FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 2 ADMINISTRATION

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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 § 34-208.

Sec. 2-2. Compliance agreements.

(a) ***Authority.*** The town manager 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 a compliance 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) ***Procedure.*** Compliance agreements may only be entered into prior to the violator's receipt of a notice of hearing of code enforcement action before the code enforcement hearing examiner. The agreement must be in writing 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 to abate the violation. The agreement must also provide a specific abatement time frame. The town may, at its option, record the compliance agreement in the public records. If a copy of the agreement is recorded, the town will record a satisfaction or release of the agreement once the violation is deemed abated. The parties must comply with all terms of the agreement, in the stated time frame, before the violation will be deemed abated. In the event the parties fail to comply with the terms of the agreement, the town may pursue code enforcement action. If the town pursues code enforcement action subsequent to the execution of the compliance agreement, the terms of the agreement will have no further effect on the parties and will not be binding on the hearing examiner.

(d) ***Enforcement.*** The terms and conditions of a compliance agreement may be enforced in a court of competent jurisdiction by injunction or an action for specific performance. In the event the parties execute but do not perform all obligations under an agreement, the town may pursue code enforcement hearing examiner action in accordance with article V. The hearing examiner 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 or 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. In cases of challenges to development orders controlled by F.S. § 163.3215, no suit may be brought and no verified complaint, as explained in F.S. § 163.3215(4), may be filed or accepted for filing until the development order giving rise to the complaint has become final by virtue of its having been issued by the director or by virtue of its having been ordered by the town council on an appeal reversing the director's denial of the development permit or where the town council has granted planned development zoning or an extension of a development order. Once a development order has been granted, the provisions of F.S. § 163.3215 will be the sole means of challenging the approval or denial of a development order, as that term is defined in F.S. § 163.3164(6), when the approval of the development order is alleged to be inconsistent with the Fort Myers Beach Comprehensive Plan. An action brought pursuant to F.S. § 163.3215 will be limited exclusively to the issue of comprehensive plan consistency.

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* — —			
	Transportation	*Regional*	*Community*	*Fire Protection*	*Schools*[2]
Residential:					
Single-family residence	$2,436	$461	$655	$560	$2,232
Multiple-family building *(per dwelling unit)*	$1,687	$341	$485	$269	$691
Timeshare unit	$1,834	$341	$485	$269	$0
Hotel/motel room	$1,834	$230	$327	$308	$0
Assisted living facility *(per dwelling unit)* (see § 34-1415 for density equivalents)	$1,687	$0	$0	$269	$0
Commercial (fee per 1,000 sq. ft. except as noted):					
Retail store or shopping center	$3,992	$0	$0	$549	$0
Bank	$6,063	$0	$0	$549	$0
Car wash, self-service (fee per stall)	$7,749	$0	$0	$549	$0
Convenience store with gas pumps	$8,715	$0	$0	$549	$0
Movie theater	$5,600	$0	$0	$549	$0
Restaurant, fast food	$9,886	$0	$0	$549	$0
Restaurant, standard	$4,905	$0	$0	$549	$0
Office (fee per 1,000 square feet):					
General office	$2,254	$0	$0	$594	$0
Medical office	$6,334	$0	$0	$594	$0
Institutional (fee per 1,000 square feet):					
Church	$1,402	$0	$0	$549	$0
Day care center	$3,900	$0	$0	$549	$0
Elementary/secondary school (private)	$611	$0	$0	$549	$0
Warehouse (fee per 1,000 square feet):	$1,198	$0	$0	$123	$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. 01-21, effective December 1, 2001.*

(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. However, a shopping center 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. 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 from the sources named in this subsection; and
(2) Applying the formula set forth in subsection (f) 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.*
        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. *Cost documentation studies.* The feepayer may also provide documentation substantiating that the costs to accommodate the impacts of the proposed development, or 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
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, less administrative costs retained or collected 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 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.

(a) The intent of this article is to promote, protect and improve the health, safety and welfare of the citizens of Fort Myers Beach by using Lee County's code enforcement hearing examiner and granting the power 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.

(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.

(1) Division 2 of this article describes the use of Lee County's hearing examiner for code enforcement, when so authorized by interlocal agreement.

(2) Division 3 of this article describes the use of civil citations to enforce town codes.

DIVISION 2. HEARING EXAMINER

Sec. 2-421. Creation of position of hearing examiner.

For the purpose of enforcing codes and regulations of the Town of Fort Myers Beach, the town council may contract with Lee County through interlocal agreement for the use of the position of hearing examiner as created by the board of county commissioners.

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 shall have the meanings respectively ascribed to them by this section:

Hearing examiner means the officer appointed by the Lee County Board of County Commissioners, including any deputy hearing examiners or hearing examiners pro tempore, to hear matters concerning compliance with codes and ordinances.

Code inspector means any authorized agent or employee of the Town of Fort Myers Beach whose duty it is to assure code compliance. Whenever the town council contracts with Lee County to provide code enforcement services, Lee County code inspectors shall serve as Fort Myers Beach code inspectors.

Repeat violation means a violation of a provision of a code or ordinance by a person who has previously been found to have violated the same provision within five years prior to the current violation.

Sec. 2-424. Enforcement procedure.

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

(b) ***Initial violation.*** Except as provided in §§ (c) and (d) of this section, if a code inspector finds a violation of town regulations, notice indicating the type of violation found and the manner in which it may be corrected must be given to the violator. The notice must also provide a reasonable time in which to correct the violation. If the violation continues beyond the time provided for correction or abatement, the code inspector may request a hearing before the hearing examiner and provide written notice of the hearing to the violator. A case may be presented to the hearing examiner even if the violation has been corrected prior to the hearing, provided the violation was not corrected within the specified time period or the violation was corrected and reoccurred and the notice indicates the possibility of these consequences.

(c) ***Repeat violation.*** If a repeat violation is found, the code inspector must notify the violator of the type of violation and the manner in which it can be abated, but the violator is not entitled to a reasonable time in which to correct the violation. Once the violator has been notified of the repeat violation, the code inspector may request a hearing before the hearing examiner and provide written notice of the hearing to the violator. The case may be presented to the hearing examiner even if the repeat violation is corrected prior to the hearing provided the notice indicates the possibility of these consequences.

(d) ***Immediate hearing.*** If the code inspector 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 inspector, after making a reasonable effort to notify the violator, may request an immediate hearing before the hearing examiner.

Sec. 2-425. Conduct of hearing.

(a) ***Scheduling of hearings.*** A regular time and place will be designated by the hearing examiner for code enforcement proceedings. The frequency of these hearings will be based upon the number of cases to be heard. If necessary, the hearing examiner may also set a special hearing to take place on a day or at a time not regularly set aside for code enforcement proceedings. The code inspector is responsible for scheduling cases to be heard by the hearing examiner. All code enforcement proceedings and 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 hearing examiner by the town attorney. If the town prevails in prosecuting a case before the hearing examiner, it will be entitled to recover all costs incurred in prosecuting the case. 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 hearing examiner will proceed to hear the cases on the docket for that day. All testimony will be under oath and recorded. Testimony may be taken from the code inspector and the alleged violator. Formal rules of evidence will not apply, but fundamental due process is to be observed and will govern the proceedings.

(d) ***Hearing examiner order.*** At the conclusion of the hearing, the hearing examiner will issue a written order containing findings of fact and conclusions of law based on evidence of record, the actions necessary to abate any violation, the fine to be imposed if the violation is not, or has not been, abated, and an award of the costs of prosecution due and owing to the town. The hearing examiner 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 as pat of the administrative fine.

(e) ***Recording the order.*** Certified copies of orders 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. The findings in the recorded order are binding upon the violator and, if the violation concerns real property, subsequent purchasers, successors in interest, or assigns. If an order has been recorded in the public records pursuant to this subsection, then after receiving proof the violation is abated, the hearing examiner will issue an order acknowledging abatement that must also be recorded in the public records. A hearing is not required to issue an order acknowledging abatement. 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.

Sec. 2-426. Powers of the code enforcement hearing examiner.

The code enforcement hearing examiner 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) Take testimony under oath.
(5) Issue orders having the force of law to command whatever steps are necessary to bring a violation into compliance.

Sec. 2-427. Penalties and liens.

(a) ***Order imposing fine/lien.*** The hearing examiner, upon sworn notification by the code inspector that a code enforcement violation has not been abated, may order the violator to pay a fine not to exceed $250 for each day the violation continues past the date set for abatement. If an order requiring abatement has been issued by the hearing examiner, a hearing is not necessary for the imposition of a fine. However, if a dispute arises as to whether abatement has occurred, the hearing examiner may grant a request for hearing if the request is made by the respondent in writing setting forth the reasons for dispute, either on the date set for abatement or within ten days thereafter. For a repeat violation, the hearing examiner may order the violator to pay a fine not to exceed $500 per day per violation from the date the repeat violation was noticed to the violator by the code inspector. If the violation is of the type described in § 2-424(d), the hearing examiner must notify the town manager, who may make all reasonable repairs required to bring the property into compliance and charge the violator with the reasonable cost of those repairs along with the fine imposed under this section.

(b) ***Penalties.***

(1) A fine imposed under this section cannot exceed $250.00 per day for the first violation or $500.00 per day for a repeat violation. Further, the fine may include the cost of all repairs incurred by the town in accordance with subsection (a) hereof as well as the costs of prosecuting the case before the hearing examiner. For purposes of this article, prosecution costs of include, but are not limited to, recording costs, inspection costs, appearances by the code inspector at hearings, photography costs, and similar items.
(2) The following factors will be considered by the hearing examiner in determining the fine to be imposed:
    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 hearing examiner may mitigate the fine imposed under this section.

(c) ***Creation of a lien.*** A certified copy of an order imposing fines 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 levy against the personal property, 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 the violation is abated or until 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 may execute a satisfaction or release of lien entered in accordance with this section. A release or satisfaction of lien may be executed by the mayor on behalf of the entire council. The hearing examiner may authorize the town attorney to foreclose on a lien which remains unpaid for a period of three or more months after filing. 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.

(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 fines and/or

assessing the costs of prosecution has been recorded, unless within that time an action to foreclose on the lien is commenced in a court of competent jurisdiction. In an action to foreclose on the lien, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the foreclosure. The town is entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien affected by the commencement of an action will not be enforceable against creditors or subsequent purchasers for valuable consideration without notice, unless a lis pendens is recorded.

Sec. 2-428. Appeals.

An aggrieved party, including the town council, may appeal a final order of the hearing examiner to the circuit court. Such an appeal will be limited to appellate review of the record created before the hearing examiner and may not be a hearing de novo. Any appeal must be filed within 30 days of the execution of the order being appealed in accordance with the Florida Rules of Appellate Procedure. A copy of the notice of appeal must be provided to the hearing examiner, the town attorney, and the town manager.

Sec. 2-429. Notices.

(a) All notices required by this article must be provided to the alleged violator by certified mail, return receipt requested; by hand delivery by the sheriff or other law enforcement officer, code inspector, or other person designated by the town manager; or 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.

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

(1) Such notice must 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 in at least two locations, once of which must be the property upon which the violation is alleged to exist and the other must be at the Lee County Justice Center. Proof of posting must be by affidavit of the code inspector 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).

(c) Evidence that an attempt has been made to hand deliver or mail notice as provided in subsection (a), together with proof of publication or posting as provided in subsection (b), 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) ***Code enforcement officer.*** As used in this section, "code enforcement officer" means any designated employee or agent of Lee County whose duty it is to enforce county codes and ordinances. Whenever the town council contracts with Lee County to provide code enforcement services, Lee County code enforcement officers shall serve as Fort Myers Beach code enforcement officers and shall have the powers as described herein.

(b) ***Citation training.*** Lee County may designate certain county employees or agents as code enforcement officers. The training and qualifications necessary to be a code enforcement officer will be determined by the county manager or his 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.

(c) ***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 will hear the charge.

(2) Prior to issuance a citation, a code enforcement office must provide notice to the person that a violation of a county 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 county 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.

(d) ***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.

(e) ***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) Citation proceedings are necessary to enforce town codes and ordinances.

(f) 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.

(g) 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.

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