherwise would be controlled by ch. 34, the notices required in ch. 34 also shall be given. The same notice and hearing requirements also should be observed when making home rule development agreements. However, failure to satisfy all of such notice and hearing requirements shall not be grounds to invalidate a home rule development agreement.

Sec. 2-99. Amendment or cancellation of development agreement by mutual consent.

A statutory development agreement adopted pursuant to this article may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest utilizing the same public hearing and notice requirements as are prescribed for the adoption of development agreements pursuant to this article and any administrative code authorized by § 2-98.

Sec. 2-100. Reservation of home rule authority.

Nothing contained in this article shall be construed so as to prevent the town from entering into an agreement which is substantially similar to a development agreement adopted pursuant to the Florida Local Government Development Agreement Act but which is based upon the home rule authority granted the town pursuant to article VIII, § 1(f), of the constitution of the state and F.S. chs. 163, 166, and 380, and specifically recognized by the state legislature in F.S. § 163.3220(5).

Sec. 2-101. Conflicts between development agreement and other land development regulations.

To the extent that this code may permit it and a development agreement purports to rezone land, grant deviations or variances from this code, including article II of this chapter, grant development orders or amendments to or extensions thereof equivalent to those which are available pursuant to ch. 10, implement development orders or amendments to development orders for developments of regional impact, or grant building permits or other permits which specifically allow the physical alteration or improvement of land, the development agreement must explicitly identify each instance of conflict with other ordinances and expressly provide for the development agreement to control, or else all of the provisions of such other ordinances shall control to the extent that the development agreement fails to expressly provide otherwise. Any ambiguity with respect to whether a development agreement or an ordinance is to control shall be interpreted to favor the ordinance.

Sec. 2-102. Appeals.

No person may challenge the validity of a development agreement on the grounds that the agreement conflicts with the town's comprehensive plan except pursuant to the procedures set forth in F.S. § 163.3215. A party or a successor in interest to a party to a development agreement may bring suit to challenge the town's administration of a development agreement only after he has exhausted the administrative remedies prescribed in ch. 34 for appeals from administrative actions.

Secs. 2-103--2-300. Reserved.

ARTICLE IV. IMPACT FEES

Sec. 2-301. Statutory authority.

The Town of Fort Myers Beach has the authority to adopt this article pursuant to article VIII of the constitution of the state, F.S. ch. 166 and F.S. §§ 163.3201, 163.3202, and 380.06(16).

Sec. 2-302. Applicability of article.

This article shall apply to the entire incorporated area of the town.

Sec. 2-303. Intent and purpose of article.

(a) This article is intended to implement and be consistent with the Fort Myers Beach Comprehensive Plan.

(b) The purpose of this article is to regulate the use and development of land so as to ensure that new development bears a proportionate share of the cost of capital expenditures for transportation, regional parks, community parks, and fire protection, as contemplated by the Fort Myers Beach Comprehensive Plan.

(c) This article also reflects the required payment of school impact fees in accordance with Lee County Ordinance No. 01-21, which became effective on December 1, 2001.

Sec. 2-304. Definitions and rules of construction.

(a) For the purposes of administration and enforcement of this article, unless otherwise stated in this article, all transportation terms shall have the same meaning as in the Fort Myers Beach Comprehensive Plan, and in ch. 34 and ch. 10, unless otherwise indicated.

(b) The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section and in the latest edition of the Institute of Transportation Engineers (ITE) manuals, except where the context clearly indicates a different meaning:

Assisted living facility has the same meaning given it in ch. 34.

Building official means the same officer as appointed by the town manager through § 6-44.

Building permit means an official document or certification issued by the building official authorizing the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving, or repair of a building or structure. In the case of a change in use or occupancy of an existing building or structure, the term shall specifically include certificates of occupancy and occupancy permits, as those permits are defined or required by this code.

Building with mixed uses means a building which contains more than one principal use, as that term is defined in ch. 34.

Capital improvement for community or regional parks means land acquisition, site improvements, including landscape plantings and the removal of exotic vegetation, off-site improvements associated with a new or expanded community or regional park, buildings and equipment. Off-site improvements may also include sidewalks and bikeways which connect to the park facility. Capital improvements do not include maintenance and operations.

Capital improvement for fire protection includes land acquisition and related expenses, site improvements, off-site improvements associated with new or expanded facilities, buildings, and equipment, including communications equipment, with an average useful life of at least three years, but excludes maintenance and operations.

Capital improvement for transportation means preliminary engineering, engineering design studies, land surveys, right-of-way acquisition, engineering, permitting, and construction of all the necessary features for transportation construction projects, including but not limited to:

(1) Construction of new or improved through or turn lanes;
(2) Construction of curbs, medians, sidewalks, bicycle paths, and shoulders in conjunction with roadway construction;
(3) Construction of new pedestrian or bicycle facilities;
(4) Construction of new bridges;
(5) Construction of new drainage facilities in conjunction with other transportation construction;
(6) Purchase and installation of traffic signalization (including both new installations and upgrading signalization);
(7) Relocating utilities to accommodate new transportation construction; and
(8) On-street and off-street parking when such parking is intended for and designed to protect or enhance the vehicular and pedestrian capacity of the existing street network.

Site-related road improvements as defined herein are not a capital improvement for transportation under this definition.

Community park means a tract of land designated and used by the public primarily for active recreation but also used for educational and social purposes and passive recreation. Community parks also include bikeways that are designed and used primarily for active recreation. A community park generally serves a specific community composed of at least several neighborhoods. Community park standards are based upon several subclassifications of community parks: standard community parks, community recreation centers, community pools, and school parks. The term "community park" specifically includes school sites and publicly owned parks that are available for use by the surrounding neighborhoods.

Dwelling unit has the same meaning given it in ch. 34.

Fast food restaurant has the same meaning given it in ch. 34.

Feepayer means a person applying to the town for the issuance of a building permit for a type of land development activity listed in the impact fee schedule in § 2-306, regardless of whether the person owns the land to be developed.

Fire district means the Fort Myers Beach Fire Control District, a special district which is authorized to provide fire protection and rescue service.

Fire protection means the prevention and extinguishment of fires, the protection of life and property from fire, and the enforcement of

municipal, county, and state fire prevention codes, as well as any law pertaining to the prevention and control of fires, when enforcement duties are performed by firefighters, as defined in F.S. § 633.30, or by fire safety inspectors, as defined in F.S. § 633.021(8), and such other persons who may be employed by a fire district. The term "fire protection" also includes rescue and emergency medical services.

Fort Myers Beach Comprehensive Plan means the town's comprehensive plan adopted pursuant to F.S. ch. 163, as amended from time to time.

General office means, for the purpose of this article only, any type of office except a medical office. A general office building may contain accessory uses such as a beauty or barber shop, shack bar, cafeteria, day care center, or other uses where permitted by ch. 34.

Hotel/motel has the same meaning given it in ch. 34.

Land development activity means any change in land use, or any construction of buildings or structures, or any change in the use of any building or structure that adds dwelling units, attracts or produces vehicular trips, or requires fire protection.

Medical office has the same meaning given it in ch. 34.

Multiple-family building means and includes those definitions set forth in ch. 34 for multiple-family building and two-family dwelling units.

Recreation facility has the same meanings given it in ch. 34.

Regional park means a tract of land designated and used by the public for active and passive recreation. A regional park draws users from a larger area than a community park, frequently from the entire county and beyond, by providing access to especially attractive natural resources, amenities, and specialized activities. It specifically includes municipally owned parks when they are used as regional parks.

Retail store means the use of a building to sell goods and to provide personal services (as described in ch. 34) to the general public.

Road has the same meaning given it in F.S. § 334.03.

Shopping center means an integrated group of commercial establishments planned and managed as a unit, consisting primarily of retail stores but sometimes containing other uses such as restaurants, offices, and personal services.

Single-family residence has the same meaning given it in ch. 34.

Site-related road improvements means physical improvements and right-of-way dedications for direct access improvements to the development in question. Direct access improvements include but are not limited to the following:

(1) Site driveways and roads;
(2) Median cuts made necessary by those driveways or roads;
(3) Right turn, left turn, and deceleration or acceleration lanes leading to or from those driveways or roads;
(4) Traffic control measures for those driveways or roads; and
(5) Roads or intersection improvements whose primary purpose at the time of construction is to provide access to the development.

Timeshare unit has the same meaning given it in ch. 34.

Town manager means the manager of the Town of Fort Myers Beach, or the officials that he or she may designate to administer the various provisions of this article.

Warehouse means the use of a building or structure primarily for the storage of goods, boats, or vehicles.

Cross reference(s)--*Definitions and rules of construction generally, § 1-2.*

Sec. 2-305. Imposition.

(a) Except as provided in §§ 2-312 through 2-314, any person who seeks to develop land by applying for the issuance of a building permit to make an improvement to land for one of the uses which is specified in § 2-306 shall be required to pay impact fees in the manner and amount set forth in this article.

(b) No building permit for any activity requiring payment of impact fees pursuant to § 2-306 shall be issued by the town unless and until the impact fees required by this article have been paid.

(c) In the case of structures moved from one location to another, impact fees shall be collected for the new location if the structure is a type of land development listed in § 2-306, regardless of whether impact fees had been paid at the old location, unless the use at the new location is a replacement of an equivalent use. If the structure so moved is replaced by an equivalent use, no impact fees shall be owed for the replacement use. In every case, the burden of proving past payment of impact fees or equivalency of use rests with the feepayer.

Sec. 2-306. Computation of amount.

(a) At the option of the feepayer, the amount of the impact fees may be determined by the schedule set forth in this section.

(b) References in this schedule to square feet refers to the gross square footage of each floor of a building measured to the exterior walls, and not to usable, interior, rentable, noncommon, or other forms of net square footage.

FORT MYERS BEACH IMPACT FEE SCHEDULE

LAND USE TYPE	Impact Fees (rounded to nearest dollar)[1]				
		Parks		*Fire*	
	Transportation	*Regional*	*Community*	*Protection*	*Schools*[2]
Residential:					
Single-family residence	$2,971	$631	$788	$610	$4,309
Multiple-family building *(per dwelling unit)*	$2,059	$518	$591	$478	$1,704
Timeshare unit	$2,237	$518	$591	$478	$0
Hotel/motel room	$2,237	$318	$363	$501	$0
Assisted living facility *(per dwelling unit)* (see § 34-1415 for density equivalents)	$1,017	$0	$0	$478	$0
Commercial (fee per 1,000 sq. ft. except as noted):					
Retail store or shopping center	$5,063	$0	$0	$476	$0
Bank	$8,038	$0	$0	$476	$0
Car wash, self-service (fee per stall)	$1,683	$0	$0	$476	$0
Convenience store with gas pumps	$11,250	$0	$0	$476	$0
Movie theater	$7,427	$0	$0	$476	$0
Restaurant, fast food	$12,763	$0	$0	$476	$0
Restaurant, standard	$6,504	$0	$0	$476	$0
Office (fee per 1,000 square feet):					
General office	$2,336	$0	$0	$222	$0
Medical office	$7,716	$0	$0	$222	$0
Institutional (fee per 1,000 square feet):					
Church	$1,467	$0	$0	$476	$0
Day care center	$4,107	$0	$0	$476	$0
Elementary/secondary school (private)	$643	$0	$0	$476	$0
Warehouse (fee per 1,000 square feet):	$1,461	$0	$0	$216	$0

[1] *In addition to the impact fees listed, an additional 3 percent administrative charge will be levied in accordance with § 2-310(e).*
[2] *School impact fees are collected in accordance with Lee County Ordinance No. 05-25, effective January 1, 2006.*

(c) If a building permit is requested for a building with mixed uses, as defined in § 2-304, then the fees shall be determined according to the schedule by apportioning the total space within the building according to the space devoted to each principal use. A shopping center will be considered a principal use; however, when located within a shopping center, a fast-food restaurant or convenience store with gasoline sales will be considered a principal use.

(d) If the type of development activity for which a building permit is applied is not specified on the schedule, the town manager shall use the fee applicable to the most nearly comparable type of land use on the schedule. For transportation impact fees, the town manager shall be guided in the selection of a comparable type by the Institute of Transportation Engineers' *Trip Generation* (latest edition), studies or reports by the federal, state, and county departments of transportation, and articles or reports appearing in the ITE Journal and other reliable sources. If the town manager determines that there is no comparable type of land use on the fee schedule set out in this subsection, then the town manager shall determine the fee by:

(1) Using traffic generation statistics or other relevant data from the sources named in this subsection; and
(2) Applying the formula set forth in subsection (g)(3) of this section

(e) When change of use, redevelopment, or modification of an existing use requires the issuance of a building permit, impact fees shall be based upon the net increase in the impact fee for the new use as compared to the previous use. However, should the change of use, redevelopment, or modification result in a net decrease, no refunds or credits for past impact fees paid shall be made or created.

(f) If an impact fee has been calculated and paid based on error or misrepresentation, it shall be recalculated and the difference refunded to the original feepayer or collected by the town, whichever is applicable. If impact fees are owed, no permits of any type may be issued for the building or structure in question, or for any other portion of a development of which the building or structure in question is a part, until all impact fees are paid. The building official may bring any action permitted by law or equity to collect unpaid fees.

(g) The person applying for the issuance of a building permit may, at his option, submit evidence to the town manager indicating that the fees set out in the impact fee schedule in this section are not applicable to the particular development. Based upon convincing and competent evidence, which shall be prepared and submitted in accordance with any applicable administrative code, the town manager may adjust the fee to that appropriate for the particular development.

(1) The adjustment may include a credit for recreation facilities provided to the development by the feepayer if the recreation facilities serve the same purposes and functions as set forth for regional and/or community parks.
(2) If a feepayer opts not to have the transportation impact fee determined according to the impact fee schedule in this section, then the feepayer shall prepare and submit to the town manager an independent fee calculation study for the land development activity for which a building permit is sought. The independent fee calculation study shall measure the impact of the development in question on the transportation system by following the prescribed methodologies and formats for such studies established by Lee County's administrative code. The feepayer must attend a preapplication meeting with town manager or designee to discuss the traffic engineering and economic documentation required to substantiate the request. The traffic engineering or economic documentation submitted must address all aspects of the impact fee formula that the county manager determines to be relevant in defining the project's impacts at the preapplication meeting and must show the basis upon which the independent fee calculation was made, including but not limited to the following:
    a. *Traffic engineering studies.* All independent fee calculation studies must address all three of the following:
        1. Documentation of trip generation rates appropriate for the proposed land development activity;
        2. Documentation of trip length appropriate for the proposed land development activity; and

3. Documentation of trip data appropriate for the proposed land development activity.

b. *Revenue credit studies.* The feepayer may also provide documentation substantiating that the revenue credits due to the development differ from the average figures used in developing the fee schedule. This documentation shall be prepared and presented by qualified professionals in their respective fields and shall follow best professional practices and methodologies.

(3) The following formula shall be used by the town manager to determine the transportation impact fee per unit of development:

Impact Fee = VMT x NET COST/VMT

Where:

VMT =	**ADT x %NEW x LENGTH ÷ 2**
ADT =	Trip ends during average weekday
%NEW =	Percent of trips that are primary, as opposed to passby or diverted-link trips
LENGTH =	Average length of a trip on the approved road system
÷ 2 =	Avoids double-counting trips for origin and destination
ADJUSTMENT =	Local adjustment factor, representing the ratio between the VMT predicted by national travel characteristics and observed VMT on the approved road system
NET COST/VMT =	**COST/VMT - CREDIT/VMT**
COST/VMT =	COST/LANE-MILE ÷ AVG LANE CAPACITY
COST/LANE-MILE =	Average cost to add a new lane to the approved roadway system
AVG LANE CAPACITY =	Average daily capacity of a lane at level of service "D"
CREDIT/VMT =	$/GAL ÷ MPG x 365 x NPV
$/GAL =	Capacity-expanding funding for roads per gallon of gasoline consumed
MPG =	Miles per gallon, average for U.S. motor vehicle fleet
365 =	Days per year (used to convert daily VMT to annual VMT)
NPV =	Net present value factor (i.e., 12.46 for 20 years at 5% discount)

Sec. 2-307. Payment.

(a) The feepayer shall pay the impact fees required by this article to the building official prior to the issuance of the building permit for which the fees are imposed. No building permit may be issued for any development listed in the impact fee schedule in § 2-306 until the impact fees have been paid.

(b) In lieu of cash, up to 100 percent of the impact fees may be paid by the use of credits created in accordance with the provisions of § 2-313.

(c) All funds collected pursuant to this article shall be promptly transferred for deposit into the appropriate impact fee trust accounts and used solely for the purposes specified in this article.

Sec. 2-308. Reserved.

Sec. 2-309. Trust accounts.

(a) There is hereby established five impact fee trust accounts, one each for transportation, regional parks, community parks, fire protection, and schools.

(b) Funds withdrawn from these accounts must be used in accordance with the provisions of § 2-310.

Sec. 2-310. Use of funds.

(a) Funds collected from impact fees shall be used only for the purpose of capital improvements for transportation, regional parks, community parks, fire protection, and schools, as defined in § 2-304. Impact fee collections, including any interest earned thereon, but excluding administrative charges pursuant to subsection (e) of this section, shall be used exclusively for capital improvements or expansion. These impact fee funds shall be segregated from other funds and shall be expended in the order in which they are collected. Funds may be used or pledged in the course of bonding or other lawful financing techniques, so long as the proceeds raised thereby are used for the purpose of capital improvements.

(b) Each fiscal year the town manager shall present to the town council a proposed capital improvement program for transportation, regional parks, and community parks, assigning funds,

including any accrued interest, from the appropriate impact fee trust account to specific capital projects. Monies, including any accrued interest, not assigned in any fiscal period shall be retained in each impact fee trust account until the next fiscal period, except as provided by the refund provisions of this article.

(c) The town shall remit fire protection impact fees to the fire district at least once each quarter, less any amounts retained or collected pursuant to § 2-310(e), unless another method is specified in an appropriate interlocal agreement.

(d) The town shall remit school impact fees to Lee County at least monthly, less any amounts retained or collected pursuant to § 2-310(e), unless another method is specified in an appropriate interlocal agreement. Lee County will remit these school impacts to the School Board in accordance with Lee County Ordinance No. 01-21.

(e) The town is entitled to charge and collect three percent of the impact fees it collects in cash, or by a combination of cash and credits, as an administrative fee to offset the costs of administering this article. This administrative charge is in addition to the impact fee amounts required by this article. The applicant is responsible for payment of the additional administrative charge in conjunction with the payment of impact fees at the time a building permit or development order is issued.

Sec. 2-311. Refund of fees paid.

(a) If a building permit expires, is revoked, voluntarily surrendered, or otherwise becomes void, and no construction or improvement of land has been commenced, then the feepayer shall be entitled to a refund of the impact fees paid as a condition for its issuance, except that three percent of the impact fee paid shall be retained as an administrative fee to offset the cost of processing the refund. This administrative fee is in addition to the charge collected at the time of fee payment. No interest shall be paid to the feepayer on refunds due to noncommencement.

(b) Any funds not expended or encumbered by the end of the calendar quarter immediately following ten years from the date the impact fee was paid shall, upon application of the feepayer within 180 days of that date, be returned to the feepayer with interest at the rate of six percent per annum. For school impact fees, this period is set at six years by Lee County Ordinance 01-21.

Sec. 2-312. Exemptions.

(a) The following shall be exempted from payment of the impact fees:

(1) Alteration or expansion of an existing building or use of land, where no additional dwelling units will be produced and where the use is not changed and where no additional vehicular trips or demand for fire protection will be produced over and above that produced by the existing use.

(2) The construction of accessory buildings or structures which will not produce additional dwelling units and where no additional vehicular trips or demand for fire protection will be produced over and above that produced by the existing use.

(3) The replacement of an existing building with a new building or structure of the same use and at the same location, provided that no additional dwelling units, vehicular trips, or fire protection demands will be produced over and above those produced by the original use of the land. However, no exemption will be granted if the existing building was removed 5 years or more before a building permit is issued for its replacement.

(4) A building permit obtained by or for the United States of America, the state, or the county school board.

(5) A building permit for which the impact fees thereof have been or will be paid or provided for pursuant to a written agreement, zoning approval, or development order which, by the written terms thereof, clearly and unequivocally was intended to provide for the full mitigation of the projected impact by enforcement of the agreement, zoning approval or development order, and not by the application of this article.

(6) A building permit which does not result in an additional dwelling unit, additional vehicular trips, or increased need for fire protection or emergency medical services.

(b) Exemptions must be claimed by the feepayer at the time of the application for a building permit. Any exemptions not so claimed will be deemed waived by the feepayer.

Sec. 2-313. Credits.

(a) Impact fee credits are subject to the following:

(1) ***Prohibitions.*** No credit shall be given for design or construction of site-related road improvements or local roads. No credit shall be given for recreation facilities except pursuant to an independent fee calculation prepared and accepted in accordance with § 2-306(f).

(2) ***Eligibility.*** Other approved capital improvements for transportation, regional or community parks, or fire protection may generate corresponding impact fee credits in amounts to be established pursuant to this section. The right to determine whether a capital improvement will be approved for credit purposes lies exclusively with the town.

(3) ***Conditions of credit approval.*** Credit for capital improvement construction or land dedication is subject to the following:

a. *Construction.* A formal request for impact fee construction credits must include a detailed project description and complete cost estimates prepared by qualified professionals and sufficient to enable the town manager to verify these cost estimates and thereby determine the amount of the credit which the town manager will recommend be authorized by the town council. Construction credits for transportation projects may be given as the town council shall determine on a case-by-case basis if it finds that the granting of such credits will not significantly affect future transportation impact fee collections within the town. The amount of credit shall be limited to the actual verified costs of construction and may be reduced by the percentage to which the capacity of the improvement in question is reasonably expected to be utilized by future development on adjacent lands owned or controlled by the grantor. This amount then may be further reduced, as the council shall determine, to reflect the council's estimate of the value of the accelerated construction in relation to the town's schedule for construction.

b. ***Land dedication.*** A formal request for impact fee credits for land dedication must include:

1. A survey of the land to be dedicated, certified by a professional land surveyor duly registered and licensed by the state;
2. A specimen of the deed which he proposes to use to convey title to the appropriate governmental body;
3. An ALTA Form B title insurance policy in an amount equal to the approved value of the credits, to be issued by a company satisfactory to the town attorney and verifying that the proffered deed will convey unencumbered fee simple title to the appropriate governmental body;
4. Property appraisals prepared by qualified professionals that appraise the land as part of the whole development or parent parcel; and
5. A document from the tax collector stating the current status of property taxes on the land.

c. ***Valuations.*** In preparing their reports, appraisers shall value, except where a dedication is made pursuant to a condition of zoning approval, the land at its then-current zoning and without any enhanced value which could otherwise be attributed to improvements on adjacent lands. If the land in question is subject to a valid agreement, zoning approval or development order which prescribes a different valuation, the agreement, zoning approval, or development order shall control. If the dedication is made pursuant to a condition of zoning approval and is not a site-related improvement, and the zoning condition does not specifically prescribe otherwise, the land shall be valued based upon the zoning of the land as it existed prior to the zoning approval which contains the condition of dedication.

d. ***Limitations on credit for land dedications.*** The amount of credit which the council may approve shall be limited to the value of the land in question, as determined by the methodology and procedures set out in this section, and may be reduced by the percentage to

which the capacity of the improvement in question is reasonably expected to be utilized by future development on adjacent lands owned or controlled by the grantor. This amount then may be further reduced, as the council shall determine, to reflect the council's estimate of the value of the accelerated acquisition in relation to the town's construction schedule.

e. ***Independent determinations.*** The town manager retains the right to independently determine the amount of credit to be recommended by securing other engineering and construction cost estimates and/or property appraisals for those improvements or land dedications. In applicable cases, impact fee credits shall be calculated so as to be consistent with F.S. § 380.06(16) (1997).

(4) ***Timing of credit issuance.*** Credits for construction shall be created when the construction is completed and accepted by the appropriate governmental body for maintenance, or when the feepayer posts security, as provided in this subsection, for the costs of such construction. Credits for land dedication shall be created when the title to the land has been accepted and recorded in the official records of the clerk of circuit court. Security in the form of cash, a performance bond, an irrevocable letter of credit or an escrow agreement shall be posted with the town council, made payable to the town in an amount approved by the town manager equal to 110 percent of the full cost of such construction. If the project will not be constructed within one year of the acceptance of the offer by the town, the amount of the security shall be increased by ten percent, compounded for each year of the life of the security. The security shall be reviewed and approved by the town attorney prior to acceptance of the security by the town.

(5) ***Transferability.*** Impact fee credits shall be in transferable form and may be sold, assigned, or otherwise conveyed. They may be used to pay or otherwise offset the same type of impact fees required by this article.

a. Such transferable credits must be used within ten years of the date they are created, which date is the date the instruments conveying legal title to the land or improvements, which were given in exchange for credits, were recorded in the county's official record book. Credits not used during this period shall expire.

b. If impact fee rates are increased before the credits are used, the unused transferable credits, when used to pay for the impacts of a particular use listed in impact fee schedule, will be increased at the time they are used in the same percentage that the Consumer Price Index–All Urban Consumers (CUP-U), All Items, U.S. City Average (maintained by the Bureau of Labor Statistics) increased between the time the credits are used and the time the credits were created. If impact fee rates are decreased, unused transferable credits will not decrease in value.

c. Any person who accepts credits in exchange for the dedication of land or improvements does so subject to the limitations on the use, duration, nonrefund provisions and other restrictions prescribed in this article.

d. Impact fee credits previously issued by Lee County related to development or capital improvements in the town will be accepted as if they were issued by the town, provided the credits have not expired.

(6) ***Withdrawal of offer.*** Any person who offers land or improvements in exchange for credits may withdraw the offer of dedication at any time prior to the transfer of legal title to the land or improvements in question and pay the full impact fees required by this article.

(b) Feepayers claiming credits shall submit documentation sufficient to permit the building official to determine whether such credits claimed are due and, if so, the amount of such credits.

(c) Credits must be claimed by the feepayer at the time of the application for a building permit. Any credits not so claimed shall be deemed waived by the feepayer.

(d) Once used, credits shall be canceled and shall not be reestablished even if the permit for which they were used expires without construction.

(e) Any person seeking credits for dedication of land must meet with the town manager or designee to seek agreement on appraisal methodology and assumptions before preparing any appraisals for valuation of land to be dedicated.

(f) The town may delegate to Lee County certain administrative matters regarding impact fees, pursuant to interlocal agreement.

Sec. 2-314. Appeals.

Any decision made by the town manager or his designee, or by the building official, in the course of administering this article may be appealed in accordance with those procedures set forth in ch. 34 for appeals of administrative decisions.

Sec. 2-315. Enforcement of article; penalty; furnishing false information.

The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this article. In addition to or in lieu of any criminal or civil prosecution, the county, or any impact feepayer, shall have the power to sue for relief in civil court to enforce the provisions of this article. Knowingly furnishing false information to the town manager, his designee, or the building official on any matter relating to the administration of this article shall constitute a violation thereof.

Secs. 2-316--2-419. Reserved.

ARTICLE V. CODE ENFORCEMENT

DIVISION 1. GENERALLY

Sec. 2-420. Intent and purpose.

(a) The intent and purpose of this article is to promote, protect, and improve the health, safety, and welfare of the citizens of the town by creating the position of special magistrate and granting him/her the power and authority to hold hearings and to impose administrative fines including costs of prosecution and other noncriminal penalties, in order to provide an equitable, expeditious, effective, and inexpensive method of enforcing any code, ordinance, or regulation in effect within the town, where a violation or repeated violation exists.

(b) The means of code enforcement described in this article are in addition to those described in § 1-5 of this code and as otherwise allowed by law or equity.

(1) Division 2 of this article describes the use of a special magistrate for code enforcement.
(2) Division 3 of this article describes the use of civil citations to enforce town codes.

DIVISION 2. SPECIAL MAGISTRATE

Sec. 2-421. Creation of position of special magistrate.

The position of special magistrate is hereby created pursuant to F.S. ch. 162 for the intent and purpose set forth in this code. Special magistrate will include the officer(s) appointed by the town council, including but not limited to any special magistrates pro tempore, with the power set forth in § 2-420 and § 2-426.

Sec. 2-422. Applicability.

This article is applicable to the incorporated area of the Town of Fort Myers Beach.

Sec. 2-423. Definitions.

For the purposes of this article, the following words and phrases will have the meanings respectively ascribed to them by this section unless the context clearly indicates otherwise:

Clerk means the Town Clerk or his/her designee.

Code or codes means any ordinance or ordinances of the Town of Fort Myers Beach, as the same exist and as they may have been amended on the effective date of this article, and as the same may be amended from time to time.

Code enforcement officer means any designated agent or employee of the town whose duty it is to enforce codes and ordinances enacted by the town. The term "code enforcement officer" will be construed to include the duties and authority of code inspectors as set forth in Florida law. Whenever the town council contracts with another governmental entity and/or third-party vendor to provide code enforcement services, the code enforcement officers for such other entity or vendor will serve as town code enforcement officers.

Repeat violation means a violation of a provision of a code or ordinance by a person who has previously been found by a special magistrate or through any other quasi-judicial process, or any judicial process, to have violated or who has admitted violating the same provision within five years prior to the violation, notwithstanding whether the violations occur at different locations.

Sec. 2-424. Enforcement procedure.

(a) ***Initiation of proceedings.*** It will be the duty of the code enforcement officer to initiate code enforcement proceedings.

(b) ***Initial violation.*** Except as provided in §§ (c), (d), and (e) of this section, if a violation of any town code, ordinance, or regulation is found, the code enforcement officer will give the violator a notice indicating the type of violation found and manner in which it may be corrected and providing a reasonable time in which to correct the violation. If the violation continues beyond the time provided on the notice for compliance, the code enforcement officer may notify the special magistrate and request a hearing. The special magistrate, through the clerk, will schedule a hearing, and written notice of such hearing will be provided to the violator as set forth in § 2-429 below. If the violation is corrected and then recurs, or if the violation is not corrected by the time specified for correction by the code enforcement officer, the case may be presented to the special magistrate even if the violation has been corrected prior to the special magistrate hearing, and the notice will so state.

(c) ***Repeat violation.*** If a repeat violation is found, the code enforcement officer will notify the violator but is not required to give the violator a reasonable time to correct the violation. The code enforcement officer, upon notifying the violator of a repeat violation, will notify the special magistrate and request a hearing. The special magistrate, through the clerk, will schedule a hearing and provide notice as set forth in § 2-429. The case may be presented to the special magistrate even if the repeat violation is corrected prior to the hearing, and the notice will so state. If the repeat violation has been corrected, the special magistrate retains the right to schedule a hearing to determine costs and impose the payment of reasonable enforcement fees upon the repeat violator. The repeat violator may choose to waive his or her rights to this hearing and pay said costs as determined by the special magistrate.

(d) ***Immediate hearing.*** Notwithstanding anything else contained in this article, if the code enforcement officer has reason to believe a violation or the condition causing the violation presents a serious threat to the public health, safety, and welfare, or if the violation is irreparable or irreversible in nature, the code enforcement officer will make a reasonable effort to notify the alleged violator and may immediately notify the special magistrate and request a hearing. The clerk will serve the alleged violator with notice of hearing. In addition, the special magistrate will notify the town, which may make all reasonable repairs which are required to bring the property into compliance. Making such repairs does not create a continuing obligation on the part of the town to make further repairs or to maintain the property and does not create any liability against the town for any damages to the property if such repairs were completed in good faith. The costs of such repairs will be borne by the owner and/or violator, as applicable.

(e) ***Transfer of subject property.*** If the owner of property that is subject to any enforcement proceeding before a special magistrate or court transfers ownership of such property between the time the initial pleading or notice, as applicable, was served and the time of the hearing, such owner must:

(1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee; and
(2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor; and
(3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding; and
(4) File a notice with the code enforcement officer regarding the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within 5 days after the date of the transfer.

A failure to make the disclosures described in subsections (1), (2), and (3) above before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding will not be dismissed, but the new owner will be provided a reasonable period of time to correct the violation before the hearing is held.

(f) ***No Stay.*** A request for an interpretation from the director as set forth in § 2-1, § 34-90, or § 34-265 of this code, or any appeal of such interpretation to the town council, will not act to stay any enforcement proceeding under this code unless specifically ordered by the special magistrate.

Sec. 2-425. Conduct of hearing.

(a) ***Scheduling of hearings.*** A regular time and place will be designated by the special magistrate for code enforcement proceedings before the special magistrate. The frequency of these hearings will be based upon the number of cases to be heard. The special magistrate may set a special hearing to take place on a day or at a time not regularly set aside for code enforcement proceedings, upon request of the code enforcement officer or at such other times as may be necessary. The code enforcement officer is responsible for scheduling cases to be heard by the special magistrate. Minutes will be kept of all hearings. All hearings will be open to the public, but no public input will be taken.

(b) ***Prosecution of the case.*** Each case on the code enforcement docket will be presented to the special magistrate by the town attorney or by the director or his designee. If the town prevails in prosecuting a case before the special magistrate, it will be entitled to recover all costs incurred in prosecuting the case. Such costs may be included in the lien authorized under this code and under F.S. 162.07 and 162.09(3). For purposes of this section, the issuance of an order finding violation will be evidence that the town has prevailed in prosecuting the case.

(c) ***Hearing testimony.*** The special magistrate will proceed to hear the cases on the docket for that day. All testimony will be under oath and recorded. The special magistrate will have the power to take testimony from the code enforcement officer and the alleged violator. Formal rules of evidence will not apply, but fundamental due process will apply and will govern the proceedings.

(d) ***Special magistrate order.*** Within 15 days after the conclusion of each hearing, the special magistrate will issue findings of fact based on evidence of record and conclusions of law and will issue an order affording the proper relief consistent with powers granted under this code and Florida law. Such order may include a notice that the order must be complied with by a specific date and that a fine may be imposed. An award of the costs of prosecution due and owing to the town may also be imposed. The special magistrate has the discretion to grant additional time for abatement of the violation. The date for abatement will be set out in the written order. If the violation is of the type described in § 2-424(d), the cost of repairs incurred by the town pursuant to § 2-427(a) may be included along with the administrative fine and imposition of costs of prosecution if the order is not complied with by said date.

(e) ***Recording the order.*** A certified copy of the order may be recorded in the public records of Lee County and will constitute notice to any subsequent purchasers, successors in interest, or assigns if the violation concerns real property, and the findings therein are binding upon the violator and, if the violation concerns real property, any subsequent purchasers, successors in interest, or assigns. If an

order has been recorded in the public records pursuant to this subsection, and the order is complied with by the date specified in the order, the special magistrate will issue an order acknowledging compliance that will be recorded in the public records. A hearing is not required to issue an order acknowledging compliance. Failure of a violator to pay the costs of prosecution assessed against him/her by the date specified in the order finding violation may also result in the recording of the order in the public records of Lee County, and will constitute a lien on the subject property and all other properties of the violator. Nothing in this section will be construed to waive the violator's obligations under § 2-424(e) or other provisions of this code.

Sec. 2-426. Powers of the code enforcement special magistrate.

The code enforcement special magistrate has the power and authority to:

(1) Adopt rules for the conduct of code enforcement hearings.
(2) Subpoena alleged violators and witnesses to code enforcement hearings. Subpoenas may be served by the sheriff of the county.
(3) Subpoena evidence to code enforcement hearings.
(4) Hold hearings.
(5) Take testimony under oath.
(6) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance, including but not limited to the imposition of administrative fines, costs of prosecution, and other noncriminal penalties.

Sec. 2-427. Administrative fines, costs, and liens.

(a) ***Order by special magistrate.*** The special magistrate, upon notification by the code enforcement officer that an order of the special magistrate has not been complied with by the set time or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by the special magistrate for compliance; or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code enforcement officer; or may order abatement. In addition, if the violation is a violation described in § 2-424(d) above, the special magistrate will notify the town which may take the actions set forth with specificity in § 2-424(d). If a finding of a violation or a repeat violation has been made by the special magistrate as provided in this code, a hearing will not be necessary prior to issuance of an order imposing a fine. However, if a dispute arises as to whether the violator has complied, the special magistrate may grant a request for hearing if the request is made by the violator in writing, setting forth the reasons for dispute, and received by the town or special magistrate no later than ten days following the date specified in the order for compliance. If such hearing is held, testimony will be limited to the issue of compliance with the special magistrate's previous order and no new evidence as to whether a violation occurred will be allowed. If the violation is of the type described in § 2-424(d), the special magistrate may charge the violator with the cost of those repairs made by the town, along with the fine imposed under this section.

(b) ***Administrative fine.***

(1) A fine imposed under this section will not exceed $250.00 per day for the first violation or $500.00 per day for a repeat violation. However, if the special magistrate finds a violation is irreparable or irreversible in nature, a fine not to exceed $5,000 per violation may be imposed. The special magistrate may assess the cost of all repairs incurred by the town in accordance with subsection (a) of this section as an additional component of the fine as well as the costs of prosecuting the case before the special magistrate. For purposes of this article, prosecution costs include, but are not limited to, recording costs, inspection costs, appearances by the code enforcement officer(s) at hearings, preparation costs, photography costs, attorney fees, and similar items.
(2) The following factors will be considered by the special magistrate in determining the amount of the fine or the amount of mitigation necessary, if any:
    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.

(3) The special magistrate may reduce the fine imposed under this section and is authorized to mitigate any such fine at a hearing specifically noticed for such purpose.

(c) ***Creation of a lien.*** A certified copy of an order imposing a fine or a fine plus repair costs, and/or assessing the costs of prosecution, may be recorded in the public records and thereafter will constitute a lien against the land on which the violation exists and upon any real or personal property owned by the violator. 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 execution and levy against the personal property of the violator, but such order will not be deemed to be a court judgment except for enforcement purposes. A fine imposed under this article will continue to accrue until (i) the violator has complied with the order rendered by the special magistrate or until (ii) judgment is rendered in a suit to foreclose the lien, whichever occurs first. A lien arising from a fine imposed under this section runs in favor of the Town of Fort Myers Beach, and the town manager may execute a satisfaction or release of lien entered in accordance with this section. The special magistrate may authorize the town attorney to foreclose on a lien which remains unpaid for a period of three or more months after filing thereof or sue to recover a money judgment for the amount of the lien plus accrued interest. No lien created under this article may be foreclosed on real property which is a homestead under section 4, article X of the state constitution. The money judgment provisions of this section will not apply to real or personal property which is covered under section 4(a), article X of the state constitution.

(d) ***Duration of lien.*** A lien established in accordance with the provisions of this article may not continue for a period longer than 20 years after the certified copy of an order imposing the fine and/or assessing the costs of prosecution has been recorded, unless within that time an action to foreclose on the lien is commenced as set forth in § 2-427(c) above in a court of competent jurisdiction. In an action to foreclose on the lien or for a money judgment, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the action. The town is entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of an action will not be good against creditors or subsequent purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

(e) ***Jurisdiction over lien.*** The special magistrate will retain jurisdiction over all cases in which a lien has been recorded until the lien has been released. Upon a showing of clear and convincing evidence by the violator, the special magistrate has the authority to reduce the lien amount for pay-off purposes, in the following circumstances:

a. The violator has come into compliance, but due to circumstances beyond his or her control resulting in extreme financial hardship, the violator cannot pay the full amount necessary to satisfy and release the lien; or
b. The violator has not come into compliance, but has a contract to sell the property, contingent upon release of the lien, to a contract purchaser who intends to bring the property into compliance, provided, however, that the contract-purchaser must first enter into an agreement with the town, indicating his intent to bring the property into compliance and a timetable for completing the work, and establishing security for performance. The authority to reduce fines granted to the special magistrate will be applicable to all code enforcement cases in which a lien has been placed on the property and remains unsatisfied.

Sec. 2-428. Request for rehearing and appeals.

(a) Either the town or the violator may request a rehearing of the decision of the special magistrate. A request for rehearing will be made, in writing, and will be filed with the clerk within ten business days of the special magistrate's execution of the order. A request for rehearing will be based only on the grounds that the decision was contrary to the evidence or that the hearing involved an error on a ruling of law that was fundamental to the decision of the special magistrate. The written request for rehearing will specify the precise reasons therefor. The special magistrate will make a determination as to whether or not to rehear the matter and his/her decision will be made at a public hearing. If the special magistrate determines that he or she will grant a rehearing, he/she may:

(1) Schedule a hearing where the parties will be given the opportunity to present evidence or

argument limited to the specific reasons for which the rehearing was granted; or

(2) Modify or reverse the prior order, without receiving further evidence, providing the change is based on a finding that the prior decision of the special magistrate resulted from a ruling on a question of law which the special magistrate has been informed was an erroneous ruling.

Until a request for rehearing has been denied or otherwise disposed of, the order of the special magistrate will be stayed and the time for taking an appeal, pursuant to this section, will not commence to run until the date upon which the special magistrate has finally disposed of the request for rehearing by denying the same, or otherwise.

(b) An aggrieved party, including the town council, may appeal a final order of the special magistrate to the circuit court. Such an appeal will be limited to appellate review of the record created before the special magistrate and will not be a hearing de novo. An appeal must be filed within 30 days of the special magistrate's execution of the order being appealed. A copy of the notice of appeal must be provided to the special magistrate, the town attorney, and the town manager.

Sec. 2-429. Notices.

(a) All notices required by this article will be provided to the alleged violator by (i) certified mail, return receipt requested, subject to the provisions of § 2-429(b) below; or (ii) by hand delivery by the sheriff or other law enforcement officer, code enforcement officer, or other person designated by the director; or (iii) by leaving the notice at the violator's usual place of residence with any person residing therein who is above 15 years of age and informing such person of the contents of the notice; or (iv) in the case of commercial premises, leaving the notice with the manager or other person in charge.

(b) If notice is sent via certified mail, return receipt requested, to the owner of the property in question at the address listed in the Lee County Tax Collector's Office for tax notices, and at any other address provided to the town by such owner, and is returned as unclaimed or refused, notice may be provided by posting as described in subsections (c)(1) and (2) below and by first class mail directed to the addresses furnished to the town, with a properly executed proof of mailing or affidavit confirming the first class mailing.

(c) In addition to provision of notice as set forth in subsection (a), notice may also be served by publication or posting, as follows:

(1) Such notice will be published once during each week for four consecutive weeks (four publications being sufficient) in a Lee County newspaper of general circulation. The newspaper must meet the requirements prescribed under F.S. ch. 50 for legal and official advertisements. Proof of publication must be made in accordance with F.S. §§ 50.041 and 50.051.

(2) In lieu of publication as described in subsection (1), such notice may be posted for at least ten days prior to the hearing or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which must be the property upon which the violation is alleged to exist and the other must be at town hall for the Town of Fort Myers Beach. Proof of posting must be by affidavit of the person posting the notice. The affidavit must include a copy of the notice posted and the date and places of its posting.

(3) Notice by publication or posting may run concurrently with, or may follow, an attempt or attempts to provide notice by hand delivery or by mail as required under subsection (a) above.

(d) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsections (a) and (b), together with proof of publication or posting as provided in subsection (c), will be sufficient to show the notice requirements of this article have been met, without regard to whether or not the alleged violator actually received such notice.

DIVISION 3. CITATIONS

Sec. 2-430. Citation procedures; penalties.

(a) ***Citation training.*** The director may designate certain employees or agents as code enforcement officers. The training and qualifications necessary to be a code enforcement officer will be determined by the director or his/her designee. Employees or agents who may be designated as code enforcement officers include, but are not limited to, code inspectors, law enforcement officers, animal control officers, or fire safety inspectors. Designation as a code enforcement officer does not provide the code enforcement officer with the power of arrest or subject the code enforcement officer to the provisions of F.S. §§ 943.085 through 943.255.

(b) ***Citation issuance.***

(1) A code enforcement officer is authorized to issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of a duly enacted code or ordinance and that the county court or special magistrate, as applicable, will hear the charge.

(2) Prior to issuing a citation, a code enforcement officer must provide notice to the person that a violation of a town code or ordinance has been committed and provide a reasonable time within which the violator may correct the violations. Such time period can be no more than 30 days. If upon personal investigation the code enforcement officer finds that the person has not corrected the violation within the time period, a citation may be issued to the violator. If the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible, or if a repeat violation is found, the code enforcement officer is not required to provide a reasonable time in which to correct the violation and may immediately issue a citation to the person who committed the violation.

(3) A citation issued by a code enforcement officer must be in a form prescribed by the town and contain the following:

a. The date and time of issuance.
b. The name and address of the person to whom the citation is issued.
c. The date and time the civil infraction was committed.
d. The facts constituting reasonable cause.
e. The number or section of the code or ordinance violated.
f. The name and authority of the code enforcement officer.
g. The procedure for the person to follow in order to pay the civil penalty or to contest the citation.
h. The applicable civil penalty if the person elects to contest the citation.
i. The applicable civil penalty if the person elects not to contest the citation.
j. A conspicuous statement that if the person fails to pay the civil penalty within the time allowed, or fails to appear in court to contest the citation, he will be deemed to have waived his right to contest the citation and that, in such case, judgment may be entered against the person for an amount up to the maximum civil penalty.

(c) ***Deposit of original citation.*** After issuing a citation to an alleged violator, the code enforcement officer must deposit the original citation and one copy of the citation with the county court or special magistrate if the alleged violator should so choose.

(d) ***Enforcement by citation.*** Any code or ordinance of the Town of Fort Myers Beach may be enforced using the citation procedure. When the citation procedure is used to enforce town codes and ordinances, the following will apply:

(1) A violation of the code or ordinance is deemed a civil infraction.
(2) A maximum civil penalty not to exceed $500.00 may be imposed.
(3) A civil penalty of less than the maximum civil penalty may be imposed if the person who has committed the civil infraction does not contest the citation.
(4) A citation may be issued by a code enforcement officer who has reasonable cause to believe that a person has committed an act in violation of a code or ordinance.
(5) A citation may be contested in county court.
(6) Such procedures and provisions as are necessary to provide for the enforcement of a

code or an ordinance under the provisions of this division.

(e) Any person who willfully refuses to sign and accept a citation issued by a code enforcement officer will be guilty of a misdemeanor of the second degree, punishable as provided in F.S. §§ 775.082 or 775.083.

(f) The provisions of this section are an additional and supplemental means of enforcing town codes and ordinances and may be used for the enforcement of any code or ordinance, or for the enforcement of all codes and ordinances. Nothing in this section prohibits the town from enforcing its codes or ordinances by any other means.

Sec. 2-431. Conflict.

In the event that any provision in this article is found to be contrary to any other existing town code or ordinances covering the same subject matter, the more restrictive will apply. In the event that any provision in this article is in conflict with the procedures found in F.S. ch. 162, the provisions of the statute will prevail to the extent of such conflict.

Sec. 2-432–2-459. Reserved

ARTICLE VI. IMPLEMENTING PUBLIC CAPITAL IMPROVEMENTS

Sec. 2-460. Applicability.

This article applies to capital improvement projects that have been approved by the town council to be constructed wholly within the incorporated limits of the Town of Fort Myers Beach.

Sec. 2-461. Purpose and intent.

(a) The purpose of this article is to identify the approving authorities for capital improvements initiated by the town council of the Town of Fort Myers Beach. The council's intent is to:

(1) streamline the approval process to correspond with the unusual requirements of public capital improvements;
(2) ensure compliance with all proper building and floodplain management codes; and
(3) ensure that proper approvals have been obtained from governmental agencies having legitimate authority over the activity in question.

(b) Notwithstanding any other provisions of this code, it is the town council's intent to grant the town manager the same level of authority with respect to town capital improvement projects as the director exercises with respect to development orders under ch. 10 of this code.

Sec. 2-462. Procedures.

(a) Capital improvements that require a building permit under ch. 6 of this code shall be submitted and approved in the same manner as building permits for private land development activities.

(b) Capital improvements that require a permit from the South Florida Water Management District or other state or federal agencies shall be submitted and approved in accordance with rules of those permitting agencies.

(c) Capital improvements that will be constructed or improved within rights-of-way maintained by Lee County or by the state of Florida shall be submitted to the engineering departments of those entities with a request for their approval of design and construction methods and materials.

(d) Capital improvements that might normally require a development order under ch. 10 of this code may be submitted and approved through the processes specified in ch. 10 at the sole discretion of the town manager.

Chapters 3--5 RESERVED

movable structure in accordance with § 14-5, ch. 27, and § 34-3151 of this code.

(2) Minor structures that are not permitted by right may be approved in the EC zoning district through the special exception process or as deviations in the planned development rezoning process. Such minor structures may include stairways, walkways, ramps, fences, walls, decks, bathhouses, viewing platforms, gazebos, chickees, patios, and other paved areas. These structures should be located as close to the landward edge of the EC zoning district as possible and must minimize adverse effects on the beach and dune system. See §§ 34-88, 34-932(b), and 34-652 for details.

(3) Minor structures not qualifying by right, by special exception, or through another provision of this code are not permitted in the EC zoning district. See § 34-652 for details.

(c) When existing major structures that were built partially or fully seaward of the 1978 coastal construction control line are reconstructed, they shall be rebuilt landward of this line. Exceptions to this rule may be permitted through the planned development zoning process only where it can be scientifically demonstrated that the 1978 coastal construction control line is irrelevant because of more recent changes to the natural shoreline. The town shall seek the opinion of the Florida Department of Environmental Protection in evaluating any requests for exceptions. Exceptions must also comply all state laws and regulations regarding coastal construction.

(d) New and expanded beachfront development must construct state-approved dune walkover structures at appropriate crossing points (see § 10-415(b). All walkovers must meet these criteria in addition to state approval:

(1) Walkovers must be placed perpendicular to the dune or no more than 30 degrees from perpendicular. New walkovers cannot be placed closer than 150 feet to the nearest walkover.

(2) Walkovers must be supported on posts embedded to a sufficient depth to provide structural stability. These posts may not be encased in concrete.

(3) Walkovers cannot exceed 4 feet in width when serving single-family homes or 6 feet in width otherwise.

(4) Walkovers must be elevated at least 2 feet above the highest point of the dune and dune vegetation and must extend to the seaward toe of any existing dune and dune vegetation.

(5) Walkovers must be constructed in a manner that minimizes short-term disturbance of the dune system. Any dune vegetation destroyed during construction must be replaced with similar native vegetation that is suitable for beach and dune stabilization.

(6) Walkovers may not be constructed during the sea turtle nesting season (May 1 through October 31).

(e) For newly created lots and parcels, a 50-foot separation between structures and dunes is required by § 10-415(b).

Sec. 6-367. Public access.

Development or construction activity may not interfere with accessways established by the public through private lands to lands seaward of mean high tide line or mean high-water line by prescription, prescriptive easement or any other legal means, unless the developer provides a comparable alternative accessway. The developer has the right to improve, consolidate or relocate such public accessways if the accessways provided are:

(1) Of substantially similar quality and convenience to the public;

(2) Approved by the town council;

(3) Consistent with the Fort Myers Beach Comprehensive Plan; and

(4) Approved by the Florida Department of Environmental Protection whenever changes are proposed seaward of the 1991 coastal construction control line.

Secs. 6-368--6-400. Reserved.

ARTICLE IV. FLOODPLAIN REGULATIONS

DIVISION 1. GENERALLY

Sec. 6-401. Reserved.

Sec. 6-402. Findings of fact.

(a) The Town of Fort Myers Beach is subject to periodic inundation which may result in the loss of life and property, as well as health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(b) These flood losses are caused by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated or floodproofed or otherwise unprotected from flood damages.

Sec. 6-403. Purpose of article.

It is the purpose of this article to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion; and
(2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.

Sec. 6-404. Objectives of article.

The objectives of this article are to:

(1) Protect human life and health;
(2) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
(3) Minimize prolonged business interruptions;
(4) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in floodplains; and
(5) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas.

Sec. 6-405. Definitions.[3]

The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Unless specifically defined in this section, words or phrases used in this article shall be interpreted so as to give them the meanings they have in common usage and to give this article its most reasonable application.

Accessory structure means a building or structure which is customarily incidental and subordinate to a principal building or to the principal use of the premises, and located on the same premises.

Addition means any walled and roofed expansion that increases the floor space of an existing building in which the addition is connected by a common loadbearing wall other than a firewall. Any walled and roofed addition which is connected by a firewall or is separated by independent perimeter loadbearing walls is considered new construction.

Appeal means a request for a review of the coordinator's interpretation of any provision of this article. A request for a variance from the precise terms of this article is not an appeal.

Area of special flood hazard means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year. The entire Town of Fort Myers Beach has been designated an area of special flood hazard by the Federal Emergency Management Agency (see § 6-408).

---

[3]***Cross reference(s)--****Definitions and rules of construction generally, § 1-2.*

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year, as determined by the maps described in § 6-408.

Breakaway walls means any type of walls, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic, or any other suitable building materials, which are not part of the structural support of the building and which are designed and constructed to collapse under specific lateral loading forces without causing damage to the elevated portion of the buildings or the supporting foundation system on which they are used.

Building means any structure built for support, shelter, or enclosure for any occupancy or storage.

Coastal high-hazard area means the area subject to high-velocity waters caused by storms. The coastal high-hazard area is designated on the flood insurance rate map as zones V1--V30.

Coordinator means the town's flood insurance coordinator, who has been designated by the town manager to implement, administer, and enforce these floodplain regulations.

Cost of improvements means the total of all costs for the repair, reconstruction, rehabilitation, additions, or other improvements to a structure. These costs include materials, labor, profit, and overhead, and include the costs of demolition and built-in appliances, but do not include the costs of plans, surveys, permits, or outdoor improvements such as landscaping. These costs may be substantiated by a contractor licensed in accordance with §§ 6-231–330 through submission of actual construction contracts, accompanied by the contractor's affidavit attesting to their accuracy and completeness. The coordinator may also accept other reliable methods for substantiating costs, such as building valuation tables published by the International Code Council, provided the type of construction and extent of improvement is accurately reflected.

Development means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, dredging, filling, grading, paving, excavating, drilling operations, or storage of materials or equipment.

Elevated building means a building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, columns (posts and piers), or shear walls.

Existing, when referring to a building or structure, means that construction had commenced on the building or structure, or portion thereof, prior to August 31, 1984.

Existing manufactured home park or manufactured home subdivision means a parcel or contiguous parcels of land divided into two or more manufactured home lots or sites for rent or sale for which the construction of facilities for servicing the lot or site on which the manufactured home is to be affixed, including, at a minimum, the installation of utilities, either final site grading or the pouring of concrete pads, and the construction of streets, was completed prior to August 31, 1984.

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

Flood and ***flooding*** mean a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters.
(2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood insurance rate map (FIRM) means the official map of Fort Myers Beach on file with the coordinator, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones for Fort Myers Beach, including base flood elevations and coastal high hazard areas (V zones).

Floodproofing means any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures,

and/or their contents. There are three major kinds of floodproofing in coastal areas:

(1) Elevation of the lowest floor is the most common and economical method for floodproofing structures and is the only acceptable method under this code for floodproofing new or substantially improved residential structures.
(2) For dry floodproofing, a commercial building is made watertight up to the base flood elevation and strengthened to resist all hydrostatic and hydrodynamic loads and to counter the effects of buoyancy. See § 6-472(4).
(3) For wet floodproofing, damage to a building is avoided by allowing flood waters to temporarily fill the building to equalize loads and prevent buoyancy. See §§ 6-446(e) and 6-472(5)b.

Floor means the top surface of an enclosed space in a building, i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used for parking vehicles.

Functionally dependent facility means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of passengers. The term does not include longterm storage, manufacture, sales, or entertainment facilities.

Highest adjacent grade means the highest elevation of the ground surface, either prior to or after construction whichever is higher, next to the proposed walls of a structure.

Historic structure means any structure that is:

(1) Listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register of Historic Places; or
(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district; or
(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior and also listed on a local inventory of historic places, either individually or as a contributing structure in a historic district, pursuant to ch. 22 of this code.

Lowest floor means the lowest floor of the lowest enclosed space, including any floors below grade. An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the non-elevation design requirements of this article.

Mangrove stand means an assemblage of mangrove trees, which are mostly low trees noted for a copious development of interlacing adventitious roots above the ground, which contains one or more of the following species: black mangrove (Avicennia nitida), red mangrove (Rhizophora mangle), white mangrove (Languncularis racemosa), and buttonwood (Conocarpus erecta).

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. This definition includes mobile homes and most park trailers (those larger than 400 square feet and/or not towable by a light duty truck), as defined in F.S. § 320.01(2), but does not include other types of recreational vehicles, as defined in F.S. § 320.01(1). However, a manufactured building as defined in F.S. ch. 553, pt. IV is not considered a manufactured home.

Market value of the structure, depending on the context, means either:

(1) the value of the structure prior to the start of the improvement, or
(2) in the case of damage, the value of the structure prior to the damage occurring.

Value will be as determined (for the structure only) by the Lee County Property Appraiser, by a private appraisal acceptable to the coordinator, or by an independent appraisal commissioned by the coordinator. This value shall not include the value of the land on which the structure is located, nor the value of other structures or site improvements

on the site, nor the value of the structure after the proposed improvements are completed. Any proposed value submitted via private appraisal that exceeds the Property Appraiser's valuation by more than 35 percent shall be subject to peer review by a qualified local appraiser or a new independent appraisal, to be commissioned by the coordinator, with the full cost of the review or new appraisal paid by the applicant to the town prior to initiation of the process. In lieu of submitting a private appraisal, an applicant may obtain an independent appraisal through the coordinator, with the full cost paid to the town prior to initiation of the process.

Mean sea level means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this article, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929, to which base flood elevations shown on the flood insurance rate map are referenced.

National Geodetic Vertical Datum (NGVD), as corrected in 1929, is a vertical control used as a reference for establishing varying elevations within the floodplain.

New construction means structures for which the start of construction commenced on or after May 1, 1990, and includes any subsequent improvements to such structures.

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 August 31, 1984.

Primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

Reconstruction means an improvement to an existing building that substantially replaces all or a portion of an existing building with a new building, or physically moves an existing building to a different location.

Recreational vehicle means, for floodplain management purposes, a vehicle which is:

(1) Built on a single chassis;
(2) Four hundred square feet or less when measured at the largest horizontal projection;
(3) Designed to be self-propelled or permanently towable by a light duty truck; and
(4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Registered architect means an architect registered or licensed by the state of Florida to practice architecture, or who is authorized to practice architecture in Florida under a reciprocal registration or licensing agreement with another state.

Registered professional engineer means an engineer registered or licensed by the state of Florida to practice engineering, or who is authorized to practice engineering in Florida under a reciprocal registration or licensing agreement with another state.

Registered land surveyor means a land surveyor registered or licensed by the state of Florida to practice land surveying, or who is authorized to practice surveying in Florida under a reciprocal registration or licensing agreement with another state. This term includes professional surveyors and mappers registered by the state of Florida.

Rehabilitation means an improvement to an existing building that does not expand its external dimensions.

Repair means the replacement or renewal of nonstructural elements of an existing building.

Reinforced pier means a system designed and sealed by a state-registered architect or engineer which is an integral part of a foundation and anchoring system for the permanent installation of

a manufactured home or recreational vehicle, as applicable, so as to prevent flotation, collapse or lateral movement of the manufactured home or recreational vehicle due to flood forces. At a minimum, a reinforced pier would have a footing adequate to support the weight of the manufactured home or recreational vehicle under saturated soil conditions such as occur during a flood. In areas subject to high-velocity floodwaters and debris impact, cast-in-place reinforced concrete piers may be appropriate. Nothing in this division shall prevent a design which uses pilings, compacted fill or any other method, as long as the minimum flood and wind standards are met.

Repetitive loss means flood-related damages sustained by a structure on two or more separate occasions during any ten-year period, for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damages occurred. For the purposes of computing this 25 percent cost only, the cost of nonstructural interior finishings may be deducted from the cost of repairs, including, but not limited to, the cost of finish flooring and floor coverings, base molding, nonstructural substrates, drywall, plaster, paneling, wall covering, tapestries, window treatments, decorative masonry, paint, interior doors, tile, cabinets, moldings and millwork, decorative metal work, vanities, electrical receptacles, electrical switches, electrical fixtures, intercoms, communications and sound systems, security systems, HVAC grills and decorative trim, freestanding metal fireplaces, appliances, water closets, tubs and shower enclosures, lavatories, and water heaters.

Sand dunes means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Start of construction, for other than new construction or substantial improvements under the Coastal Barrier Resources Act (Public Law 97-348), includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory structures, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure, whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. Actual repair work need not have been performed on flood-related damage.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cumulative cost of which equals or exceeds, over any five-year period, 50 percent of the market value of the structure either before the start of construction of the improvement or, if the structure has been damaged and is being restored, before the damage occurred. The term "substantial improvement" includes structures that have incurred "substantial damage" or "repetitive loss," regardless of the actual repair work performed. The term "substantial improvement" does not, however, include either:

(1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to ensure safe living conditions; or
(2) costs of alterations or improvements whose express purpose is the mitigation of future

storm damage, provided they do not exceed 50 percent of the market value of the structure over any one-year period; examples of such mitigation include the installation of storm shutters or shatterproof glass, strengthening of roof attachments, floors, or walls, and minor floodproofing.

a. Storm mitigation improvements may be made during the same year as other improvements, but the total cost of improvements of both types that are made over any one-year period may not exceed 50% of the market value of the structure.
b. The annual allowance for storm mitigation improvements is not applicable to any costs associated with a lateral or vertical addition to an existing structure or to the complete replacement of an existing structure; or

(3) any alteration of a "historic structure" provided that the alteration would not preclude the structure's continued designation as a "historic structure."

Variance means a grant of relief to a person from the requirements of this article which permits construction in a manner otherwise prohibited by this article where specific enforcement would result in unnecessary hardship.

Sec. 6-406. Penalty for violation of article.

The director and the coordinator are authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this article.

Sec. 6-407. Applicability of article.

This article shall apply to the entire Town of Fort Myers Beach. No structure or land shall be located, extended, converted, or structurally altered without full compliance with the terms of this article.

Sec. 6-408. Basis for establishing flood regulations.

The entire Town of Fort Myers Beach has been designated an area of special flood hazard by the Federal Emergency Management Agency. Their maps illustrating the minimum federal floodplain regulations as adopted on September 19, 1984, and all revisions thereto, are adopted by reference and declared to be a part of this article. These flood insurance rate maps show base flood elevations and coastal high-hazard areas (V zones) for the entire town and are available for inspection at town hall and at the Lee County Administration Building, 2115 Second Street, Fort Myers, or can be viewed at *www.fema.gov*, or can be purchased by calling 1-800-358-9616. The individual map panels are numbered as follows:

General area shown	***Panel number***	***Latest***
Bowditch – Donora	125124 0429D	9/20/96
Donora – Gulfview	125124 0433B	9/19/84
Gulfview – Flamingo	125124 0441B	9/19/84
Flamingo – Buccaneer	125124 0442C	7/20/98
Buccaneer – Big Carlos	125124 0444D	7/20/98

Sec. 6-409. Reserved.

Sec. 6-410. Conflicting provisions.

Where this article and any other part of this code conflict or overlap, whichever imposes the more stringent restriction shall prevail.

Sec. 6-411. Reserved.

Sec. 6-412. Warning and disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This article shall not create liability on the part of the town council, or by any officer or employee thereof, for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder.

Secs. 6-413--6-440. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 6-441. Designation of administrator.

The town manager shall designate a flood insurance coordinator ("coordinator") to administer and implement the provisions of this article on behalf of the Town of Fort Myers Beach.

Sec. 6-442. Reserved.

Sec. 6-443. Permit required.

All land-disturbing activities and improvements to land that are defined in this article as "development" must comply with all provisions of this article and must obtain permits in accordance with the procedures in this division.

Sec. 6-444. Applications and certifications.

(a) The provisions of this article will be enforced concurrently with review of proposed building permits and development orders. No separate application is required. However, the following information is required on the plans submitted for review:

(1) Elevation, in relation to mean sea level, of the proposed lowest floor of all structures;
(2) Elevation in relation to mean sea level to which any nonresidential structure will be floodproofed;
(3) A certificate from a registered professional engineer or architect that the nonresidential floodproofed structure meets the floodproofing criteria in § 6-472, when dry or wet floodproofing is proposed; and
(4) An operation and maintenance plan when dry floodproofing is proposed:
  a. At a minimum this plan must identify who is responsible for maintenance and installation of the flood barriers that will protect wall and door openings and where the flood barriers will be stored when not in use.
  b. This plan must also provide a realistic estimate of the manpower, time, and equipment required for installation.
  c. This plan must also include a binding requirement for present and future owners to conduct a test installation before May 31 of each year of all flood barriers, with 10 days' advance written notice provided to the town manager to allow the manager or coordinator to witness this test.
  d, The plan must also include a binding requirement that upon completion of each annual test, a written report will be submitted by the owners to the coordinator within 30 days to document the results of the test and set forth any corrective measures that may be necessary, including proposed revisions to the operation and maintenance plan as to responsibility for maintenance, installation, and storage of flood barriers.

(b) Prior to issuance of approvals, applicants must supply evidence that all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

(c) A permit holder must submit to the coordinator a floor elevation or floodproofing certification after the lowest floor is completed, or, in instances where the structure is subject to the regulations applicable to coastal high-hazard areas, after placement of the horizontal structural members of the lowest floor:

(1) Within 21 calendar days of establishment of the lowest floor elevation, or floodproofing by whatever construction means, or upon placement of the horizontal structural members of the lowest floor, whichever is applicable, it shall be the duty of the permit holder to submit to the coordinator a certification of the elevation of the lowest floor, floodproofed elevation, or the elevation of the lowest portion of the horizontal structural members of the lowest floor, whichever is applicable, as built, in relation to mean sea level. Such certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by a registered land surveyor or professional engineer.
(2) When floodproofing is utilized for a particular building, the certification shall be prepared by or under the direct supervision

of a registered professional engineer or architect and certified by a registered professional engineer or architect.

(3) Any work done within the 21-day calendar period and prior to submission of the certification shall be at the permit holder's risk.

(d) The coordinator shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make the corrections required by this section shall be cause to issue a stop work order for the project.

Sec. 6-445. Appeals.

Any affected person may file an appeal alleging that there has been an error in any requirement, decision or determination made by the coordinator in the enforcement or administration of this article. Such appeals shall be processed and decided in the same manner as for appeals under ch. 34 of this code.

Sec. 6-446. Variances.

(a) Variances from base flood elevation requirements may only be granted upon a clear showing by the applicant that an exceptional hardship would result from compliance with the requirements. If a variance is granted, the coordinator shall notify the applicant, in writing, that:

(1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as $25.00 for $100.00 of insurance coverage; and

(2) Such construction below the base flood level increases risks to life and property.

Such notification shall be maintained with a record of all variance actions.

(b) Variances shall only be granted upon a determination, based upon competent substantial evidence presented by the applicant, that:

(1) It will not result in increased flood heights, additional threats to public safety or extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing regulations or ordinances; and

(2) The lot or parcel in question is so small or has such unusual characteristics that the prescribed standards cannot be met without some relief so as to allow a reasonable use of the property.

(c) Variances shall only be issued upon a determination that the variance being granted is the minimum necessary, considering the flood hazard, to afford relief.

(d) Variances may be issued for repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(e) Variances may be issued to allow non-residential buildings other than those already identified in § 6-472(5) to contain wet-floodproofed space below the base flood elevation, provided:

(1) the building is not in the coastal high-hazard areas; and

(2) such action is determined to be in the public interest.

Any such buildings must meet the technical standards for wet floodproofing found in § 6-472(5)b.

(f) A variance is a deviation from the exact terms and conditions of this article. Requests for variances shall be processed and decided in the same manner as for variances under ch. 34 of this code following public hearings before the local planning agency and town council.

(g) In passing upon variance applications, the town council shall consider all technical evaluations, all relevant factors including local and federal policies on flood protection, all standards specified in this article, and:

(1) The danger that materials may be swept onto other lands to the injury of others;

(2) The danger to life and property due to flooding or erosion damage;

(3) The susceptibility of the proposed facility and its contents to flood damage, and the

effect of such damage on the individual owner;
(4) The importance of the services provided by the proposed facility to the community;
(5) The necessity to the facility of a waterfront location, in the case of a functionally dependent facility;
(6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
(7) The compatibility of the proposed use with existing and anticipated development;
(8) The relationship of the proposed use to the comprehensive plan;
(9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
(10) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters, and the effects of wave action, if applicable, expected at the site; and
(11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(h) Upon consideration of the factors listed in subsection (g) of this section and purposes of this article, the town council may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.

Secs. 6-447--6-470. Reserved.

DIVISION 3. STANDARDS

Sec. 6-471. General standards.

The following general standards must be followed within the Town of Fort Myers Beach:
(1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure;
(2) Manufactured homes shall be securely anchored to an adequately anchored foundation system to prevent flotation, collapse, or lateral movement. Methods of anchoring may include but are not limited to use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state requirements for resisting wind forces;
(3) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
(4) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
(5) Electrical, heating, ventilation, plumbing and air conditioning equipment, and other service facilities shall be designed and located so as to prevent water from entering or accumulating within the components during conditions of flooding. Utility equipment shall be exempt from this requirement as long as the utility company which owns the equipment accepts the sole responsibility for any flood damage to the equipment by filing written acceptance of such responsibility with the local building director prior to claiming the exemption;
(6) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;
(7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters; and
(8) Any alteration, repair, reconstruction, or improvement to a structure which is in compliance with the provisions of this

article shall meet the requirements of new construction as contained in this article.

Sec. 6-472. Specific standards.

The following specific standards must be followed within the Town of Fort Myers Beach:

(1) ***Conventional residential construction.*** New construction or substantial improvement of any residential structure shall have the lowest floor elevated to or above the base flood elevation. Space below the base flood elevation in A zones is regulated in accordance with standards of subsection (5) of this section. (See subsection (7) for additional restrictions in V zones.)
   a. When an improvement to an existing residential structure involves reconstruction or includes an addition, and the improvement's cost exceeds the 50 percent threshold in this article's definition of "substantial improvement," then the reconstruction or addition shall be elevated the same as new construction, with its lowest floor elevated to or above the base flood elevation.
   b. When such an improvement does not exceed the 50 percent threshold, any additional enclosed floor space must be elevated to or above the structure's existing lowest floor.

(2) ***Manufactured homes.*** New or expanded parks or subdivisions for manufactured homes are not allowed in the Town of Fort Myers Beach. Where zoning allows existing manufactured homes to be replaced or substantially improved:
   a. on individual subdivision lots, replacement or substantially improved manufactured homes must be elevated so that the lowest floor of the manufactured home is at or above the base flood elevation and in compliance with the anchoring requirements of § 6-471(2), or
   b. on an existing site in a mobile home park, the manufactured home chassis must be supported by reinforced piers, or other foundation elements of at least equivalent strength, that are no less than 36 inches in height above highest adjacent grade, and the manufactured home shall comply with the anchoring requirements of § 6-471(2). However, this 36-inch alternative may not be used if a manufactured home on that specific site has incurred "substantial damage" from flooding, as defined in this article; if "substantial damage" has occurred, the manufactured home or a replacement manufactured home on that site must be elevated so that the lowest floor is at or above the base flood elevation and in compliance with the anchoring requirements of § 6-471(2).

(3) ***Recreational vehicles.*** New parks or subdivisions for recreational vehicles are not allowed in the Town of Fort Myers Beach. Where zoning allows recreational vehicles to be placed or substantially improved on a site located in an existing recreational vehicle park, they must be either:
   a. placed on the site for fewer than 180 consecutive days and fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanently attached additions); or
   b. elevated so that the lowest floor of the recreational vehicle is at or above the base flood elevation and in compliance with the anchoring requirements of § 6-471(2).

(4) ***Nonresidential construction.*** New construction or substantial improvement of any commercial or other nonresidential structure shall either:

a. have the lowest floor elevated to or above the base flood elevation, or,

b. together with attendant utility and sanitary facilities, be dry-floodproofed so that below the base flood level the structure is watertight, with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

   1. Dry-floodproofing up to the base flood elevation is the preferred alternative for providing sidewalk-level commercial space in the Future Land Use Map's Pedestrian Commercial category, except in V zones where dry-floodproofing is not permitted (see § 6-472(7)).
   2. A registered professional engineer or architect shall develop and/or review the structural design, specifications, and plans and shall certify that the they meet the dry-floodproofing standards of this subsection and the accepted standards of practice for meeting the applicable provisions of 44 CFR 60.3(c)(3)ii. Such certification shall be provided to the coordinator, who will maintain a public record at town hall of all such certifications.
   3. An operation and maintenance plan must be submitted in accordance with § 6-444(a)(4). Failure to conduct the annual test installation or submit the annual report required by this plan shall subject the owner to the code enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) after 30 days' prior written notice sent via certified mail, return receipt requested.

c. No person may undertake a series of improvements, additions, and/or demolitions that connects two or more existing structures in a manner that evades the requirement to either elevate or dry-floodproof new construction or substantial improvements to nonresidential structures.

(5) ***Space below elevated buildings (A zones)***. New construction or substantial improvements of elevated buildings, both residential and non-residential, may contain enclosed or unenclosed space below the base flood elevation provided it is usable solely for parking, building access, or storage (additional restrictions for coastal high-hazard areas are provided in subsection (7) below).

a. Enclosed space below the base flood elevation can include up to 100 percent of the space below an elevated building but cannot extend beyond the perimeter of the elevated structure.

b. Partially or fully enclosed space below the base flood elevation, including garages, must be wet-floodproofed, designed to preclude finished living space below the base flood elevation, and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls below the base flood elevation.

c. The following requirements apply to all new construction and substantial improvements below elevated buildings in A zones:

   1. Designs for complying with these requirements must meet the following minimum criteria or be certified by a registered professional engineer or architect as providing equivalent automatic equalization of hydrostatic flood forces:
      - -a- A minimum of two openings shall be provided for any enclosed space having a total net area of not less than one square inch for every square foot of enclosed space subject to flooding;
      - -b- The bottom of all openings shall be no higher than one foot above highest adjacent grade; and
      - -c- Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

Technical guidance in meeting these requirements may be found in FEMA's *Technical Bulletin 1-93*.

2. Electrical, plumbing, and other utility connections below the base flood elevation must be designed and constructed so that floodwaters cannot infiltrate or accumulate within the component or group of components. Technical guidance in meeting these requirements may be found in *Protecting Building Utilities From Flood Damage*, FEMA Publication 348.
3. Access to the enclosed space below elevated buildings shall be the minimum necessary to allow for:
   -a- Parking of vehicles (garage or other overhead doors), and
   -b- External entries including access for storage (no more than one standard exterior door with no more than a single door opening of up to 36 inches in each of the four exterior walls, or windowless double exterior doors with no more than 72 inches of opening in each exterior wall), and
   -c- Internal entry doors to the living space (access to stairway or elevator from parking and/or storage space).
4. The interior portion of any enclosed space below elevated buildings may not be temperature-controlled and must be constructed and finished only with wall, floor, and ceiling materials that comply with all provisions of § 6-472(5). Interior partitions are limited to separating parking spaces from building access or storage spaces.
5. All structural and non-structural components must be constructed of materials that are durable, resistant to flood forces, and resistant to deterioration caused by repeated inundation by flood water. Technical guidance in meeting this requirement may be found in FEMA's *Technical Bulletin 2-93.* Technical guidance in meeting this requirement for elevators may be found in FEMA's *Technical Bulletin 4-93.*
6. These provisions apply to space below the base flood elevation to be used for parking, building access, or storage. Other uses proposed for wet-floodproofed space may be approved by variance as provided in § 6-446(e). Examples could include functionally dependent facilities, historic buildings, and utility structures.
7. Any application for a garage or other fully enclosed space formed by exterior walls below the base flood elevation must be accompanied by a signed and notarized acknowledgment of the limitations on allowable uses of the enclosed space that applied when building permits were obtained, using a form provided by the coordinator. This agreement shall be recorded in the official record books in the office of the clerk of the circuit court to provide additional notice of these limitations to future purchasers.

(6) ***Accessory structures.*** Accessory structures may be exempted from meeting the elevation requirements only if:

a. The structure is securely anchored to resist flotation or lateral movement and offers the minimum resistance to the flow of floodwaters; and
b. The total cost of the structure does not exceed 10% of the market value of the principal building, or the following amounts, whichever is greater:
   1. $16,000 for a single-family dwelling unit or other single unit.
   2. $32,000 for a two-family dwelling unit.
   3. $50,000 for a multiple-family building, hotel/motel, or commercial establishment.

   These dollar amounts may be increased each year beginning January 1, 2008 by the percentage increase of the Consumer Price Index–All Urban Consumers (CUP-U), All Items, U.S. City Average (maintained by the Bureau of Labor Statistics); and

c. The structure is used exclusively for nonhabitable recreational, security, or storage purposes and not used as offices, kitchens, or living space; and
d. All electrical, air conditioning, or heating equipment is elevated above the base flood elevation or floodproofed in accordance with § 6-472(5)c.2); and
e. Openings to equalize hydrostatic pressure during a flood are provided in conformance with § 6-472(5)b.1; and
f. All structural and non-structural components below base flood elevation are constructed of materials that are durable, resistant to flood forces, and resistant to deterioration caused by repeated inundation by flood water. Technical guidance in meeting this requirement may be found in FEMA's *Technical Bulletin 2-93.*
g. For accessory structures located in coastal high-hazard zones (V zones), the following additional requirements also apply:
    1. Only breakaway walls may be used below the base flood elevation.
    2. The structure must be constructed with a piling or column foundation system that is adequately embedded to resist scour and lateral deflection.
    3. Floor slabs may not be structurally attached to pilings or columns and must be located at existing grade.
    4. The lowest horizontal structural member of roof systems, including plates and beams connecting the pilings or columns, must be placed at or above the base flood elevation.

(7) ***Coastal high-hazard areas (V zones).*** Certain areas of the town are designated as coastal high-hazard areas (V zones) because they have special flood hazards associated with wave wash. In V zones, the following additional provisions shall apply to all construction including both residential and commercial buildings:

a. All new construction shall be located landward of the reach of the mean high tide line and landward of the 1978 coastal construction control line except as provided in § 6-366.
b. All new construction and substantial improvements shall be elevated so that the lowest supporting horizontal member, excluding pilings or columns, is located at or above the base flood elevation level, with all space below the lowest supporting member open so as not to impede the flow of water. Breakaway walls may be permitted and must be designed to wash away in the event of abnormal wave action in accordance with the remainder of this subsection.
c. Improvements that do not exceed the 50 percent threshold for being classified as a substantial improvement must have any additional enclosed floor space elevated to or above the structure's existing lowest floor.
d. All new construction and substantial improvements shall be securely anchored on pilings or columns.
e. All pilings and columns and the attached structures shall be anchored to resist flotation, collapse, and lateral movement due to the effect of wind and water loads acting simultaneously on all building components. The anchoring and support system shall be designed with wind and water loading values as required by the Florida Building Code and the base flood event respectively.
f. Compliance with the provisions contained in subsections (7)b, d, and e of this section shall be certified by a registered professional engineer or architect.
g. The use of fill as structural support is prohibited.

h. Man-made alterations to sand dunes and mangrove stands that would increase potential flood damage are prohibited.
i. Nonsupporting breakaway walls, latticework or decorative screening shall be allowed below the base flood elevation provided it is not part of the structural support of the building and is designed so as to break away, under abnormally high tides or wave action, without damage to the structural integrity of the building on which it is to be used, and provided the following design specifications are met:
   1. Design safe loading resistance of each wall shall be not less than ten and not more than 20 pounds per square foot; or
   2. If more than 20 pounds per square foot, a registered professional engineer or architect shall certify that the design wall collapse would result from a water load less than that which would occur during the base flood event, and the elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Water loading values shall be those associated with the base flood. Wind loading values shall be those required by the Florida Building Code.
j. If breakaway walls are utilized, such enclosed space must not be used for human habitation and must be designed to be used only for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Space enclosed by latticework and breakaway walls in a V zone is subject to the same limitations as to size, usage, and formal acknowledgments that apply below base flood elevation in an A zone, as provided in subsection (5) above.
k. Prior to construction, plans for any structure that will have breakaway walls must be submitted to the coordinator for approval.
l. Any alteration, repair, reconstruction, or improvement to a structure shall not enclose the space below the lowest floor except with breakaway walls, and except as provided for in the remainder of this subsection.
m. The placement of manufactured homes is prohibited. A replacement recreational vehicle may be placed in an existing recreational vehicle park, provided the mobility standards of § 6-472(3)a. are met.
n. Electrical, plumbing, and other utility connections are prohibited below the base flood elevation except where components must be extended below the base flood elevation for service connections or code compliance (such components must be designed and constructed so that floodwaters cannot infiltrate or accumulate within the components). Technical guidance in meeting these requirements may be found in *Protecting Building Utilities From Flood Damage*, FEMA Publication 348.

Sec. 6-473. Reserved.

Sec. 6-474. Standards for subdivision proposals.

(a) All subdivision proposals shall be consistent with the need to minimize flood damage.

(b) All subdivision proposals shall have public utilities and facilities such as sewers, electrical and water systems located and constructed to minimize flood damage.

(c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(d) Base flood elevation data shall be provided for all subdivision and development proposals.

CHAPTERS 7--9 RESERVED

necessary variances and deviations have also been approved. After a variance or deviation request has been heard and has been approved or denied, the applicant shall proceed with the preparation of all the documents necessary for the approval of the development order.

(i) ***Deviations in planned developments.*** For developments that have received zoning as a planned development, specific deviations from the terms of these regulations shall not be required if such deviations were approved as part of the schedule of deviations attendant to the master concept plan.

Sec. 10-105. Preapplication meeting.

All applicants are encouraged to submit an application for an informal meeting with the director's staff for the purpose of advancing a conceptual plan for development prior to making formal application for approval of a development order. The results of the meeting shall not be binding upon the developer or the town.

Sec. 10-106. Revocation of existing development orders on granting of new development order.

In those cases where an applicant wishes to apply for a development order on property upon which a development order has been granted and is still valid, the applicant must, as a condition of making application for a new development order, agree to the revocation and cancellation of the entire existing development order upon granting of the new development order. This agreement shall be in writing and shall be irrevocable.

Sec. 10-107. Initiation of application; designation of representative.

All legal and equitable owners of the property must jointly authorize the filing of an application for a development order and any subsequent amendments thereto. The applicants shall designate a representative who shall have full power and authority to represent and bind all legal and equitable owners of the property. Legal and equitable owners of the property include but are not limited to the heirs, successors, and assigns of the legal and equitable owners, all mortgagees, purchasers of all or any portion of the property under a sales contract or an agreement for deed, and all trustees. The authority of the duly authorized representative for the applicant shall continue should an amendment to the development plan be sought if all new legal or equitable owners have joined in the application and that authority has not been expressly revoked by any of the legal or equitable owners.

Sec. 10-108. Application procedure.

(a) The general procedure to obtain a development order requires that the applicant employ a registered professional engineer and other development consultants, as may be required, to prepare engineered drawings, plans, reports, calculations, and legal documents that are specified in this chapter. The applicant shall submit a completed application, pay all required application fees and submit all required submittals to the director. The director will review the data submitted by the applicant and will approve or deny the development order request. Review of submittals shall be performed as noted in § 10-109.

(b) The development order must be approved prior to approval of plats and prior to the issuance of a building permit. No estoppel argument or grievance of any sort shall be made by any applicant who submits simultaneously for development orders and building permits and has to incur further expense to revise any documents or drawings submitted.

(c) Developments required to plat shall submit the application for plat review pursuant to the procedures and application requirements for a development order. Application may be made simultaneously for plat review and development order review.

Sec. 10-108.1. Payment of taxes.

No development orders or plats shall be approved for the subject property if ad valorem taxes or assessments against the property are delinquent or if there are outstanding tax certificates issued for the property.

Sec. 10-109. Review procedure; action by director.

(a) The submittal for development order approval shall be made to the director. The director will log

in the submittal transaction and will schedule a time and due date for completion of the submittal review. No review shall take place unless all appropriate filing fees and charges have been paid. After the initial review of the submittal, the director will notify the applicant, in writing, of the results of the review, and the rationale upon which any unfavorable decision was based.

(b) The director will take one of the following actions as a response to a submittal:

(1) Grant approval of the development order;
(2) Deny approval of the development order; or
(3) Grant conditional approval subject to the applicant fulfilling certain specified terms as outlined in the approval letter. The granting of conditional approval shall not be granted as a matter of right, but may be granted as a matter of discretion by the director. Should the applicant not meet the conditions set forth in the conditional approval, the conditional approval shall be automatically rescinded, and all funds expended in reliance on the conditional approval shall be expended at the applicant's own risk. The granting of conditional approval shall be subject to the conditions and time constraints imposed by the director in the conditional approval letter.

(c) When the director denies an application, a list of deficiencies requiring correction will be sent to the applicant with a letter stating that the application has been denied.

Sec. 10-110. Resubmittal of application following denial.

(a) Where the director denies approval of the application for a development order and the submittals pursuant thereto, then the applicant may do either of the following:

(1) Redraft and resubmit the submittals required for approval to the director in accordance with §§ 10-108 and 10-109; or
(2) Appeal the denial of the development order submittal in accordance with the provisions of § 10-112.

(b) Subsequent to notification that the plans have not been approved due to deficiencies, the applicant shall have 180 days to submit a supplement or corrected drawings or plans setting forth those corrections and changes necessary to remedy the deficiency. If the supplement is not submitted in 180 days, the application shall be deemed withdrawn.

(c) Where the applicant is required to redraft and resubmit to pursue approval of an application, the applicant will submit such revised drawings, plans, reports, calculations, etc., as may be deemed necessary by the director to substantiate compliance with this chapter.

Sec. 10-111. Issuance of order; approval letter and stamping of drawings.

When the director grants approval of all development order submittals, the development order shall be issued. The director shall issue a development order approval letter and will stamp the approved development order drawings with an appropriate development order approval stamp.

Sec. 10-112. Appeals.

(a) ***Right of appeal.***

(1) The applicant may file an appeal of any decision of the director in accordance with § 34-86.
(2) An appeal is not a legal substitute for a variance. Any appeal that requests a departure from or waiver of the terms and conditions of this chapter shall not be heard through the appeal process, except as provided in § 10-104(f).

(b) ***Decisions.***

(1) If the decision of the director is upheld, then the applicant may redraft and resubmit all documents which are necessary for the appropriate approval in accordance with §§ 10-109 and 10-110.
(2) If the decision of the director is reversed without modifications, then the applicant may prepare the submittals required for final approval or be issued a development order by the director, as appropriate.
(3) If the decision of the director is modified on appeal, then the applicant may take such remedial steps as are necessary to correct the rejected submittals and resubmit them in accordance with §§ 10-109 and 10-110.

(c) ***Special magistrate.***

(1) The applicant may file a request for relief under F.S. § 70.51 within 30 days from the

conclusion of an administrative appeal, or 4 months from the initiation of an administrative appeal even if that appeal has not concluded.

(2) The request for relief must allege that the decision of the director is unreasonable or unfairly burdens the use of the subject property. The request for relief will be heard by an impartial special magistrate in accordance with § 34-94.

(3) The request for relief under F.S. § 70.51 will not adversely affect the applicant's rights to judicial review. However, a request for judicial review will waive the right to a special magistrate proceeding.

Sec. 10-113. Recording of notice of development order.

Where a development order is issued, then a notice of the development order, in accordance with the forms to be provided by the director, shall be executed, and the director shall record the notice in the official record books of the county.

Sec. 10-114. Contents of development order.

A development order shall contain the following:

(1) Incorporation by reference of all submittal documents required for a development order application; the plat, if a subdivision; and all other documents prepared for approval of the development order;

(2) A list of all town permits which must be obtained;

(3) Any other conditions which the director deems appropriate in accordance with this chapter; and

(4) A signature clause, to be signed by the duly authorized representative, which will bind all owners and run with the land.

Sec. 10-115. Duration of development order.

(a) A development order will be valid for a period of 3 years from the date of issuance for those items specifically approved in the development order, or for the life of the surety or performance bond if the bond is for a period of less than 3 years. A development order for property which is the subject of a duly executed development agreement (see §§ 2-91–2-300) may be authorized for a different period if so prescribed in the development agreement.

(b) The development order is valid for those items specifically approved.

(1) The development order file will become inactive when the certificate of compliance is issued for the project or when the last certificate of compliance is issued for the last phase of a phased project.

(2) For phased projects where tracts of land are designated as future development areas (see § 10-117), the development order for subsequent phases must be approved within 3 years of the development order approval of the last phase approved. If the development order for a subsequent phase is not approved within 3 years of the last phase approved, the applicant must obtain a new development order for the undeveloped portion of the project and pay all applicable fees.

(c) In order for a development order to remain valid and active, significant construction activity must commence within the duration of the development order and the construction of the project to build-out must be actively pursued.

(1) Active pursuit of construction of a project to build-out is defined as continuous construction of the improvements shown and specified in the development order or buildings on the project.

(2) If a project, including a phased project, is under construction when the development order duration period has elapsed, the developer must either obtain a development order extension or continue the construction to build-out without any periods of construction inactivity which exceed 18 months.

(3) For development order projects where there has been a foreclosure action, a deed given in lieu of foreclosure, or title has been transferred pursuant to court ordered sale, and where there is a question of active pursuit of the construction under the development order, the new owner must resume construction of the project within 24 months from the date when the title to the property changes pursuant to the foreclosure, deed in lieu of foreclosure or court sale. Once restarted, construction must continue to

build-out without any periods of construction inactivity which exceed 18 months.

(d) Documents approving the issuance of development orders may contain language stating that the development order's concurrency approval is effective for a shorter period than the remainder of the development order, in accordance with article II of ch. 2. No vested right to concurrency approval will exist solely due to the existence of an otherwise effective development order.

Sec. 10-116. Effect of approval of development order.

If all applicable state and federal permits and approvals have been obtained, the issuance of a development order shall be authorization for the applicant to begin those site development activities specifically approved in the development order. Site development activities shall not occur before all applicable state and federal permits have been obtained.

Sec. 10-117. Phased projects.

(a) ***Authorized.*** Development projects may be split into phases to accommodate the development plans and schedules of the developer. However, development orders for phased projects must still show all required facilities, infrastructure, and buildings, if applicable, on the entire parcel of land that is covered by the development order.

(b) ***General requirements.*** The development order drawings or plans for each phase shall be sufficiently clear to show compliance with this chapter.

Sec. 10-118. Amendments generally.

(a) If an applicant wishes to amend any part of a development for which a development order has been issued, he shall submit, on the forms to be prescribed by the director, an application for an amendment to the development order. The development order amendment application shall be accompanied by revised plans, reports, and other appropriate submittals to allow the director to ensure that the proposed amendment complies with the requirements of this chapter.

(b) Development order amendment applications and submittals will be prepared, reviewed, and processed in accordance with the procedures specified in §§ 10-108, 10-109, and 10-110, as well as other procedural and technical sections of this chapter.

(c) A development order amendment fee, in accordance with the adopted fee schedule, shall be paid by the applicant prior to review of the amendment submittal.

Sec. 10-119. Amendment to correct error or omission.

When, after issuance of a development order and prior to commencement of construction (land clearing), it is determined that the development order should have contained a specific town permit, and the permit was omitted, or that by an error or omission of the applicant's consultant a technical requirement of this chapter is not satisfied, the applicant shall submit an application for a development order amendment as specified in § 10-118 to correct the development order, except that no fees will be paid.

Sec. 10-120. Minor changes.

(a) Minor changes to an approved development order may be requested. Minor changes are those changes which do not substantially affect the technical requirements of this chapter or do not require a review by 3 or more of the following review disciplines: zoning, transportation, drainage, fire, utilities, and landscaping. Changes that exceed the criteria for the scope of a minor change as specified in this subsection shall be processed as a development order amendment in accordance with § 10-118.

(b) If an applicant wishes to make a minor change to a development order, he shall submit an application for a minor change on the forms provided by the director. The minor change application shall be accompanied by revised plans, reports, and other appropriate submittals to allow the director to ensure that the proposed minor change complies with the requirements of this chapter.

(c) A minor change application fee, in accordance with the adopted fee schedule, shall be paid by the

(3) ***Decisions and authority.***

a. In exercising its authority, the town council shall consider the recommendation of the local planning agency where applicable, but may, in conformity with the provisions of this chapter, reverse, affirm, or modify the recommendation, or remand the recommendation to afford due process.

b. The town council shall not approve any zoning action other than that published in the newspaper unless such change is more restrictive than the proposed zoning published.

c. The town council has the authority to attach special conditions to any approval of a request for a special exception, development of regional impact, planned development rezoning, or variance within their purview, deemed necessary for the protection of the health, safety, comfort, convenience, or welfare of the general public. Such special conditions must be reasonably related to the action requested.

d. The decision of the town council on any matter listed in this section is final. If a decision of approval is not obtained, or if a tie vote results from a motion to grant a request or from a motion to deny a request, then the matter being considered shall be deemed to have been denied, unless a majority of the members present and voting agree by motion, before the next agenda item is called, to take some other action in lieu of denial. Such other action may be moved or seconded by any member, regardless of his vote on any earlier motion.

(4) ***Denials***.

a. *Denial with prejudice.*

1. Except when specifically stated otherwise, a denial by the town council is a denial with prejudice.
2. If an application is denied with prejudice, no similar application for rezoning, special exception, or variance covering the same property, or portion of the property, shall be resubmitted or initiated for a period of 12 months from the date of denial. However, this shall not preclude the application for a different rezoning, special exception, or variance which in the opinion of the director is substantially different from the request originally denied.

b. *Denial without prejudice.*

1. When the town council denies without prejudice any application, it is an indication that, although the specifically requested action is denied, the town council is willing to consider the same request after modifications have been made, or an application for other action, without the applicant having to wait 12 months before applying for consideration of the modified request or other action.
2. Any resubmitted application shall clearly state the modifications which have been made to the original request or other changes made in the application.

(5) ***Rehearings.*** Any rehearings of decisions under this section shall be in accordance with § 34-93.

(6) ***Special magistrate.*** Final decisions under this section may be the subject of a request for relief under F.S. § 70.51 or 70.001 (see §§ 34-94 and 34-95).

(7) ***Judicial review.*** Judicial review of final decisions under this section shall be in accordance with section 34-96.

Sec. 34-85. Rezonings.

(1) ***Function.*** The town council shall hear and decide all applications for changes in zoning district boundaries.

(2) ***Considerations.*** In reaching its decision, the town council shall consider the following, whenever applicable:

a. Whether there exists an error or ambiguity which must be corrected.
b. Whether there exist changed or changing conditions which make approval of the request appropriate.
c. The impact of a proposed change on the intent of this chapter.
d. The testimony of any applicant.
e. The recommendation of staff and of the local planning agency.
f. The testimony of the public.
g. Whether the request is consistent with the goals, objectives, policies, and intent, and with the densities, intensities, and general uses as set forth in the Fort Myers Beach Comprehensive Plan.
h. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.

i. Whether urban services are, or will be, available and adequate to serve a proposed land use change.
j. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
k. Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
l. Whether the location of the request places an undue burden upon existing transportation or other services and facilities and will be served by streets with the capacity to carry traffic generated by the development.
m. For planned development rezonings, see § 34-216 for additional considerations.

(3) ***Findings.*** Before granting any rezoning, the town council shall find that the requested zoning district complies with:
a. The Fort Myers Beach Comprehensive Plan.
b. This chapter.
c. Any other applicable town ordinances or codes.
d. For planned development rezonings, see § 34-216 for additional findings.

(4) ***Authority.***
a. When rezoning land to conventional zoning districts or redevelopment districts (see §§ 34-612(1) and (2)), the town council shall not impose any special conditions or requirements beyond those contained in this code, except as authorized by subsections 34-87(4)b. related to variances and 34-88(4)b. related to special exceptions.
b. In reaching decisions on planned development rezonings (see § 34-612(3)), the town council shall proceed in accordance with § 34-216 and shall have the authority to adopt a master concept plan, establish permitted uses, attach special conditions, and grant deviations from this code in accordance with §§ 34-932–933.

Sec. 34-86. Appeals from administrative action.

(1) ***Function.*** The town council will hear and decide appeals where it is alleged there is an error in any order, requirement, decision, interpretation, determination, or action of any administrative official charged with the administration and enforcement of the provisions of this code, or any other ordinance or portion of this code which provides for similar review; provided, however, that:
a. No appeal to the town council shall lie from any act by such administrative official pursuant to:
   1. An order, resolution, or directive of the town council directing him to perform such act; or
   2. Any ordinance or other regulation or provision in this code which provides a different appellate procedure.
b. The appeal to the town council shall be in writing on forms provided by the director, and shall be duly filed within 30 calendar days, but not thereafter, after such act or decision by the administrative official. The appeal shall specify the grounds for the appeal.
c. No appeal shall be considered by the town council where it appears to be a circumvention of an established or required procedure. Specifically, in no case may an appeal be heard when the town council determines that the case should more appropriately be heard on a request for a variance.
d. Appeals from administrative action do not require a public hearing before the local planning agency.

(2) ***Considerations.***
a. In reaching its decision, the town council shall consider the following criteria, as well as any other issues which are pertinent and reasonable:
   1. Whether the appeal is of a nature properly brought for decision, or whether there is an established procedure for handling the request other than through the appeal process (i.e., a variance or special exception, etc.).
   2. The intent of the ordinance which is being applied or interpreted.
   3. The effect the ruling will have when applied generally to this code.
b. Staff recommendations, the testimony of the appellant, and testimony of the general public shall also be considered.

(3) ***Authority.***
In exercising its authority, the town council may reverse, affirm, or modify any decision or action of any administrative

official charged with the administration or enforcement of this chapter.

Sec. 34-87. Variances.

(1) ***Function.*** The town council shall hear and decide all requests for variances from the terms of the regulations or restrictions of this code (except for administrative setback variances as provided in § 34-268) and such other ordinances which assign this responsibility to the town council, except that no use variance or procedural variance as defined in this chapter shall be heard or considered.

(2) ***Considerations.*** In reaching its decision, the town council shall consider the following criteria, recommendations and testimony:
   a. Whether the facts support the five required findings in subsection (3) below;
   b. Staff recommendations and local planning agency recommendations;
   c. Testimony from the applicant; and
   d. Testimony from the public.

(3) ***Findings.*** Before granting any variance, the town council must find that all of the following exist:
   a. That there are exceptional or extraordinary conditions or circumstances that are inherent to the property in question, or that the request is for a *de minimis* variance under circumstances or conditions where rigid compliance is not essential to protect public policy;
   b. That the conditions justifying the variance are not the result of actions of the applicant taken after the adoption of the regulation in question;
   c. That the variance granted is the minimum variance that will relieve the applicant of an unreasonable burden caused by the application of the regulation in question to his property;
   d. That the granting of the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and
   e. That the conditions or circumstances on the specific piece of property for which the variance is sought are not of so general or recurrent a nature as to make it more reasonable and practical to amend the regulation in question.

(4) ***Authority.***
   a. The town council has the authority to grant or deny, or modify, any request for a variance from the regulations or restrictions of this code; provided, however, that no use variance as defined in this chapter, or any variance from definitions or procedures set forth in any ordinance, shall be granted.
   b. In reaching its decision, the town council has the authority to attach special conditions necessary for the protection of the health, safety, comfort, convenience, and welfare of the general public. Such special conditions shall be reasonably related to the variance requested.

(5) ***Existing buildings.*** Setback, height, and similar variances granted to accommodate an existing building will expire when the building is removed. Redevelopment of the site must then comply with the setback and height regulations in effect at the time of redevelopment.

Sec. 34-88. Special exceptions.

(1) ***Function.*** The town council shall hear and decide all applications for special exceptions permitted by the district use regulations.

(2) ***Considerations.*** In reaching its decision, the town council shall consider the following, whenever applicable:
   a. Whether there exist changed or changing conditions which make approval of the request appropriate.
   b. The testimony of any applicant.
   c. The recommendation of staff and of the local planning agency.
   d. The testimony of the public.
   e. Whether the request is consistent with the goals, objectives, policies and intent of the Fort Myers Beach Comprehensive Plan.
   f. Whether the request meets or exceeds all performance and locational standards set forth for the proposed use.
   g. Whether the request will protect, conserve, or preserve environmentally critical areas and natural resources.
   h. Whether the request will be compatible with existing or planned uses and not cause damage, hazard, nuisance, or other detriment to persons or property.
   i. Whether a requested use will be in compliance with applicable general zoning provisions and supplemental regulations

pertaining to the use set forth in this chapter.

(3) ***Findings.*** Before granting any special exceptions, the town council must find that the applicant has demonstrated that the requested special exception complies with the standards in this section and with:
   a. The Fort Myers Beach Comprehensive Plan;
   b. This chapter; and
   c. Any other applicable town ordinances or codes.

(4) ***Authority.***
   a. The town council shall grant the special exception unless it finds that granting the special exception is contrary to the public interest and the health, safety, comfort, convenience, and welfare of the citizens of the town, or that the request is in conflict with the criteria in this section.
   b. In reaching its decision, the town council has the authority to attach special conditions necessary for the protection of the health, safety, comfort, convenience, or welfare of the general public. Such special conditions shall be reasonably related to the special exception requested.

Sec. 34-89. Developments of regional impact.

The town council shall hold public hearings on all applications for developments of regional impact, in accordance with the requirements of ch. 380, Florida Statutes. If a proposed development of regional impact also requires a rezoning and/or a comprehensive plan amendment, the public hearings shall be held simultaneously provided that all advertising requirements for the individual applications can be met.

Sec. 34-90. Land development code interpretations.

The town council may hear and decide applications for interpretations of this code as provided in § 34-265. Such applications shall not require a public hearing or recommendation from the local planning agency. Applications for such interpretations must be accompanied by the submittals described in § 34-202(a)(4)–(9); the director may waive any submittals that are not applicable to the type of interpretation being requested.

Sec. 34-91. Comprehensive plan interpretations.

The town council will hear and decide applications for interpretations of the Fort Myers Beach Comprehensive Plan as permitted by ch. 15 of that plan. The following types of applications will be accepted:

(1) ***Equitable estoppel.*** In circumstances where development expectations conflict with the comprehensive plan but judicially defined principles of equitable estoppel may override the otherwise valid limitations imposed by the plan, such expectations may be recognized by the town through a resolution of the town council. Such applications shall not require a public hearing or recommendation from the local planning agency.

(2) ***Appeals of administrative interpretations.*** Persons or entities whose interests are directly affected by the comprehensive plan have the right to certain administrative interpretations of the plan as described in ch. 15 of the plan. That section specifies the following procedures for appealing an administrative interpretation:
   a. An administrative interpretation may be appealed to the town council by filing a written request within fifteen days after the administrative interpretation has issued in writing. In reviewing such an appeal, the town council shall consider only information submitted in the administrative interpretation process and shall review only whether the proper standards set forth in the comprehensive plan have been applied to the facts presented. No additional evidence shall be considered by the town council.
   b. The town council shall conduct such appellate review at a public meeting to be held within thirty days after the date of the written request for appeal. The town council may adopt the administrative interpretation being appealed, or may overrule it, with a written decisions to be rendered by the town clerk in writing within thirty days after the date of the hearing.

(3) ***Legislative interpretations.*** In order to apply the plan consistently and fairly, it will be necessary from time to time to interpret provisions in the plan in a manner which insures that the legislative intent of the town council which adopted the plan be understood

and applied by subsequent councils, town employees, private property owners, and all other persons whose rights or work are affected by the plan. When the plan is interpreted, it should be done in accordance with generally accepted rules of statutory construction, based upon sound legal advice, and compiled in writing in a document which can be a companion to the plan itself.

a. ***Requests.*** Requests for legislative interpretations may be made by any town council member, the town manager, the local planning agency, or any applicant for a type of development regulated by the plan.
b. ***Local planning agency.*** Upon receiving a request and written recommendations from the town manager, the local planning agency shall review the same and forward them to the town council with its comments and recommendations.
c. ***Town council.*** Upon receiving the recommendations of the local planning agency, the town council shall render a final decision as to the correct interpretation to be applied. This interpretation shall be that which is adopted by absolute majority of the town council, and, upon being reduced to a resolution drafted in response to the council majority, it shall be signed by the mayor and recorded in the town's official records. The town clerk shall be responsible for maintaining copies of all such resolutions in a single document which shall be appropriately indexed and provided to all persons upon request. The document shall be updated regularly and the latest version thereof furnished to all persons requesting copies of the plan itself.
d. ***Legal effect of legislative interpretations.*** Any provision of the plan specifically construed in accordance with the foregoing procedures may not be re-interpreted or modified except by a formal amendment of the plan itself. Once formally adopted in accordance with these procedures, the interpretation shall have the force of local law and all persons shall be placed on constructive notice of it. Any development orders issued in reliance on legislative interpretations of this plan are subject to challenge under the provisions of F.S. § 163.3215.

Sec. 34-92. Comprehensive plan amendments.

(a) Amendments to any part of the Fort Myers Beach Comprehensive Plan may be proposed by private parties. All amendments requested during a calendar year will be considered simultaneously with any public amendment proposals put forth by the town council or local planning agency.

(b) Private applications for amendments must be received at town hall by the last business day of the calendar year. Amendment proposals do not need to include all of the information required by § 34-201, but must be sufficient to identify the parties making the request and the exact nature of the request, and must provide adequate supporting material in support of the request.

(c) Proposals to amend the Future Land Use Map must meet Comprehensive Plan Policy 4-C-10.

Sec. 34-93. Rehearing of decisions.

(a) ***Timely filing.*** Any person who may be aggrieved by any decision of the town council made pursuant to an application for rezoning, development of regional impact, administrative appeal, special exception, or variance may file a written request for a public rehearing before the town council to modify or rescind its decision. The request must be filed with the director within 15 calendar days after the decision. For purposes of computing the 15-day period, the date of the decision is the date of the public hearing at which the town council made such decision by oral motion.

(b) ***Written request and response.*** All requests for a public rehearing shall state with particularity the new evidence or the points of law or fact which the aggrieved person argues the town council has overlooked or misunderstood, and must include all documentation offered to support the request for a rehearing. In addition, if the request is filed by one other than the original applicant, the director shall notify the applicant of the filing of the request for a rehearing and the applicant shall be allowed 15 days to submit an independent written analysis.

(c) ***No oral testimony.*** The town council shall decide whether to grant or deny the request for a rehearing based exclusively upon the written request, supporting documentation, any response, and the director's and/or town manager's written analysis thereof. The deliberations of the town

council with respect to the question of whether to grant a rehearing do not constitute a public hearing, and no oral testimony shall be allowed or considered by the town council in the course of these deliberations.

(d) ***Judicial review.*** The pursuit of a request for rehearing is not required in order to exhaust administrative remedies as a condition precedent to seeking judicial review in the circuit court. The proper filing of a request for rehearing will not toll the 30-day time limit to file an action seeking judicial review of final decisions. No judicial review is available to review the town council's decision to deny a rehearing request.

(e) A request for rehearing is not an administrative appeal as that term is used in F.S.§ 70.51. Filing a request for rehearing will not toll the time for filing a request for relief under F.S. § 70.51.

(f) Filing of a request for rehearing will not toll the time for seeking relief under F.S. § 163.3215.

Sec. 34-94. Special magistrate proceedings under the Florida land use and environmental dispute resolution act (F.S. § 70.51)

(a) ***Special magistrate proceedings***. Special magistrate proceedings may be requested by landowners who believe that action on a development order or enforcement of this code is unreasonable or unfairly burdens the use of their property. Special magistrate proceedings are a non-judicial approach to resolving land-use disputes and will be conducted in accordance with state law and any administrative codes designated for that purpose.

(b) ***Implementation of special magistrate recommendation.*** If the town council elects to adopt the recommendation of any duly-appointed special magistrate, the landowner will not be required to duplicate processes in which the owner previously has participated in to effectuate the recommendation.

(c) ***Modification of special magistrate recommendation.*** The town council may elect to modify a special magistrate's recommendation and implement it by development agreement, where applicable, or by other method in the ordinary course and consistent with the town's rules and procedures, so long as it does not require the duplication of processes in which the owner has participated in to effectuate the council's will.

(d) ***Waiver of procedural requirements.*** In order to implement the recommendation of a special magistrate, or a modification of that recommendation, the town council has the authority to waive any or all procedural requirements contained in town ordinances or administrative codes and to directly exercise all authority otherwise delegated to the local planning agency, the town manager or designees, or any other part of town government.

Sec. 34-95. Proceedings under the Bert J. Harris, Jr., private property rights protection act (F.S. § 70.001).

(a) ***Offers of Settlement.*** Within 180 days of the filing of a notice of intent to file a claim under this act, the town may offer to resolve the claim by way of a settlement offer that includes an adjustment of the initial government action. Settlement offers may entail:

(1) an increase or modification to density, intensity, or use of the owner's property, so long as the density, intensity, and use remain consistent with Fort Myers Beach Comprehensive Plan.
(2) the transfer of development rights;
(3) land swaps or exchanges;
(4) compensation and purchase of the property or property interest, or
(5) issuance of a development permit or order.

(b) The parties to a dispute arising under the Bert J. Harris, Jr., private property rights protection act may craft settlements that exceed the town's statutory or ordinance authority provided the parties jointly file a judicial action for court approval of the settlement.

(c) In order to implement a settlement offer, the town council has the authority to waive any or all procedural requirements contained in town ordinances or administrative codes and to directly exercise all authority otherwise delegated to the local planning agency, the town manager or designees, or any other part of town government.

Sec. 34-96. Final decision; judicial review.

(a) Any final zoning decision of the town council on a specific application may be reviewed by the circuit court unless otherwise provided in this article. This review may only be obtained through filing a petition for writ of certiorari pursuant to the Florida Rules of Appellate Procedure. Any such petition

must be filed within 30 calendar days after the decision has been rendered. For the purposes of computing the 30-day period, the date that the decision has been rendered is the date of the public hearing at which the town council made such decision by oral motion.

(b) The person making application to the town council for a final decision entitled to judicial review is a necessary and indispensable party to any action seeking judicial review of that final decision.

(c) This section is not intended to preclude actions pursuant to F.S. § 70.51 (see § 34-94), or actions pursuant to § 163.3215 that challenge consistency of any final zoning decision on a specific application with the Fort Myers Beach Comprehensive Plan.

Secs. 34-97--34-110. Reserved.

DIVISION 3. LOCAL PLANNING AGENCY

Sec. 34-111. Agency established.

The Town of Fort Myers Beach local planning agency (LPA) is hereby established.

Sec. 34-112. Purpose and scope.

The broad objectives of town planning and the creation of the local planning agency are to further the welfare of the citizens of the town by helping to promote a better, more helpful, convenient, efficient, healthful, safe, and attractive community environment and to insure that the unique and natural characteristics of the island are preserved.

Sec. 34-113. Composition, appointment, and compensation of members.

(a) The local planning agency shall consist of up to seven members appointed by the town council. No members of the local planning agency shall be salaried officials of the town. Membership on the local planning agency shall render a person ineligible for membership on any other advisory committee for the Town of Fort Myers Beach during his/her term of office. One spouse per household will be eligible for membership on the local planning agency during any given term of office. No current member of Town Council shall be eligible to serve on the local planning agency. Except for inclusion of members required under Florida law, all members must be residents of, or owners of real property located within, the territorial limits of the Town of Fort Myers Beach at the time of application for membership on the local planning agency and during the period of service on the local planning agency. All applicants must apply on or before March 1 of the appointment year (however, for 2006 only, the application period is extended to April 19, 2006). Each application must be submitted on one 8½" by 11" paper, and must include a short biography and short explanation as to why the applicant wishes to serve on the local planning agency.

(b) The members of the local planning agency shall serve without compensation but may be reimbursed for expenses as are necessary to conduct the work of the agency from funds appropriated by the town council.

(c) In addition to the up to seven voting members, the local planning agency shall also include as a nonvoting member a representative of the Lee County School District, as designated by the Lee County School Board, to attend and participate in those meetings at which the local planning agency considers comprehensive plan amendments and rezonings that would, if approved, increase residential density on the property that is the subject of the application (see F.S. 163.3174(1), 2002).

Sec. 34-114. Members' terms and vacancies.

(a) The term of office of a member of the local planning agency shall be staggered in increments of two years or until a successor has been appointed and has qualified, except that the respective terms of the members first appointed under this amendment shall be up to four members for a one-year term and three members for a two-year term. No member shall serve more than two consecutive terms of two years each; however, after two years out of office with this agency, any person who has previously served and is otherwise qualified may apply for re-appointment to this agency. This term limit will not be construed to apply to the members who are appointed for an initial one-year term in 2006.

(b) Appointments shall be made annually at the first meeting of the council in April; however, for 2006 only, appointments shall be made at the first general council meeting subsequent to April 19,

2006. Vacancies in the local planning agency shall, within sixty days, be filled by the council for the remainder of the term created by such vacancy.

Sec. 34-115. Forfeiture of office.

A local planning agency member shall forfeit office if the member:

(1) Lacks at any time during the term of office any qualification for the office prescribed by town ordinance or state law; or
(2) Violates any standard of conduct or code of ethics established by law for public officials; or
(3) Is absent from three regular local planning agency meetings per year without being excused by the local planning agency.

Sec. 34-116. Election and duties of officers.

(a) The local planning agency shall elect a chairperson and a vice-chairperson each year at the first meeting of the newly appointed members.

(b) It shall be the duty of the chairperson to preside over all meetings of the local planning agency. In the absence of the chairperson, the vice-chairperson may preside.

Sec. 34-117. Clerk.

The town manager or designee shall be the clerk of the local planning agency. It shall be the duty of the clerk to keep a record of all proceedings of the local planning agency, transmit its recommendations when directed by the chairperson, maintain an updated complete file of all its proceedings at town hall, and perform such other duties as are usually performed by the clerk of a deliberative body.

Sec. 34-118. Rules and procedures.

The local planning agency shall meet at least eight times per year and shall meet no less often than bimonthly or more frequently at regular intervals to be determined by it, and at such other times as the chairperson or as it may determine. It may adopt rules for the transaction of its business. The rules may be amended from time to time, but only upon notice to all members that said proposed amendments shall be acted upon at a specified meeting. A majority vote of the local planning agency shall be required for the approval of the proposed amendment. It shall keep a properly indexed record of its resolutions, transactions, findings, and determinations, which record shall be a public record. All meetings of the local planning agency shall be public meetings.

Sec. 34-119. Employment of staff and experts.

The local planning agency may, subject to the approval of the town council and within the financial limitations set by appropriations made or other funds available, recommend the town manager employ such experts, consultants, technicians and staff as may be deemed necessary to carry out the functions of the local planning agency. Such technical assistance to the local planning agency shall be under the day-to-day supervision of the town manager.

Sec. 34-120. Specific functions, powers, and duties as to comprehensive planning and land development regulations.

The functions, powers, and duties of the local planning agency as to comprehensive planning and adoption of land development regulations shall be to:

(1) Acquire and maintain such information and materials as are necessary to an understanding of past trends, present conditions, and forces at work to cause changes in these conditions, and provide data for estimates of future conditions. Such information and material may include maps and photographs of man-made and natural physical features, statistics on trends and present and future estimated conditions with respect to population, property values, economic base, land uses, municipal services, various parameters of environmental quality, and such other information as is important or likely to be important in determining the amount, direction and kind of development to be expected in the town and its various parts and the necessary regulation thereof to insure that the unique and natural characteristics of the island be preserved.
(2) Prepare principles and policies for guiding land uses and development in the town in order to preserve the unique and natural characteristics of the island, to overcome the

island's present handicaps, and to prevent or minimize future problems.

(3) Make or cause to be made any necessary special studies on the location, condition, and adequacy of specific facilities in the town or portion thereof. These may include, but are not limited to, studies on housing, commercial facilities, utilities, traffic, transportation, parking, and emergency evacuation.

(4) Review proposed land development codes and amendments thereto, and make recommendations to the town council as to their consistency with the comprehensive plan.

(5) Recommend to the town council annually whether the proposed capital improvements program is consistent with the comprehensive plan.

(6) Make administrative interpretations of the comprehensive plan when such interpretations are referred to the local planning agency by its legal counsel, in accordance with the ch. 15 of the comprehensive plan and § 34-124(3).

(7) Request legislative interpretations of the comprehensive plan in accordance with ch. 15 of that plan, when deemed appropriate by the local planning agency.

(8) Make recommendations to the town council on legislative interpretations that have been requested in accordance with ch. 15 of the comprehensive plan.

(9) Recommend action to the town council on any amendments that are proposed to the comprehensive plan.

(10) Monitor and oversee the effectiveness and status of the comprehensive plan and recommend to the town council such changes in the comprehensive plan as may from time to time be required, including preparation of the periodic evaluation and appraisal reports required by F.S. § 163.3191.

(11) Conduct such public hearings as may be needed for updating the comprehensive plan and such additional public hearings as are specified by law.

(12) Aid town officials charged with the direction of projects or improvements embraced within the comprehensive plan and generally promote the realization of the comprehensive plan.

(13) Cooperate with municipal, county and regional planning commissions and other agencies or groups to further the local planning program and to assure harmonious and integrated planning for the area.

(14) Perform any other duties which lawfully may be assigned to it by the town council.

Sec. 34-121. Functions, powers, and duties as to zoning matters.

The functions, powers, and duties of the local planning agency as to zoning matters shall be to:

(1) Prepare recommendations for changes to the boundaries of the various zoning districts, or to the regulations applicable thereto, to the town council.

(2) Make recommendations on the following to the town council:
   a. Applications for rezonings including planned developments.
   b. Applications for developments of regional impact and Florida Quality Developments approval, which may or may not include a request for rezoning.
   c. Special exceptions.
   d. Variances from this code and any town ordinance which specifies that variances from such ordinance can only be granted by the town council.
   e. Extensions of master concept plans for planned developments (see § 34-220(4)).
   f. Any other applications that require action by the local planning agency pursuant to this code.

(3) *Authority.*
   a. The local planning agency shall serve in an advisory capacity to the town council with respect to zoning matters as set forth in subsections (1) and (2) of this section, and in such capacity may not make final determinations.
   b. The local planning agency shall not recommend the approval of a rezoning, and the town council shall not approve a rezoning, other than the change published in the newspaper pursuant to § 34-236(b), unless such change is more restrictive and permitted within the land use classification as set forth in the Fort Myers Beach Comprehensive Plan.
   c. In reaching its recommendations, the local planning agency shall have the authority to recommend special conditions to be attached to any request for a planned development, special exception, or variance.

Sec. 34-122. Functions, powers, and duties as to historic preservation.

The powers, and duties of the local planning agency regarding historic preservation shall include performing all functions assigned to the historic preservation board as set forth in ch. 22, article II, division 2.

Sec. 34-123. Cooperation with the local planning agency.

Each officer and employee of the town is hereby directed to give all reasonable aid, cooperation, and information to the local planning agency or to the authorized assistants of such agency when so requested.

Sec. 34-124. Legal counsel to the local planning agency.

The local planning agency have its own legal counsel, whose duties shall include:

(1) Advising the local planning agency as to its legal responsibilities and options during the conduct of its business.

(2) Preparing resolutions reflecting actions of the local planning agency.

(3) Issuing administrative interpretations of the Fort Myers Beach Comprehensive Plan or referring requests for such interpretations to the local planning agency (see § 34-120(6)) when applications are submitted to the town clerk in accordance with chapter 15 of the comprehensive plan.

Secs. 34-125--34-200. Reserved.

DIVISION 4. APPLICATIONS AND PROCEDURES

Subdivision I. General Procedures

Sec. 34-201. General procedure for applications requiring public hearing.

(a) ***Initiation of application.*** An application for a rezoning, development of regional impact, special exception, appeal from administrative action, or variance may be initiated by:

(1) A landowner, or his authorized representative, for his own property; provided, however, that:

a. Except as provided in subsections (a)(1)b. and c. of this section, where there is more than one owner, either legal or equitable, then all such owners must jointly initiate the application or petition.

1. This does not mean that both a husband and wife must initiate the application on private real property which is owned by them.
2. Where the property is subject to a land trust agreement, the trustee may initiate the application.
3. Where the fee owner is a corporation, any duly authorized corporate official may initiate the application.
4. Where the fee owner is a partnership, the general partner may initiate the application.
5. Where the fee owner is an association, the association or its governing body may appoint an agent to initiate the application on behalf of the association.

b. Where the property is a condominium or a timeshare condominium, as defined and regulated in F.S. chs. 718 and 721, respectively, an application or petition may be initiated by both the condominium association and no less than 75 percent of the total number of condominium unit owners, or by both the owners' association and no less than 75 percent of timeshare condominium unit owners.

1. For purposes of this subsection, each individually owned condominium unit within the condominium complex and

DIVISION 3. EXPLANATION OF PROPERTY DEVELOPMENT REGULATIONS FOR ALL ZONING DISTRICTS

Sec. 34-631. Building heights.

(a) ***Methods of measurement.*** Maximum building heights specified in this code are measured in two ways, as shown in Figure 34-1-a. Both measurement methods apply to each building.

(1) *Measured in stories*, the height includes enclosed or unenclosed space at ground level as the first story, provided it is six feet or more in height.

a. Space within a roofline that is entirely non-habitable shall not be considered to be a separate story, for example overhead space enclosed by a cathedral ceiling, cupola, or similar roof enclosure.

b. Any single story cannot exceed 16 feet in height, including structural members, except that the first story may be taller if required to comply with any regulation in this code.

(2) *Measured in feet*, the height is the vertical distance between the base flood elevation and the top of the structural members that serve as the ceiling for the highest habitable story of the building.

a. Where ceilings are sloped, height is measured to the highest vertical point on a wall of the highest habitable story of the building.

b. For parking garages, height is measured to the top of the structural members of the highest ceiling, or if parking is allowed on the roof level, to the highest point on the rooftop parking level.

c. When determining maximum building heights only, base flood elevation (BFE). means the minimum required elevation for a property as established by the floodplain maps described in § 6-408, or the minimum 100-year storm elevation as established by the Florida Department of Environmental Protection for structures seaward of the 1991 coastal construction control line, whichever is higher for a particular property.

d. On July 31, 2006, FEMA released maps showing preliminary BFE increases that could become mandatory in 2007. Landowners who voluntarily meet the higher elevations shown on the preliminary FEMA maps may measure their building's height in feet from the higher elevation.

e. Landowners who to choose to elevate up to three feet above the heights in subsections c. or d. above may increase their maximum building height by the same number of feet.

(3) Specific height regulations are provided for each zoning district.

a. For conventional zoning districts, see Table 34-3 in division 4 of this chapter.

b. For redevelopment zoning districts, see individual districts in division 5 of this chapter.

c. For planned development zoning districts, see division 6 of this chapter.

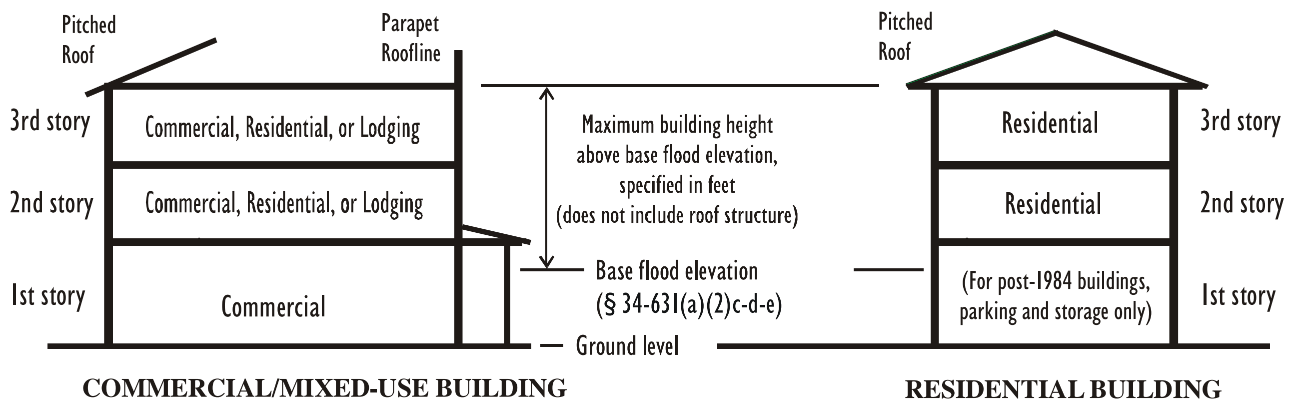

Figure 34-1-a

(b) ***Exceptions to height regulations.***

(1) Roof structures and parapet walls may exceed the height limit defined in any zoning district provided there is no habitable space inside the roof structure.

(2) Non-habitable architectural appurtenances such as cupolas, clerestories, and steeples may also extend above the height limit if they do not exceed an area of 250 square feet. A habitable roofed tower up to 150 square feet, whether open-sided or enclosed, may also qualify as an acceptable architectural appurtenance and extend above the height limit provided it is roofed in a manner consistent with the design of the building. Decks do not qualify as architectural appurtenances for the purposes of this subsection. Any proposed appurtenance taller than an additional 15 feet or larger than the specified sizes would require a variance from this code.

(3) Mechanical or structural appurtenances such as elevator and stairwell enclosures, air-conditioning equipment, and antennas may also extend above the height limit provided these appurtenances:
   a. do not exceed 250 square feet per type; and
   b. screening is provided as required by this code (see, for example, § 6-2(f) for rooftop mechanical equipment).

(4) When properties are being rebuilt pursuant to the buildback regulations in § 34-3237 and 34-3238, specific height regulations in those sections may supersede the height regulations established for that property's zoning district.

(5) In those few cases where individual parcels of land are so surrounded by tall buildings on lots that are contiguous (or directly across a street) that the height regulations in this chapter would be unreasonable, landowners may seek relief through the planned development rezoning process, which requires a public hearing and notification of adjacent property owners. The town will approve, modify, or deny such requests after evaluating the level of unfairness that would result from the specific circumstances and the degree the specific proposal conforms with all aspects of this comprehensive plan,

Roofed towers, Figure 34-1-b

including its land-use and design policies, pedestrian orientation, and natural resource criteria. Particular attention would be paid to any permanent view corridors to Gulf or Bay waters that could be provided in exchange for allowing a building to be taller than the height limits in this chapter. In each case, the town shall balance the public benefits of the standard height limit against other public benefits that would result from the specific proposal.

(6) For amateur radio antennas/towers, see § 34-1175. For communication towers and commercial antennas, see § 34-1441–1550).

(c) ***Space at ground level.***

(1) Commercial space below the base flood elevation (at ground level) requires dry-floodproofing of the building (see §§ 6-401–474).

(2) Space below the base flood elevation in new residential buildings may be used only for parking and limited storage (see §§ 6-401–474).

Property Development Regulations For All Zoning Districts

Sec. 34-632. Density.

Residential density cannot exceed the maximum levels established in the Fort Myers Beach Comprehensive Plan. Additional dwelling units are not allowed in the "Marina" or "Tidal Waters" categories on the Comprehensive Plan's future land use map; live-aboards are permitted in accordance with § 34-1861.

(1) ***Formula for computing density.*** The maximum number of dwelling units allowed on a parcel of land is computed by taking the maximum number of dwelling units per acre the comprehensive plan allows on that parcel and multiplying it by the site's lot area in acres, with the result rounded down to the nearest whole number (except as provided in subsection (3) below).

(2) ***Determining lot area.*** For purposes of this section, a site's lot area includes the gross acreage within the site's private property line, minus wetlands, canals or other water bodies that extend beyond the site, minus all primarily commercial and other non-residential land, and minus any land designated "Recreation" on the Comprehensive Plan's future land use map. For any site with wetlands or land designated "Recreation," the maximum number of dwelling units shall be increased by one unit per 20 acres of such land.

(3) ***Existing subdivisions.*** In existing subdivisions where lots are smaller than 15,000 square feet each:

a. Residential densities may be computed based on the actual lot size plus one-half the width of adjoining streets and water bodies, but in no case may more than 35 feet be counted as the allowance for one-half of an adjoining water body.

b. Computed densities greater than 1.5 DU/acre may be rounded up to two dwelling units where two-family and multifamily dwelling units are permitted.

c. This method for determining densities cannot be used for:

1. Three or more lots that are being combined into a development project; or
2. Any lot that was created after December 31, 1995, as described in § 34-3272.

(4) ***Mixed-use buildings.*** Residential densities may be computed without deleting any acreage for commercial uses that are located on other floors of mixed-use buildings. However, any acreage used primarily for commercial purposes cannot be included in computations of residential density.

(5) ***Adjustments to density computations.*** The following rules shall apply when measuring density for living units or guest units that may not also qualify as dwelling units:

a. When permitted on a property, certain other land uses such as assisted living facilities and hotels/motels are limited by using equivalency factors between those uses and dwelling units, such as provided in §§ 34-1415 and 34-1803.

b. For density purposes, each living unit shall count as one dwelling unit except where this code explicitly provides a different measure for measuring density (see, for example, § 34-1178(d) regarding accessory apartments in owner-occupied homes).

c. Lock-off accommodations in multiple-family buildings and timeshare units are living units and are calculated as separate dwelling units for density purposes.

d. Live-aboards are considered to be living units but not dwelling units as defined by the Fort Myers Beach Comprehensive Plan. Where live-aboards are permitted in accordance with § 34-1861, they are not subject to residential density computations.

(6) ***Density transfers.*** The Town Council may, at its discretion, permit the transfer of residential and hotel/motel development rights from one parcel to another if the following conditions established by Policy 4-C-8 of the comprehensive plan are met:

a. the transfer is clearly in the public interest, as determined by the Town Council;

b. the parcels affected by the transfer are in close proximity to each other;

c. the density of residential or hotel/motel units being transferred is based upon

allowable density levels in the comprehensive plan category from which the density is being transferred;
d. the transfer is approved through the planned development rezoning process; and
e. binding permanent restrictions are placed on the property from which development rights have been transferred to guarantee the permanence of the transfer.

Sec. 34-633. Intensity and floor area ratios.

Another measure of building intensity used in this code is the floor area ratio (FAR), which means the gross floor area of all buildings on a site divided by the site's lot area.

(1) For purposes of this section, gross floor area includes the total floor area of all stories of a building within the surrounding exterior walls (whether the walls are solid or screened), plus all area below an elevated building that is 6 feet or more in height, plus all stories of covered parking, but not including any area whose roof is screened rather than solid (such as swimming pool enclosures).
(2) For purposes of this section, a site's lot area includes the gross square footage within the site's private property line, minus wetlands, canals or other water bodies, and minus any land designated "Recreation" on the Comprehensive Plan's future land use map.

Sec. 34-634. Intensity and building coverage.

Another measure of building intensity used in this code is building coverage, which means the horizontal area of all principal and accessory buildings on a site divided by the site's lot area.

(1) For purposes of this section, horizontal area means the area within the surrounding exterior walls (whether the walls are solid or screened). The term "horizontal area" does not include any area occupied by unroofed structures such as driveways, sidewalks, patios, outside stairways, or open swimming pools, and does not include any area whose roof is screened rather than solid such as swimming pool enclosures.
(2) For purposes of this section, a site's lot area includes the gross square footage within the site's private property line, minus wetlands, canals, or other water bodies, and minus any land designated "Recreation" on the Comprehensive Plan's future land use map.

Sec. 34-635. Commercial design standards.

Except where this code specifically provides otherwise, the commercial design standards (see § 34-991–1010) apply to all commercial and mixed-use buildings or portions thereof that are being newly built, and to "substantial improvements" to such buildings as defined in § 6-405, on properties that are zoned in any of the following zoning districts:

(1) SANTOS (§ 34-648);
(2) DOWNTOWN (§ 34-671–680);
(3) SANTINI (§ 34-681–690);
(4) VILLAGE (§ 34-691–700);
(5) CB (§ 34-701–710); and
(6) CPD (commercial planned development) (§ 34-951–960).

Sec. 34-636. Parcelization or subdivision of existing buildings.

(a) ***Two-family building.*** When a building owner proposes further parcelization or subdivision of land in the RC zoning district into separate lots and separating two lawfully existing dwelling units into individual parcels, all of the following requirements must be satisfied before the required limited review development order can be issued:

(1) The building cannot exceed the density limits of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land and the lots resulting from the subdivision must each conform to the dimensional regulations for lot size in the RC zoning district (see Table 34-3).
(2) The building must comply with all floodplain requirements as provided in ch. 6 of this code.
(3) The entire building must meet the coastal construction requirements that apply to new structures, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and

most minor structures must be located landward of the 1978 coastal construction control line (see §6-366).

(4) The individual dwelling units must be separated by walls with not less than 1-hour fire resistance.

(5) The development must meet all other requirements of this code, including Table 34-2.

(b) ***Multiple-family building.*** When a building owner proposes further parcelization or subdivision of lawfully existing dwelling units, all of the following requirements must be satisfied before the required development order can be issued:

(1) The number of dwelling units in the existing building may exceed the density limits of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land, but may not exceed the number of lawfully permitted units. The burden to demonstrate the lawful nature of the units is on the applicant. If the number of dwelling units exceeds the density limitations of the Fort Myers Beach Comprehensive Plan as they would apply to vacant land, the interior square footage of the building, as defined in §34-3238(2)d.1., may not be increased, but may be exchanged on a square-foot for square-foot basis to provide larger but fewer dwelling units within the same interior area.

(2) Existing buildings must comply with all floodplain requirements as provided in ch. 6 of this code. Existing buildings that cannot comply with these requirements may seek to replace their building by obtaining approval for pre-disaster buildback in accordance with § 34-3237.

(3) The entire building must meet the coastal construction requirements that apply to new structures, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be located landward of the 1978 coastal construction control line (see §6-366).

(4) The individual dwelling units must be separated by walls with not less than 1-hour fire resistance.

(5) The development must meet all other requirements of this code, including Table 34-2.

Sec. 34-637. Minimum lot sizes.

(a) All lot area, width, and depth dimensions in this code are mandatory minimums for newly created lots.

(1) Minimum lot areas, width, and depths are specified for various zoning districts.
   a. For all conventional zoning districts, see Table 34-3.
   b. For redevelopment zoning districts, as described for the individual districts in division 5 of this chapter.
   c. For PD districts, see §§ 34-943 and 34-953.

(2) Definitions and methods of measuring lot widths and depths are provided in § 34-2.

(b) Where two or more dwelling units or guest units are proposed for a single lot or combination of lots, the lot(s) must also be large enough to comply with the density limitations of the Fort Myers Beach Comprehensive Plan, as computed in accordance with § 34-632.

(c) Division 4 of article V of this chapter defines nonconforming lots, which may be smaller than the minimum lot areas, widths, and/or depths specified in this code.

(1) Certain nonconforming *residential* lots are subject to the smaller minimum lot areas, widths, and depths that are found in § 34-3274.

(2) Certain nonconforming *commercial* lots are subject to the smaller minimum lot areas, widths, and depths that are found in § 34-3277.

(d) Essential services and essential service equipment shall not be required to meet the minimum required lot dimensions for the district wherein located (see § 34-1617).

127

Sec. 34-638. Minimum setbacks.

(a) ***Generally.*** Most zoning districts require minimum setbacks between all buildings and structures and the street, the side lot line, the rear lot line, and any water body.

(1) Setbacks are minimum horizontal distances between a property line and the nearest point of all structures that ensure a minimum area without buildings. Detailed definitions are provided under "setback" in § 34-2.
  a. Where an unusual lot configuration or orientation makes it unclear which property lines are street, side, or rear lot lines, the director will establish street, side, and rear lot lines for setback purposes after taking into account existing buildings on the same block as well as the intent of this code. Where access is provided by a shared driveway rather than a street, the director may determine that no street setback applies to that lot.
  b. Once established through this process, the same setbacks will be applied by the director to other lots on that block.

(2) There are two types of side setbacks:
  a. *Side setbacks – waterfront lots*. Larger side setbacks are required for waterfront lots, defined as lots that immediately adjoin a tidally influenced body of water, whether artificial or natural (see definitions in § 34-2).
  b. *Side setbacks – non-waterfront lots*. Smaller side setbacks are required for all other lots.

(3) The distinction between street setback lines and build-to lines is explained in § 34-662.

(4) Certain exceptions to minimum setbacks are provided in subsection (d) below.

(b) ***Where to find minimum setback dimensions***. Minimum setback dimensions are specified as follows:

(1) *For principal buildings*:
  a. For all conventional zoning districts, see Table 34-3.
  b. For redevelopment zoning districts, as described for the individual districts in division 5 of this chapter.
  c. For RPD districts, see § 34-943.
  d. For CPD districts, see § 34-953.

(2) *For accessory buildings*, see §§ 34-1174–1176.

(c) ***Additional wetlands buffers***. New development must maintain a 75-foot separation between wetlands and buildings or other impervious surfaces, in accordance with Policy 4-C-12 of the Fort Myers Beach Comprehensive Plan.

(1) This requirement does not apply to lawfully existing subdivided lots

(2) This requirement also does not apply to a previously approved development order to the extent it cannot reasonably be modified to comply with this requirement (see ch. 15 of the Fort Myers Beach Comprehensive Plan for details).

(d) ***Exceptions to setback dimensions.*** In addition to the following general exceptions to minimum setbacks, commercial buildings that are subject to the commercial design standards may encroach into certain setbacks as provided in § 34-991–1010.

(1) ***Exceptions to all setbacks.***
  a. *Administrative setback variances.* Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268.
  b. *Overhangs.* An overhang which is part of a building may be permitted to encroach into any setback as long as the overhang does not extend more than three feet into the setback and does not permit any balcony, porch, or living space located above the overhang to extend into the setback.
  c. *Shutters.* A shutter which is attached to a building may be permitted to encroach one foot into the setbacks.
  d. *Awnings and canopies.*
    1. Awnings and canopies which are attached to a building may be permitted to encroach three feet into the setbacks, as long as their location does not interfere with traffic, ingress and egress, or life safety equipment.

2. For purposes of this section, awnings and canopies may be attached to a nonconforming building and shall not be considered an extension or enlargement of a nonconformity, as long as the building is properly zoned for its use and the conditions as set forth in this section are met.

e. *Essential services.* Essential services and essential service equipment shall not be required to meet the minimum setbacks for the district wherein located (see § 34-1617).

f. *Two-family dwelling units.* If a two-family dwelling unit is on a lot of sufficient size to allow it to be subdivided into a separate lot under each dwelling unit (see Table 34-3), the side setback regulations in this section shall not be interpreted to forbid such subdivision. Existing two-family buildings that are being subdivided must be separated by not less than 1-hour fire resistance.

g. *Mechanical equipment.* Mechanical equipment such as air conditioners may encroach up to three feet into rear and water body setbacks but must meet the same street and side setbacks as the building it serves. These requirements apply to new buildings and to new mechanical equipment but will not apply to replacement of mechanical equipment on existing buildings if the equipment was installed in conformance with prior regulations.

(2) ***Exceptions to street setbacks.*** Certain structures are exempt from the street setback requirements as follows. See also § 34-1174.

a. ***Build-to lines.*** Some zoning districts do not have any street setback requirements but instead have build-to lines, as described in § 34-662. Awnings, canopies, balconies, bay windows, porches, stoops, arcades, and colonnades may extend forward of the build-to line provided that they comply with the commercial design standards (see § 34-995(e)).

b. ***Porches, balconies, and stoops.*** Porches, balconies, and stoops may extend up to 10 feet into the street setback zone of residential buildings, provided that:

1. Any walls, screened areas, or railings in the setback zone extend no higher than 42 inches above the floor of the porch, balcony, or stoop; and
2. No portion of a porch or balcony and no walls or screened areas may be closer than 10 feet to the edge of any street right-of-way or street easement.

c. ***Mail and newspaper delivery boxes.*** Mail and newspaper delivery boxes may be placed in accordance with U.S. Postal Service regulations; however, the support for a mail or newspaper delivery box must be of a suitable breakaway or yielding design, and any mail or newspaper delivery box placed in an unsafe or hazardous location can be removed by the government agency with jurisdiction over the right-of-way at the property owner's expense.

d. ***Bus shelters, bus stop benches, and bicycle racks.*** Bus shelters, bus stop benches, and bicycle racks may be located in any district without regard for minimum setbacks, provided the location of the structure is approved by the town manager. No advertising is permitted on bus stop benches.

e. ***Telephone booths.*** Telephone booths and pay telephone stations may be located in any zoning district that permits multifamily or commercial uses without regard for minimum setbacks, provided that the location shall be approved by the director.

(3) ***Water body setbacks.***

a. *Gulf of Mexico.* Except as provided in this section or elsewhere in this code, no building or structure shall be placed closer to the Gulf of Mexico than set forth in ch. 6, articles III and IV, or 50 feet from mean high water, whichever is the most restrictive. See also special regulations for the EC zoning district in § 34-652 and the coastal zone restrictions in § 34-1575.

b. *Other bodies of water.* Except as provided in this section or elsewhere in this chapter, no building or structure shall be placed closer than 25 feet to a canal or to a bay or other water body. For purposes of measuring setbacks from a canal, bay, or other body of water, the following will be used:
   1. If the body of water is subject to tidal changes and the property does not have a seawall, the setback will be measured from the mean high water line.
   2. If the body of water is not subject to tidal changes and the property does not have a seawall, the setback will be measured from the control elevation of the body of water if known, or from the ordinary high water line if unknown.
   3. If the property has a seawall, the setback will be measured from the seaward side of the seawall, not including the seawall cap.

c. *Exceptions for certain accessory structures.*
   Certain accessory buildings and structures may be permitted closer to a body of water as follows:
   1. *Fences and walls.* See division 17 of this article.
   2. *Shoreline structures.* See § 34-1863 and ch. 26.
   3. *Nonroofed structures.* Swimming pools, tennis courts, patios, decks, and other nonroofed accessory structures or facilities which are not enclosed, except by fence, or which are enclosed on at least three sides with open-mesh screening from a height of 3½ feet above grade to the top of the enclosure, shall be permitted up to but not closer than:
      -a- Five feet from a seawalled canal or seawalled natural body of water;
      -b- Ten feet from a nonseawalled artificial body of water; or
      -c- Twenty-five feet from a nonseawalled natural body of water;
      whichever is greater. Enclosures with any two or more sides enclosed by opaque material shall be required to comply with the setbacks set forth in subsections (d)(3)a. and (d)(3)b. of this section.
   4. *Roofed structures.*
      -a- Accessory structures with roofs intended to be impervious to weather and which are structurally built as part of the principal structure shall be required to comply with the setbacks set forth in subsections (a) and (b) of this section.
      -b- Accessory structures with roofs intended to be impervious to weather and which are not structurally built as part of the principal structure may be permitted up to but not closer than 25 feet to a natural body of water, and ten feet to an artificial body of water.

(4) ***Exceptions for certain nonconforming lots.***
   a. Certain nonconforming *residential* lots are subject to the modified side and rear setback requirements that are found in § 34-3273.
   b. Certain nonconforming *mobile home* lots in the VILLAGE zoning district are subject to the modified side and rear setback requirements that are found in § 34-694.
   c. Certain nonconforming *commercial* lots are subject to the modified side and rear setback requirements that are found in § 34-3277.

Secs. 34-639--34-640. Reserved.

DIVISION 4. CONVENTIONAL ZONING DISTRICTS

Sec. 34-641. General purpose.

The purpose of conventional zoning districts is to control land use in a uniform way throughout each zoning district, with similar use and dimensional regulations applying to all parcels within that district. Article IV of this chapter also contains supplemental regulations that apply to multiple zoning districts.

Sec. 34-642. RS (Residential Single-family) zoning district.

(a) The purpose of the RS zoning district is to provide stable neighborhoods where single-family detached homes are the predominant land use.

(b) In the RS zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

Sec. 34-643. RC (Residential Conservation) zoning district.

(a) The purpose of the RC zoning district is to recognize certain older neighborhoods that had been zoned for duplex, multifamily, or mobile homes purposes prior to incorporation of the town. Some lots in this district are large enough to accommodate a second dwelling unit (see Table 34-3 and §§ 34-632, 34-1177, and 34-1178).

(b) In the RC zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

Sec. 34-644. RM (Residential Multifamily) zoning district.

(a) The purpose of the RM zoning district is to designate suitable locations for a wide variety of multifamily residences.

(b) In the RM zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

Sec. 34-645. CR (Commercial Resort) zoning district.

(a) The purpose of the CR zoning district is to designate suitable locations for motels, resorts, and related services.

(b) In the CR zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

Sec. 34-646. CM (Commercial Marina) zoning district.

(a) The purpose of the CM zoning district is to allow commercial marinas in suitable waterfront locations to provide boaters with access to the water and related services.

(b) In the CM zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

Sec. 34-647. CO (Commercial Office) zoning district.

(a) The purpose of the CO zoning district is to allow office uses on land that is visible to the traveling public or on land that can serve as a transition between commercial and residential uses.

(b) In the CO zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

Sec. 34-648. SANTOS zoning district.

(a) The purpose of the SANTOS zoning district is allow a mixture of residential and low-intensity commercial uses that will separate the intense commercial uses along Estero Boulevard from the residential portions of the Venetian Gardens subdivision. This zoning district implements the recommendations of the Santos/Palermo Circle Planning Study (February, 1999) and Policy 4-C-11 of the Fort Myers Beach Comprehensive Plan.

(b) In the SANTOS zoning district, allowable uses are defined in Table 34-2 and property

Sec. 34-1552. Determination of paraphernalia.

In determining whether an object is drug paraphernalia, the special magistrate, court, jury, or other enforcing authority shall consider, in addition to all other logically relevant factors, the following:
(1) Statements by an owner or by anyone in control of the object concerning its use.
(2) The proximity of the object, in time and space, to a direct violation of state law.
(3) The proximity of the object to controlled substances.
(4) The existence of any residue of controlled substances on the object.
(5) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons who he or she knows, or should reasonably know, intend to use the object to facilitate a violation of state law. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this code or state law shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia.
(6) Instructions, oral or written, provided with the object concerning its use.
(7) Descriptive materials accompanying the object which explain or depict its use.
(8) Any advertising concerning its use.
(9) The manner in which the object is displayed for sale.
(10) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor of or dealer in tobacco products.
(11) Direct or circumstantial evidence of the ratio of sales of the object or objects to the total sales of the business enterprise.
(12) The existence and scope of legitimate uses for the object in the community.
(13) Expert testimony concerning its use.

Sec. 34-1553. Manufacture and delivery of drug paraphernalia.

No land or structure shall be used or permitted to be used, and no structure shall hereafter be erected, constructed, moved, altered, or maintained in any zoning district, for the purpose of delivering, possessing with intent to deliver, or manufacturing with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used:
(1) To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of state law; or
(2) To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of state law.

Secs. 34-1554--34-1570. Reserved.

DIVISION 13. ENVIRONMENTALLY SENSITIVE AREAS

Sec. 34-1571. Purpose of division; areas of concern.

Several of the goals, objectives, and policies set forth in the Fort Myers Beach Comprehensive Plan address development as it relates to the preservation, protection, enhancement, and restoration of the natural resources of the town.
(1) Coastal resources including:
  a. Marine: Gulf of Mexico.
  b. Estuarine: Coastal bays, coastal lagoons, coastal tributaries, forested saltwater wetlands, nonforested saltwater wetlands and sea grass beds.
  c. Terrestrial: Beaches, dunes, coastal ridge, overwash plain, and zones of archaeological sensitivity (see ch. 22).
(2) Other natural resources including:
  a. Wetlands as defined in this code.
  b. Areas which provide critical habitat of rare and endangered plant and animal species listed in the publication Official Lists of Endangered and Potentially Endangered Fauna and Flora in Florida, as periodically updated.
  c. Areas of rare and unique upland habitats as indicated in Lee County's 1988 coastal study, including but not limited to the following:
    1. Sand scrub (320).
    2. Coastal scrub (322).
    3. Those pine flatwoods (411) which can be categorized as mature due to the absence of severe impacts caused by

logging, drainage, and exotic infestation.

4. Slash pine/midstory oak (412).
5. Tropical hardwood (426).
6. Live oak hammock (427).
7. Cabbage palm hammock (428).

The numbered references are to the Florida Land Use Cover and Forms Classification System (FLUCFCS), level III (FDOT, 1985).

Sec. 34-1572. Applicability of division.

All areas proposed for development or rezoning which are designated as Wetlands on the future land use map, or which come under the criteria set forth in § 34-1571, shall be subject to the general as well as the specific regulations set forth in this division.

Sec. 34-1573. Environmental assessment report.

When environmentally sensitive ecosystems occur, as identified by the town, county, the U.S. Army Corps of Engineers, the state department of environmental protection, the South Florida Water Management District or other applicable regulatory agency, the developer or applicant shall prepare an environmental assessment that examines the existing conditions, addresses the environmental impacts, and proposes means and mechanisms to protect, conserve, or preserve the environmental and natural resources of these ecosystems.

Sec. 34-1574. Compliance with applicable regulations; new roads, development, or expansion of existing facilities.

(a) Any use permitted or permissible in environmentally sensitive areas shall be subject to all applicable state and federal regulations as well as applicable town regulations.

(b) Except in instances of overriding public interest, new roads, private land development, or the expansion of existing facilities within Wetlands or on the sandy beaches that are designated in the Recreation category in the Fort Myers Beach Comprehensive Plan shall be prohibited.

Sec. 34-1575. Coastal zones.

(a) Development, other than minor structures as defined in § 6-333, is prohibited seaward of the 1978 coastal construction control line. This line has been incorporated into the future land use map of the Fort Myers Beach Comprehensive Plan as the landward boundary of the beachfront Recreation category (see also Policy 5-D-1.v), and as the landward boundary of the EC zoning district (see § 34-652). Regulations for minor structures in the EC zoning district (seaward of the 1978 coastal construction control line) are found in § 6-366.

(b) Minor structures do not include structures supported by or extensions of the principal structure. The minor structures identified as acceptable in this section are considered expendable under design wind, wave, and storm forces.

(c) No vehicular or foot traffic from developments or access strips to crossovers will be allowed to cross over directly on dune ridges or beach escarpments. Access to the beach must be via elevated dune walkovers (see §§ 6-366 and 10-415(b)).

(d) No development will be permitted which alters the dune system, except for excavations for the installation of pilings necessary for the construction of elevated structures as permitted by the state department of environmental protection.

Sec. 34-1576. Reserved.

Sec. 34-1577. Wetlands.

(a) Any development in or around wetlands shall be designed to protect the values and functions of the wetlands as set forth in ch. 14, article IV.

(b) No wetland shall be drained, filled, or excavated unless and except as part of an approved restoration or mitigation program.

Secs. 34-1578--34-1610. Reserved.

(b) Operators are required to provide guests with the town's code of conduct for short-term rentals.

(1) The town shall provide operators with a printed version of the code of conduct and a standardized agreement for compliance.
(2) The operator shall provide guests of short-term rental units with the code of conduct and obtain the signature of guests on the agreement indicating that they are aware of and intend to comply with the code of conduct.
(3) The code of conduct shall also be posted at the primary entrance/exit to each short-term rental unit.

(c) Operators must provide the town with a current local telephone number of a contact for each short-term rental unit. This telephone number must be answered 24 hours a day to respond to complaints. These telephone numbers are public records and will be available at town hall during regular business hours.

Sec. 34-2394. Enforcement and penalties.

(a) The director is authorized to pursue any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2) for any violation of this division.

(b) Persons who may be charged with a violation of this division include property owners, operators, rental agents, guests, and any other person using the structure where the violation has been committed.

(c) For properties on the registry of pre-existing weekly rentals (see § 34-2392), the following additional requirements shall apply:

(1) Violations of F.S. ch. 509 shall also be considered to be violations of this division as follows:
    a. Failure to maintain licensure or any other provisions of ch. 509.
    b. Failure to eject guests who indulge in any conduct which disturbs the peace and comfort, as provided by § 509.141.
(2) Repeated violations of this division on a registered property shall lead to cumulative penalties. These penalties shall accrue as follows whenever a violation results in a fine being imposed on or paid or whenever a finding of violation is made by a judge or code enforcement special magistrate:
    a. First violation: $250 fine.
    b. Second violation: $500 fine.
    c. Third violation: six-month suspension of registration under § 34-2392.
    d. Fourth violation: two-year suspension of registration under § 34-2392.

After any period of three years during which there were no fines imposed or paid and no formal findings of violations of this division, the next violation shall be deemed to be the first violation for purposes of this section.

Secs. 34-2395–34-2410. Reserved.

DIVISION 33. SIGNS

Sec. 34-2411. Location and construction.

All signs shall be located, erected, and constructed in accordance with ch. 30, except where this chapter provides more explicit regulations for a specific use.

Secs. 34-2412--34-2440. Reserved.

DIVISION 34. SPECIAL EVENTS

Sec. 34-2441. Special events defined.

A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location. Specifically excluded from this definition are any gatherings formed and/or sponsored by any recognized religion or religious society.

Sec. 34-2442. Permits for special events.

(a) The Town of Fort Myers has established a permitting process for special events through Ordinances 98-01 and 00-16 and any future amendments.

(b) No person, corporation, partnership, or other entity shall advertise or sell or furnish tickets for a special event within the boundaries of the town, and no such event shall be conducted or maintained, unless and until that person or entity has obtained a permit from the town to conduct such event.

(c) Special events on the beach shall also comply with § 14-11 of this code.

Secs. 34-2443--34-2470. Reserved.

DIVISION 35. RESERVED

Secs. 34-2471--34-3000. Reserved.

DIVISION 36. STORAGE FACILITIES AND OUTDOOR DISPLAY OF MERCHANDISE

Sec. 34-3001. Applicability of division.

(a) Except as provided in this section, the regulations set forth in this division shall apply to all outdoor display of merchandise which is offered for sale or rent, and to all storage facilities as defined in this division.

(b) The provisions of the division do not apply to garage or yard sales by residents of dwelling units on their own property in accordance with this code (see § 34-2) or to the mooring or docking of watercraft.

Sec. 34-3002. Mobile vendors and transient merchants.

(a) Mobile vendors includes a person who sells food or other product or service to the public from a mobile dispensing vehicle which is self-propelled or otherwise readily moveable from place to place either operated from a base facility or not operated from a base facility.

(b) No mobile vendor shall be permitted to make sales from a vehicle while stopped on the right-of-way or other public property within the limits of the Town of Fort Myers Beach, except in accordance with § 34-3004.

(c) Mobile vendors and transient merchants must comply with all provisions of Ordinance 96-14, the Fort Myers Beach Transient Merchant Regulation Ordinance, and with all subsequent amendments.

Sec. 34-3003. Reserved.

Sec. 34-3004. Outdoor display of merchandise for sale or rent.

(a) Outdoor sales includes all sales or display of merchandise, food, and beverages between the outer wall of stores and public rights-of-way or, where permitted, on public rights-of-way, but does not include merchandise visible through windows or sold to customers using pass-through windows. Merchandise sold or displayed outdoors must not be placed closer than 3 feet to any sidewalk or bike path or to any right-of-way.