TOWN OF FORT MYERS BEACH, FLORIDA

LAND DEVELOPMENT CODE

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 1
GENERAL PROVISIONS

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

ARTICLE II. CONCURRENCY MANAGEMENT SYSTEM

ARTICLE III. DEVELOPMENT AGREEMENTS

ARTICLE IV. IMPACT FEES

ARTICLE V. CODE ENFORCEMENT

ARTICLE VI. IMPLEMENTING PUBLIC CAPITAL IMPROVEMENTS

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 — —			
	Transportation	*Regional*	*Community*	*Fire 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. 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.

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.

DIVISION 4. REDUCTION AND/OR RELEASE OF CODE ENFORCEMENT LIENS

Sec. 2-432. Procedure to obtain reduction and/or release of a code enforcement lien.

(a) Where a certified copy of an order imposing a penalty or fine for a code enforcement violation has been recorded in the public records and has become a lien against the land and/or property of the violator/property owner, such violator/property owner may apply for a release of such lien as follows:

(1) Upon full payment by the violator/property owner of the fine or penalty imposed as a result of a code enforcement action, the town manager or designee is hereby authorized to execute and record, at the property owner's expense, a release of lien.

(2) Upon request for a reduction or forgiveness of a fine or penalty that constitutes a lien resulting from a code enforcement action, the violator/property owner shall submit a written application to the town manager or designee. The application shall include the following:
   a. A copy of the order imposing a lien upon the property;
   b. The code enforcement case number;
   c. The date upon which the violator/property owner brought the subject property into compliance with the requirements of the town code;
   d. The factual basis upon which the violator/property owner believes the application for reduction or forgiveness of the lien should be granted;
   e. The specific terms upon which the violator/property owner believes a satisfaction or release of lien should be granted;
   f. The reasons, if any, compliance was not accomplished by the violator/property owner prior to the time the order of lien was recorded; and
   g. The amount of the reduction in penalty or fine requested by the violator/property owner;
   h. Information concerning any outstanding mortgages on the property, including the date such mortgage or mortgages were recorded and whether the mortgage or mortgages are currently in default.
   i. All documents or other evidence that support the applicant's request for a reduction or forgiveness of the lien, which must be included with the application at the time of submittal.
   j. The application shall be executed under oath and sworn to in the presence of a notary public and delivered to the town manager designee.

(3) The violator/property owner shall submit, at the time of application, an application fee in the amount of $200.00 to reimburse the town for its administrative costs associated with handling the application and recording the order imposing a penalty or fine and the requested release of lien. The application cost is non-refundable, without regard to the final disposition of the application for reduction, forgiveness, and release of lien.

(4) Upon receipt of the application for release of lien and the payment provided above, the town manager, or designee, shall confirm through the code enforcement division that the violation which resulted in the order imposing the penalty or fine has been brought into full compliance.

(5) The town manager, or designee, shall then review and consider the status of the application for release of lien with respect to the following:
   a. If a property owner acquired the property after the code enforcement lien was recorded, a waiver or reduction of lien may not be granted because the lien should have been identified and satisfied by the property owner at the time of purchase of the property.
   b. If a title insurance policy was issued at the time the property was purchased and the title insurance policy failed to identify or consider the lien, a waiver or reduction in lien may not be granted. In such cases, the lien should have been discovered by the title insurer and providing a reduction or waiver would place the town in the position of indemnifying the title insurer against its losses, which losses are the result of negligent examination of title by the title insurer.

c. A request for waiver or reduction in lien may not be granted if the town council has previously reduced the amount of the lien. This statement applies whether or not the request is received from the original applicant for reduction or from a subsequent applicant who acquired the property.

(6) If the town manager or designee determines that the request falls within any one of the above factual situations, the town manager or designee shall issue a written denial of the request for reduction or forgiveness. If the applicant desires to appeal the town manager's decision to the town council, the applicant may do so by filing a written appeal with the town manager stating the reason(s) why the town council should make an exception to its established guidelines and consider a reduction or forgiveness of the lien. Upon filing of a proper appeal, the town manager shall present the information to the town council at a regular meeting for their consideration and final determination.

(7) If the town manager or designee determines that the request does not fall within any of the above factual situations and therefore qualifies for possible reduction or forgiveness, the town manager or designee shall review the request further. The town manager or designee, in formulating a recommendation on whether to reduce the amount of the lien or forgive the lien entirely, shall consider the following factors:

a. The gravity of the violation(s);
b. The amount of time it took the violator/property owner to come into compliance;
c. The accrued amount of the code enforcement lien as compared to the market value of the property;
d. Whether there is a prior recorded mortgage on the property and, if so, whether such mortgage is in default and/or whether the principal amount of the mortgage is of such a magnitude that it would not be practical for the town to institute a lien foreclosure action;
e. Any previous code violation(s) of applicant/owner;
f. Consideration for the future or proposed use of the property for public purpose; and
g. The number and status of all other properties owned by the applicant/owner in Lee County, Florida.

(8) The town manager or designee shall place the application for satisfaction or release of lien upon the agenda of a regularly scheduled town council meeting. The town council may take action based solely upon the sworn application, recommendation of the town manager or designee, and the applicant shall have opportunity to address the town council as to the factors he or she believes warrant reduction or waiver of lien in considering the application for satisfaction or release of lien.

(9) The town council may reduce the amount of the lien, waive the full amount of the lien, or continue the lien in its full amount and may accept, modify, or reject the recommendations of the Town Manager or designee.

(10) Town council approval of a reduction in the amount of the lien shall be contingent upon payment in full of the reduced amount within thirty (30) days of the town council approval date. If the reduced amount is not paid in full within the thirty (30) day period, the reduction shall become null and void and the full amount of the lien shall be due and payable.

(11) When a lien is satisfied as a result of full payment, reduced payment, or waiver as ordered by the town council, the town shall record the satisfaction/release of lien in the Public Records of Lee County, Florida and provide a copy to the property owner.

Sec. 2-433–2-459. 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

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 6
MAINTENANCE CODES, BUILDING CODES, AND COASTAL REGULATIONS[1]

ARTICLE I. PROPERTY MAINTENANCE CODES

ARTICLE II. BUILDING CODES

ARTICLE III. COASTAL CONSTRUCTION CODE

[1]***Cross reference(s)***--*Development design standards, § 10-251 et seq.; design standards for utilities, § 10-351 et seq.; design standards for fire safety, § 10-381 et seq.; historic preservation, ch. 22; variances from building regulations for historic structures, § 22-175; zoning, ch. 34; permit for moving buildings, § 34-3103; nonconforming buildings, § 34-3231 et seq.*

ARTICLE IV. FLOODPLAIN REGULATIONS

ARTICLE I. PROPERTY MAINTENANCE CODES

DIVISION 1. INTERNATIONAL PROPERTY MAINTENANCE CODE

Sec. 6-1. Adoption of International Property Maintenance Code.

Except as amended or modified in the sections below, the 2009 edition of the International Property Maintenance Code, published by the International Code Council, is hereby adopted as the Town of Fort Myers Beach Property Maintenance Code and shall be the governing law with respect to all structures and premises in the Town of Fort Myers Beach. A complete copy of this code shall be maintained on file in the office of the town clerk.

Sec. 6-2. Amendments.

The 2009 Edition of the International Property Maintenance Code is hereby amended as follows:

(a) Wherever the term "*code official*" appears in the International Property Maintenance Code, that term shall be interpreted to mean the Director of the Department of Community Development or his or her designee. Wherever the term "*department*" appears in this code, it shall be interpreted to mean the Department of Community Development. Wherever the terms "International Building Code" or "International Existing Building Code" appear in this code, the term "Florida Building Code" shall be substituted for such terms.

(b) ***Section 101.1 Title***, is amended to read as follows:

These regulations shall be known as the International Property Maintenance Code of the Town of Fort Myers Beach, Florida, hereinafter referred to as "this code."

(c) ***Section 102.3 Application of other codes***, is amended to read as follows:

Repairs, additions, or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the Florida Building Code, as amended.

(d) ***Section 102.6 Historic Buildings***, is amended to read as follows:

The provisions of this code shall not be mandatory for existing buildings or structures formally or officially designated as historic buildings by either the federal government, the state, or the town, provided such buildings or structures are judged by the Building Official to be safe and in the public interest of health, safety and welfare.

(e) ***Section 102.7 Referenced Codes and Standards***, is amended to read as follows:

The codes and standards referenced in this code shall be the Florida Building Code, the Florida Fire Prevention Code, the Life Safety Code, and any other code or standard contained in articles II, III and IV in chapter 6 of the Land Development Code. Where there are differences between provisions of this code, the Florida Building Code, and any other code or standard contained in articles II, III and IV in chapter 6 of the Land Development Code, the Florida Building Code, the Florida Fire Prevention Code, the Life Safety Code, and any other code or standard contained in articles II, III, and IV in chapter 6 of the Land Development Code shall prevail.

(f) ***Section 103 Department of Property Maintenance Inspection*** is hereby deleted in its entirety.

(g) ***Section 104.4 Right of Entry*** is hereby deleted in its entirety.

(h) ***Section 106.3 Prosecution of Violation***, is hereby amended to read as follows:

Any person who fails to comply with a notice of violation or order served in accordance with Section 107 shall be adjudicated in accordance with the provisions of Chapter 162 of the Florida Statutes or any other method allowed by Florida law.

(i) ***Section 107.2 Form***, is hereby amended to read as follows:

The notice prescribed in Section 107.1 shall comply with the requirements of Chapter 162, Florida Statutes.

(j) ***Section 107.3 Method of Service***, is hereby amended to read as follows:

All notices shall be deemed to have been properly served if the service requirements contained in Chapter 162, Florida Statutes have been met.

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(k) ***Section 107.5 Penalties***, is hereby amended to read as follows:

Penalties for noncompliance with orders and notices shall be as set forth in Chapter 162, Florida Statutes, and the codes and ordinances of the Town of Fort Myers Beach.

(l) ***Section 107.6 Transfer of Ownership***, is hereby amended to read as follows:

If the owner of property that is subject to a code enforcement proceeding before the special magistrate or a court transfers ownership of such property between the time the notice of violation was served and the time of the hearing, such owner shall:

(1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.
(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.
(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.
(4) File a notice with the code official of 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.
(5) A failure to make the disclosures described in paragraphs (1), (2), and (3) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

(m) ***Section 108.2 Closing of Vacant Structures***, is hereby amended to read as follows:

If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to post a placard of condemnation on the premises and order the structure closed up so as not to be an attractive nuisance. Upon failure of the owner to close up the premises within the time specified in the order, the code official shall cause the premises to be closed and secured through any available public agency or by contract or arrangement by private persons and the cost thereof shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate for said costs. The lien shall be superior to all other liens and encumbrances, including prior recorded mortgage or judgments and only inferior to liens for taxes. In the event the owner or person creating the need for closing or securing the premises fails and refuses to pay or reimburse the town for the costs, the town may foreclose said lien in accordance with the law applicable to the foreclosure of such liens and the town shall be entitled to recover its reasonable attorney's fees and costs incurred in such foreclosure action.

(n) ***Section 108.7 Record***, is hereby amended to read as follows:

The code official shall prepare a report on an unsafe condition. In addition, a written notice of the unsafe condition shall be recorded in the public records for Lee County. The notice shall state the occupancy of the structure and the nature of the unsafe condition.

(o) ***Section 109.5 Costs of Emergency Repairs***, is hereby amended to read as follows:

Costs incurred in the performance of emergency work shall be paid by the town. All costs incurred by the town in the performance of emergency work shall be a lien upon such real estate for said costs. The lien shall be superior to all other liens and encumbrances, including prior recorded mortgage or judgments, and only inferior to liens for taxes. In the event the owner or person creating the need for emergency repairs fails and refuses to pay or reimburse the town for the costs, the town may foreclose said lien in accordance with the law applicable to the foreclosure of such liens and the town shall be entitled to recover its reasonable attorney's fees and costs incurred in such foreclosure action.

(p) ***Section 109.6 Hearing***, is hereby amended to read as follows:

Any person ordered to take emergency measures shall comply with such order forthwith.

Any affected person shall thereafter, upon appeal to the town council, be afforded a hearing as described in this code.

(q) ***Section 110. 1 General***, is hereby amended to read as follows:

The code official shall order the owner of any premises upon which is located any structure, which in the code official's judgment after review is so deteriorated or has become so out of repair as to be dangerous, unsafe, unsanitary, or otherwise unfit for human habitation or occupancy, and such that it is unreasonable to repair the structure, to demolish and remove such structure; or if such structure is capable of being made safe by repairs, to repair and make safe and sanitary, or to board up and hold for future repair or to demolish and remove at the owner's option; or where there has been a cessation of normal construction in accordance with the Florida Building Code, the code official shall order the owner to demolish and remove such structure, or board up until future repair. Boarding the building up for future repair shall not extend beyond one year, unless approved by the building official.

(r) ***Section 110.3 Failure To Comply***, is hereby amended as follows:

If the owner of a premises fails to comply with a demolition order within the time prescribed, the town shall cause the structure to be demolished and removed, either through an available public agency or by contract or arrangement with private persons, and the cost of such demolition and removal shall be charged against the real estate upon which the structure is located and shall be a lien upon such real estate for said costs. In the event the owner or person creating the need for demolition and removal fails and refuses to pay or reimburse the town for the costs, the town may foreclose said lien in accordance with the law applicable to the foreclosure of such liens and the town shall be entitled to recover its reasonable attorney's fees and costs incurred in such foreclosure action.

(s) ***Section 111. 1 Application For Appeal***, is hereby amended to read as follows:

Any person directly affected by a decision of the code official or a notice or order issued pursuant to this code shall have the right to appeal to the town council, provided that a written application for appeal is filed within 20 days after the day the decision, notice, or order was served on the affected person or from the date of posting on the property. An application for appeal shall be based on a claim that the true intent of this code or the rules legally adopted thereunder have been incorrectly interpreted, that the provisions of this code do not fully apply, or the requirements of this code are adequately satisfied by other means. This section shall not apply to orders issued by the town special magistrate in connection with a code enforcement special magistrate hearing.

(t) ***Sections 111.2 through Section 111.8*** are hereby deleted in their entirety.

(u) ***Section 112.4 Failure To Comply***, is hereby amended to read as follows:

Any person who shall continue any work after having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be guilty of a code violation and shall be subject to a fine as determined by the town special magistrate.

(v) ***Section 302.3 Sidewalks and Driveways***, is hereby amended to read as follows:

Section 302.3. Sidewalks, driveways and rights-of-way.

All sidewalks, walkways, stairs, driveways, parking spaces, and similar areas shall be kept in a proper state of repair, and maintained free from hazardous conditions. Trees and shrubs shall be maintained to provide for horizontal clearance of at least three (3) feet from and vertical clearance of at least eight (8) feet above any sidewalk, bike path, or street right-of-way. Unpaved areas shall be regularly mowed or otherwise maintained in a neat and attractive condition.

(w) ***Section 302.4 Weeds***, is hereby amended to read as follows:

All premises and exterior property shall be maintained free from weeds or plant growth in excess of 12 inches. Weeds shall be defined as all grasses, annual plants, and vegetation, other than trees or shrubs, provided, however, this term shall not include cultivated flowers and gardens and native beach vegetation such as sea oats. Upon failure of the owner or agent having charge of a property to cut and destroy weeds after service of

a notice of violation and having been given a reasonable time to cut and destroy the weeds, any duly authorized employee of the town or contractor hired by the town shall be authorized to enter upon the property in violation and cut and destroy the weeds growing thereon, and the costs of such removal shall be paid by the owner or agent responsible for the property. All costs incurred by the town to cut and destroy the weeds shall be a lien upon such real estate for said costs. The lien shall be superior to all other liens and encumbrances, including prior recorded mortgage or judgments, and only inferior to liens for taxes. In the event the owner or agent fails and refuses to pay or reimburse the town for its costs, the town may foreclose said lien in accordance with the law applicable to the foreclosure of such liens and the town shall be entitled to recover its reasonable attorney's fees and costs incurred in such foreclosure action.

(x) ***Section 302.8 Motor Vehicles***, is hereby amended to read as follows:

Section 302.8 Motor Vehicles and Boats. Except as provided for in other regulations, no inoperative or unlicensed motor vehicle or boat shall be parked, kept, or stored on any premises, and no vehicle or boat shall at any time be in a state of major disassemble, disrepair, or in the process of being stripped or dismantled. Painting of vehicles or boats is prohibited unless conducted inside an approved spray booth.

Exception: A vehicle or boat of any type is permitted to undergo major overhaul, including body or hull work, provided that such work is performed inside a structure or similarly enclosed area designed and approved for such purposes.

(y) A new ***Section 302.10*** is hereby added as follows:

Section 302.10 Exterior Storage.

(1) No temporary or permanent storage of materials or equipment is permitted on any vacant parcel, unless in conjunction with an active building permit or where such storage is specifically permitted by chapter 34 of the Land Development Code.
(2) Equipment, materials, and furnishings not designed for use outdoors, such as automotive parts and tires, building materials, and interior furniture, may not be stored outdoors.

(z) ***Section 303.2 Enclosures***, is hereby amended to read as follows:

Public swimming pools, hot tubs and spas shall include all safety features specified by Section 514.0315, Florida Statutes, including any subsequent amendments thereto. Residential swimming pools shall be maintained in compliance with the State Residential Swimming Pool Safety Act, as contained in Chapter 515 of the Florida Statutes.

(aa) A new ***Section 303.3*** is hereby added as follows:

303.3 Disposal of swimming pool water.

Prior to disposing of any swimming pool water, chlorine and bromine levels must be reduced by not adding chlorine or bromine for a least five (5) days or until levels are below 0.1 mg per liter. One of the following methods of disposal shall be utilized:

(1) Discharge of the water into roadside swales to allow for percolation of the water into the ground without any runoff to canals, beaches, wetlands, other tidal waters, or onto adjoining properties. This shall be the preferred method of disposal.
(2) Discharge of the water into the sanitary sewer system operated by Lee County Utilities is also permitted, but is not the preferred method. Under no circumstances shall any swimming pool water be discharged either directly or indirectly onto the beach, or into canals, wetlands, or any other tidal waters.

(bb) ***Section 304.3 Premises Identification***, is hereby amended to read as follows:

All buildings shall have address numbers that have been assigned by Lee County placed in a position to be plainly legible and visible by emergency personnel from the street or road fronting the property. All address numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet letters. Numbers shall be a minimum of 3 inches high. Numbers on all commercial, institutional, or multifamily buildings that are set back more than fifty (50) feet from the street shall be at least eight (8) inches high.

(cc) ***Section 304.14 Insect Screens***, is hereby amended to read as follows:

Every window in a residential structure that is capable of being opened and every door, window, and other outside opening required for ventilation of habitable rooms, food preparation areas, food service areas, or any areas where products to be included or utilized in food for human consumption are processed, manufactured, packaged, or stored shall be supplied with approved tightly fitting screens of not less than 16 mesh per inch (16 mesh per 25 mm), and every screen door used for insect control shall have a self-closing device in good working condition. Screens shall not, however, be required where other approved means, such as air curtains or insect repellent fans, are employed.

(dd) A new ***Section 308.4*** is hereby added as follows:

308.4 Additional regulations for rubbish and garbage containers.

(1) Rubbish and Garbage containers shall not be moved to the street more than twenty-four (24) hours prior to scheduled curbside collection, nor remain there more than twenty-four hours after scheduled collection.
(2) Each refuse container that is not movable shall be opaquely screened from view from streets and adjoining properties and such screening shall be of sufficient height to entirely screen the container. Screening may be achieved by landscaping, wall, or opaque fencing provided the wall or fence does not exceed the maximum height permitted for the property.
(3) Any rubbish or garbage container not located within a roofed enclosure must have a cover or lid that renders the interior of the container inaccessible to animals.

(ee) ***Section 402.2 Common Halls and Stairways***, is hereby amended to read as follows:

Every common hall and stairway in residential occupancies, other than in one- and two-family dwellings, shall be lighted at all times with at least a 60-watt standard incandescent light bulb for each 200 square feet (19 m^2) of floor area or equivalent illumination, provided that the spacing between lights shall not be greater than 30 feet (9144 mm). In other than residential occupancies, means of egress, including exterior means of egress, stairways shall be illuminated at all times the building space served by the means of egress is occupied with a minimum of 1 footcandle (11 lux) at floors, landings, and treads, provided, however, that during sea turtle nesting season (May 1 through October 31), the provisions of Chapter 14, Article IV of this code shall supersede the foregoing requirements.

(ff) ***Section 507 Storm Drainage***, is hereby amended to read as follows:

Drainage of roofs and paved areas, yards and courts, and other open areas on the premises shall not be discharged in a manner that creates a public nuisance. Point sources of stormwater discharge from private property directly onto the beach are prohibited. This prohibition includes drainage collected from parking lots or other paved surfaces and stormwater from roofs of buildings.

(gg) A new ***Section 602.7*** is hereby added as follows:

602.7 Screening of Mechanical Equipment.

Any new mechanical equipment placed on a roof shall be screened from view from ground level of adjoining properties and public rights-of-way. When mechanical equipment is being replaced on a roof of a building that is not undergoing structural alterations, such equipment shall be screened to the same standard using non-structural materials such as ornamental latticework.

(hh) ***Section 701.1 Scope***, is hereby amended to read as follows:

The provisions of this chapter shall govern the minimum conditions and standards for fire safety relating to structures and exterior premises, including fire safety facilities and equipment to be provided. All references to the "International Fire Code" in this Chapter 7 shall be replaced with the "Florida Fire Prevention Code."

Sec. 6-3–6-30. Reserved.

DIVISION 2. HOUSING CODE

Sec. 6-31. Adoption; amendments.

The following chapters and sections of the 1997 Standard Housing Code, as published by the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama, 35213-1206, are hereby adopted by reference and made a part of this article, with the exceptions set forth as follows:

Chapter 1, Administration.

Exception: Section 103.2.2(4) is deleted and replaced with new section 103.2.2(4) as follows:

4. State that, if such repairs, reconstruction, alterations, removal or demolition are not voluntarily completed within the stated time as set forth in the notice, the housing official shall institute such legal and/or administrative proceeding as may be appropriate.

Exception: Section 103.4 is deleted and replaced with new section 103.4 as follows:

An officer or employee, or member of any board, charged with the enforcement of this code, in the discharge of his duties, shall not thereby render himself liable personally, and is hereby relieved from all personal liability for any damage that may accrue to persons or property as a result of any act required or permitted in the discharge of his duties.

Exception: Section 103.5 is deleted.

Exception: Section 104 is deleted and replaced with new section 104 as follows:

104 Inspections

The housing official shall make, or cause to be made, inspections to determine the condition of residential buildings and premises in the interest of safeguarding the health and safety of the occupants of such buildings and of the general public. For the purpose of making such inspections, the housing official, or his designee, is hereby authorized to enter, examine, and survey, at all reasonable times, any residential building or premises. If the owner, agent, tenant or other person in charge thereof refuses to allow the housing official, or his designee, free access to such building or premises, the housing official may obtain a duly issued search or administrative warrant, pursuant to F.S. ch. 933, as from time to time amended, or any other applicable law which may be in effect at the time such warrant is sought.

Exception: Sections 105, 106, and 107, relating to the housing board of adjustment and appeals, are deleted. Appeals and variances shall be processed and decided in the same manner as for variances under ch. 34 of this code. Enforcement of this code shall be in accordance with ch. 1.

Chapter 2, Definitions.

Exception: Delete the definition of "building" and "housing official" found in section 202 and replace with a new definition of "building" and "housing official" to be used when construing minimum housing provisions, as follows:

Building--Any structure built or used for shelter or enclosure of persons which has enclosing walls sheltering 50 percent or more of its perimeter. The term "building" shall be construed as if followed by the words "or part thereof" and shall include mobile homes, manufactured homes and all recreational vehicles which have been established as units for permanent living by the filing of a declaration of domicile with the clerk of the circuit court on or before October 21, 1985; provided, however, that the foregoing definition specifically excludes hotels and motels.

Housing official–the officer, or his duly authorized representative charged with the administration and enforcement of this code, which shall be the town manager or designee.

Chapter 3, Minimum Standards for Basic Equipment and Facilities.

Exception: Delete section 302.2 and replace with new section 302.2 as follows:

All required plumbing fixtures shall be located within the dwelling unit and be accessible to the occupants of same. The water closet, tub or shower, and lavatory shall be located in a room affording privacy to the user. Bathrooms shall be accessible from habitable rooms, hallways, corridors or other protected or enclosed areas.

Exception: The following language shall be added to section 302.5:

This section and its subsections shall only apply if the Standard Building Code (as published by the Southern Building Code Congress) and any local amendments thereto, required heating facilities at the time the building was constructed.

Exception: Delete section 302.5.3 and replace with new section 302.5.3 as follows:

Unvented fuel burning heaters shall be prohibited except for gas heaters listed for unvented use where the total input rating of the unvented heater is less than 30 BTU per hour per cubic foot of room content and provided that the gas heater is installed pursuant to the Gas Code as adopted herein at section 6-171. Notwithstanding the above, all unvented fuel-burning heaters shall be prohibited in bedrooms and sleeping areas.

Secs. 6-32--6-35. Reserved.

DIVISION 3. UNSAFE BUILDING ABATEMENT CODE

Sec. 6-36. Adoption; amendments.

The following chapters and sections of the 1985 Standard Unsafe Building Abatement Code, as published by Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206, are hereby adopted by reference and made part of this article, with the exceptions set forth as follows:

Chapter I, Administration.

Section 105, relating to the board of adjustment and appeals, is deleted, and replaced by the procedures set forth for the delegation of authority to Lee County's construction board of adjustment and appeals found in division 2 of article II of this chapter.

Chapter II, Definitions.

Chapter III, Inspection and Notice of Noncompliance.

Chapter IV, Appeals.

Chapter V, Rules of Procedure for Hearing Appeals.

Chapter VI, Implementation.

Chapter VII, Recovery of Cost of Repair or Demolition.

Exception: If the building official proceeds to demolish the building or structure as set forth herein, the town council shall, by proper resolution, assess the entire cost of such demolition and removal against the real property upon which such cost was incurred, which assessment, when made, shall constitute a lien upon the property superior to all others except taxes. The lien shall be filed in the public land records of the county. The resolution of assessment and lien must indicate the nature of the assessment and lien, the lien amount, and an accurate description of the property affected. The lien becomes effective on the date of filing such notice of lien and shall bear interest from such date at the rate of ten percent per annum. If the resulting lien is not satisfied within two years after the date it is filed, then the town may:

(1) file suit to foreclose on the liened property as provided by law in suits to foreclose mortgages; or,
(2) follow any other lawful process or procedure available for enforcement of the lien in accordance with any general law of the state relating to the enforcement of municipal liens.

Secs. 6-37--6-40. Reserved.

ARTICLE II. BUILDING CODES

DIVISION 1. GENERALLY

Sec. 6-41. Applicability of article.

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

Sec. 6-42. Penalty for violation of article; additional remedies.

Any person, or any agent or representative thereof, who violates any provision of this article shall, upon conviction, be subject to the following penalties:

(1) *Criminal penalties.* Such person shall be subject to punishment as provided in § 1-5.

(2) *Civil penalties.* The town council may institute in any court, or before any administrative board of competent jurisdiction, action to prevent, restrain, correct or abate any violation of this article or of any order or regulations made in connection with its administration or enforcement, and the court or administrative board shall adjudge such relief by way of injunction, or any other remedy allowed by law, or otherwise, to include mandatory injunction as may be proper under all the facts and circumstances of the case in order to fully effectuate the regulations adopted under this article, or any amendment thereto, and any orders and rulings made pursuant thereto.

Sec. 6-43. Conflicting provisions.

Whenever the requirements or provisions of this article are in conflict with the requirements or provisions of any other lawfully adopted ordinance, code or regulation, the provisions providing the greater degree of lifesafety will apply. Any conflict between the building code and applicable fire safety codes will be resolved by agreement between the building official and the fire official in favor of the requirement of the code which offers the greatest degree of lifesafety or alternative which would provide an equivalent degree of lifesafety and an equivalent method of construction.

Sec. 6-44. Enforcing officers.

Designated officials such as the building official referenced by the codes adopted in this chapter shall be appointed by the town manager. The designated officials shall carry out the duties enumerated in these codes and shall be deemed the responsible officials with respect to enforcement of the provisions of these codes.

Sec. 6-45. Permit fees.

The town council has the power to determine and set reasonable permit fees. Unless a different fee schedule is set, permits fees shall be as referenced in Lee County Administrative Code 3-10, Appendix C (external fees and charges manual).

Secs. 6-46--6-70. Reserved.

DIVISION 2. LEE COUNTY'S BOARDS OF ADJUSTMENT AND APPEALS

Sec. 6-71. Applicability of division.

This division shall include, but not be limited to, any contractor, owner, agent, manufacturer or supplier providing construction services or materials regulated by standard codes enforced by the Town of Fort Myers Beach.

Sec. 6-72. Intent of division.

The town has adopted various standard codes relating to building, plumbing, mechanical, gas, electrical, unsafe buildings, housing, and fire. This division is intended to be construed in conjunction with these codes.

Sec. 6-73. Boards established; jurisdiction.

Lee County has established a construction board of adjustment and appeals known as the Lee County board of adjustment and appeals through chapter 6, article 2, division 2 of the Lee County Land Development Code. The purpose of that board is to hear and decide appeals from the decision of the county’s building official and fire official or their

designees on any of the various standard codes regulated and enforced by the county except the plumbing code and mechanical code. Lee County has also established separate boards of adjustment and appeals to arbitrate matters involving the plumbing code and mechanical code.

Sec. 6-74. Delegation of authority to Lee County's boards of adjustment and appeals.

(a) The Town of Fort Myers Beach hereby delegates to each of the three Lee County boards of adjustment and appeals the authority to make decisions on appeals that may be filed in accordance with § 6-80 of this division.

(b) The town attorney will provide legal advice to each of the three Lee County boards of adjustment and appeals when warranted.

Secs. 6-75--6-79. Reserved.

Sec. 6-80. Right of appeal; notice of appeal.

(a) Whenever the building official or fire official or their designees shall reject or refuse to approve the mode or manner of construction to be followed or materials to be used, or when it is claimed that the provisions of a code do not apply, or that an equally good or more desirable form of construction can be employed in any specific case, or when it is claimed that the true intent and meaning of a code or any of the regulations thereunder have been misconstrued or wrongly interpreted, the owner of such building or structure, or his duly authorized agent, may appeal from the decision of the building official or fire official or their designees to Lee County's appropriate board of adjustment and appeals. Notice of appeal shall be in writing and filed within 30 days after the decision is rendered by the building official or fire official or their designees. All requests for appeal shall be on forms provided by the building official with payment of the appropriate fee.

(b) In the case of a building or structure which in the opinion of the building official is unsafe or dangerous, the building official may, in his order, limit the time for such appeal to a shorter period.

Sec. 6-81. Variations and modifications.

(a) Lee County's boards of adjustment and appeals, pursuant to an appeal from a decision of the building official or fire official or their designees, may vary the application of a code to any particular case when, in its opinion and based upon sufficient evidence, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of a code or public interest, or when, in its opinion and based upon sufficient evidence to the contrary, the interpretation of the building official or fire official or their designees should be modified or reversed.

(b) Any decision of Lee County boards of adjustment and appeals to vary the application of any provision of a code or to modify an order of the building official or fire official or their designees shall specify the variation or modification made, the conditions upon which it is made, and the reasons therefor.

(c) Variances to the floodplain regulations must meet the additional criteria in article IV of this chapter.

Sec. 6-82. Decisions.

(a) Every decision of Lee County's boards of adjustment and appeals shall be final; subject, however, to any remedy an aggrieved party might have at law or in equity. Every decision shall be in writing and shall indicate the vote upon the decision. Every decision of Lee County's boards of adjustment and appeals shall be signed and attested to by the chairman of the board.

(b) Lee County's boards of adjustment and appeals shall, in every case, reach a decision without unreasonable or unnecessary delay.

(c) If a decision of any of Lee County's boards of adjustment and appeals reverses or modifies a refusal, order or disallowance of the building official or fire official or their designees, or varies the application of any provision of a code, the appropriate official shall immediately take action in accordance with such decision.

(d) Any aggrieved person may obtain judicial review of the decision of Lee County's boards of adjustment and appeals by filing a petition for writ

of certiorari in the circuit court. Such petition must be filed within 30 calendar days after the board of adjustment and appeals' decision, but not thereafter, pursuant to the Florida Rules of Civil Procedure. The original petition for writ of certiorari must be filed with the clerk of the circuit court. Copies of the petition shall be filed with the building official for forwarding to the town attorney.

Secs. 6-83--6-110. Reserved.

DIVISION 3. BUILDING CODE

Sec. 6-111. Adoption; amendments.

The Florida Building Code is hereby adopted by reference and made a part of this article, including all revisions and amendments approved in accordance with state law, with the exceptions set forth as follows:

Chapter 1, Administration.
Sections 103.1 through 103.6 relating to powers and duties of the building official are added as follows:

103.1 General. The building official is hereby authorized and directed to enforce the provisions of this code. The building official has the authority to render interpretations of this code and to adopt policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures must be in compliance with the intent and purpose of this code, and may not have the effect of waiving requirements specifically provided for in this code.

103.2 Right of entry.

103.2.1 Whenever necessary to make an inspection to enforce any of the provisions of this code, or whenever the building official has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building, structure, premises, electrical, gas, mechanical, or plumbing systems unsafe, dangerous, or hazardous, the building official may enter such building, structure, or premises at all reasonable times to inspect the same or to perform any duty imposed upon the building official by this code. If such building or premises are occupied, he must first present proper credentials and request entry. If such building, structure, or premises are unoccupied, he must first make a reasonable effort to locate the owner or other persons having charge or control of such and request entry. If entry is refused, the building official has recourse to every remedy provided by law to secure entry.

103.2.2 When the building official has obtained a proper inspection warrant or other remedy provided by law to secure entry, no owner or occupant or any other persons having charge, care, or control of any building, structure, or premises may fail or neglect, after proper request is made as herein provided, to promptly permit entry therein by the building official for the purpose of inspection and examination pursuant to this code.

103.3 Stop work orders. Upon notice from the building official, work on any building, structure, electrical, gas, mechanical, or plumbing system that is being done contrary to the provisions of this code, or in a dangerous or unsafe manner, must immediately cease. Such notice must be in writing and posted on the permit board, stating the reasons for the order. Work may only resume after lifting of the stop work order by the building official.

103.4 Revocation of permits. The building official is authorized to suspend or revoke a permit issued under the provisions of this code wherever the permit is issued in error or on the basis of incorrect, inaccurate, or incomplete information, or in violation of any ordinance or regulation or any provision of this code.

103.4.1 Misrepresentation of application. The building official may revoke a permit or approval issued under the provisions of this code if there has been any false statement or misrepresentation as to a material fact in the application or plans on which the permit or approval was based.

103.4.2 Violation of code provisions. The building official may revoke a permit upon determination by the building official that the construction, erection, alteration, repair, moving, demolition, installation, or replacement of the building, structure, electrical, gas, mechanical, or plumbing systems for which the permit was issued is in violation of, or not in conformity with, the provisions of this code.

103.5 Unsafe buildings or systems. All buildings, structures, electrical, gas, mechanical, or plumbing systems which are unsafe, unsanitary, or do not provide adequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life, or which in relation to existing use, constitute a hazard to safety or health, are considered unsafe buildings or service systems. All such unsafe buildings, structures or service systems are hereby declared illegal and must be abated by repair and rehabilitation or by demolition in accordance with the provisions of the Unsafe Building Abatement Code (see article I of this chapter).

103.6 Requirements not covered by code. Any requirements necessary for the strength, stability, or proper operation of an existing or proposed building, structure, electrical, gas, mechanical, or plumbing system, or for the public safety, health, and general welfare, not specifically covered by this or the other technical codes, will be determined by the building official.

Section 104.1.4 is amended to read as follows:

104.1.4. Minor repairs.

Ordinary minor repairs, routine maintenance, or incidental work of a nonstructural nature may be made without a permit, provided that such repair shall not violate any of the provisions of the technical codes. For purposes of this section, "ordinary minor repairs" include the replacement of damaged or worn materials by similar new materials and any other repairs defined as such by the building official. Ordinary minor repairs under this section may not involve the cutting of any structural beam or supporting member or include any alterations that would increase habitable floor area, change the use of any portion of the building, remove or change any required means of egress or exit access, or affect the structural integrity or fire rating of the building.

Section 104.1.6 , relating to time limitations, is amended to add the following:

104.1.6.1 A permit issued shall be construed to be a license to proceed with the work but shall not be construed as authority to violate, cancel, alter or set aside any of the provisions of this code, nor shall such issuance of a permit prevent the building official from thereafter requiring a correction of errors in plans or in construction or of violations of this code. Although a permit issued to an owner is transferable to another owner, actual notice of the transfer of permit shall be given to the building official prior to the transfer. Building permits shall be issued following the approval of site and construction plans. Building permits on multifamily projects shall be issued on each individual building or structure. Multitenant occupancies, including but not limited to shopping malls, may be permitted on an individual building or structure (shell); however, individual permits shall be used separately for tenant spaces.

104.1.6.2 The first inspection required by the permit must be successfully completed within a six-month period of issuance or the permit shall be deemed invalid. All subsequent inspections shall be made within a six-month period of the most recent inspection until completion of work or the permit shall become invalid. For purposes of this section, the foundation inspection will be considered the first inspection.

104.1.6.3 The entire foundation must be completed within the first six months from the issuance of the permit. Partial inspections due to complexity of the foundation may be made with building inspector's approval, and job site plans shall be initialed by the inspector only on that portion of the plans that is inspected, and these inspections are for compliance to plans and specifications and are in no way to be construed as the first inspection. Subsequent inspections may be made until the entire foundation is completed. At that time, the foundation will be signed off as the first inspection. One or more extensions of the building permit for good cause may be granted by the building official on a project for a period not exceeding 90 days each. The request shall be made by written notice to the building official at least 30 days prior to expiration of the building permit. The building official may require compliance with any revised building code, mechanical code, plumbing code, electrical code, gas code, swimming pool code or fire code requirements in effect at the time of granting any extension to the building permit. Any extension request denied may be appealed to the town council by the applicant on a form provided by the building official. The council shall grant or deny the extension upon a finding of good cause or lack thereof. If granted, the extension or extensions shall not exceed a period of 90 days each.

Section 106.1.4 relating to new or changed land uses is added as follows:

106.1.4 New or changed land use. A certificate of occupancy will only be granted for a new or changed use of land if that use is allowable under ch. 34 of this code.

Section 107.6.1 relating to the National Flood Insurance Program is added as follows:

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

Section 117.1 relating to variances in flood hazard areas is added as follows:

117.1 Flood hazard areas. Pursuant to section 553.73(5), F.S., the variance procedures adopted in the local floodplain management ordinance shall apply to requests submitted to the Building Official for variances to the provisions of Section 1612.4 of the *Florida Building Code, Building* or, as applicable, the provisions of R322 of the *Florida Building Code, Residential*. This section shall not apply to Section 3109 of the *Florida Building Code, Building.*

Chapter 16, Structural Design.

Section 1612.2 contains definitions relating to flood loads; the following two definitions are redefined as follows:

Substantial damage. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. The term also includes flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the costs of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

Substantial improvement. Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a 5-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. For each building or structure, the 5-year period begins on the date of the first improvement or repair of that building or structure subsequent to February 4, 2002. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

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

Chapter 33, Site Work, Demolition and Construction.

Section 3311.5 is added, to read as follows:

3311.5 Trash containers.

It shall be unlawful to bury construction debris on the construction site or on any other public or private property not specifically approved for such use. A suitable trash container and adequate collection service shall be provided for each construction site. For purposes of this requirement, a suitable container is any structure, device, receptacle, designated location or combination thereof which holds construction debris on the construction site in a central location long enough for it to be removed from the site by means of whatever collection service the contractor chooses to use or may be required to use pursuant to other applicable laws before such debris is (1) washed or blown off-site, (2) contaminates subsurface elements, (3) becomes volatile or malodorous, (4) makes an attractive nuisance, or (5) otherwise becomes a threat to the public health, safety, and welfare.

Chapter 34, Existing Buildings.

Section 3401.1, relating to scope, is modified to read as follows:

3401.1 Scope. Provisions of this chapter and of division 4 of this article shall govern the application of this code to existing buildings. In interpreting this code, the building official may be guided by the *Nationally Applicable Recommended Rehabilitation Provisions*, published in 1997 by the U.S. Department of Housing and Urban Development.

Exception: Buildings and structures located within the High Velocity Hurricane Zone shall comply with the provisions of sections 3401.5, 3401.8, and 3401.2.2.1.

Section 3401.2.2.1, relating to change of occupancy, is deleted, and replaced with a new section 3401.2.2.1, to read as follows:

3401.2.2.1 If the occupancy classification or any occupancy subclassifications of any existing building or structure is changed to a more hazardous occupancy, the building, electrical, gas, mechanical, and plumbing systems shall be made to conform to the intent of the technical codes as required by the building official.

Section 3401.5, relating to special historic buildings, is deleted, and replaced with a new section 3401.5, to read as follows:

3401.5 Special historic buildings

3401.5.1 The provisions of the technical codes relating to the construction, alteration, repair, enlargement, restoration, relocation or moving of buildings or structures shall not be mandatory for an existing building or structure identified and classified by the federal, state, county, or town government as a historic structure, or as a contributing structure in a historic district, when such building or structure is judged by the building official to be safe and in the public interest of health, safety, and welfare regarding any proposed construction, alteration, repair, enlargement, restoration, relocation or moving.

3401.5.2 If it is proposed that a historic building that is undergoing repair, renovation, alternation, reconstruction, or change of occupancy not comply literally with certain technical standards of this code, the building official may require the building to be investigated and evaluated by a registered design professional. Such evaluation shall identify each required feature of the building not in technical compliance and shall demonstrate how the intent of these provisions is to be complied with in providing an equivalent level of safety.

Florida Building Code, Existing Building, Chapter 2.

Section 202 contains general definitions; the definition of "substantial improvement" is redefined as follows:

Substantial improvement. Any combination of repair, reconstruction, rehabilitation, addition or improvement of a building or structure taking place during a 5-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started. For each building or structure, the 5-year period begins on the date of the first improvement or repair of that building or structure subsequent to February 4, 2002. If the structure has sustained substantial damage, any repairs are considered substantial improvement regardless of the actual repair work performed. The term does not, however, include either:

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

Florida Building Code, Residential, Section R322.

Sections R322.1.11 and R322.1.12 regarding enclosed areas and accessory buildings below the base flood elevation are added, to read as follows:

R322.1.11 Enclosed areas below design flood elevation. Enclosed areas, including crawl spaces, that are below the design flood elevation shall:

(1) Be permitted to enclose up to 100 percent of the area below an elevated building and shall not extend beyond the perimeter of the building.
(2) Have the interior portion of any enclosed area:
    a. Partitioned only to separate parking areas from building access or storage areas;
    b. The minimum number of interior doors necessary for access to the stairway or

elevator to the elevated buildings from areas used for parking or storage.

c. Not temperature-controlled.

(3) Have access to enclosed areas intended for building access or storage by no more than one standard 36-inch exterior door, or one windowless 72-inch double exterior door, in any exterior wall.

(4) Have access to enclosed areas intended for parking of vehicles by no more than one standard two-car garage door.

(5) Have construction documents include an agreement, signed by the owner, acknowledging the limitations on allowable uses of the enclosed areas and the conditions of the building permit, using a form provided by the Floodplain Administrator. 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.

R322.1.12 Accessory structures. Accessory structures used for parking and storage shall be permitted below the base flood if designed and constructed in compliance with Section R322 and the total cost of an accessory structure does not exceed 10% of the market value of the building or $17,500 per dwelling unit, whichever is greater. The dollar amount specified may be increased each year beginning in 2014 by the percentage increase of the Consumer Price Index – All Urban Consumers (CUP-U), All Items, U.S. City Average maintained by the federal Bureau of Labor Statistics.

Sec. 6-112. Wind-borne debris region and basic wind speed map.

The entire incorporated area of the Town of Fort Myers Beach lies within the wind-borne debris region and the 130 mph basic wind speed zone as established by section 1606.1.6 and figure 1606 of the Florida Building Code.

Sec. 6-113. Compliance with outdoor lighting standards.

All building permits must comply with the outdoor lighting standards in §§ 34-1831–1860 of this code.

Sec. 6-114. Compliance with NPDES erosion control standards.

Stormwater runoff from construction sites must be managed in compliance with §§ 10-606–607 of this land development code.

Secs. 6-115--6-120. Reserved.

DIVISION 4. EXISTING BUILDINGS CODE

Sec. 6-121. Purpose.

The purpose of this code is to encourage the continued use or reuse of existing buildings. This code is designed to supplement the other codes adopted in this article. In interpreting this code, the building official may be guided by the *Nationally Applicable Recommended Rehabilitation Provisions*, published in 1997 by the U.S. Department of Housing and Urban Development.

Sec. 6-122. Adoption; amendments.

The following chapters and sections of the 1997 Standard Existing Buildings Code, as published by the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama, 35213-1206, are hereby adopted by reference and made a part of this article, with the exceptions set forth as follows:

Chapter 1, Administration.

Section 101.7.1, relating to a change of occupancy, is deleted, and replaced with a new section 101.7.1 to read as follows:

If the occupancy classification or any occupancy subclassifications of any existing building is changed to a more hazardous occupancy, the building shall be made to conform to the intent of the Florida Building Code for new construction as required by the building official.

Section 105, relating to the board of adjustment and appeals, is deleted, and replaced by the procedures set forth for the delegation of authority to Lee County's construction board of adjustment and appeals found in division 2 of this chapter and article.

Chapter 2, Definitions and Abbreviations.

Chapter 3, Historic Structures, is hereby amended to read as follows:

The provisions of this code relating to the construction, alteration, repair, enlargement, restoration, relocation or moving of buildings or

structures shall not be mandatory for an existing building or structure identified and classified by the federal, state, county, or town government as a historic structure, or as a contributing structure in a historic district, when such building or structure is judged by the building official to be safe and in the public interest of health, safety, and welfare regarding any proposed construction, alteration, repair, enlargement, restoration, relocation or moving.

If it is proposed that a historic building that is undergoing repair, renovation, alternation, reconstruction, or change of occupancy not comply literally with certain technical standards, the building official may require the building to be investigated and evaluated by a registered design professional. Such evaluation shall identify each required feature of the building not in technical compliance and shall demonstrate how the intent of these provisions is to be complied with in providing an equivalent level of safety.

Chapter 4, Means of Egress.
Chapter 5, Fire Protection.
Chapter 6, Light, Ventilation and Sanitation.
Chapter 7, Building Services.
Chapter 8, Maintenance.
Appendix A, Rehabilitation Guidelines.

Secs. 6-123--6-230. Reserved.

DIVISION 5. CONTRACTOR LICENSING

Sec. 6-231. Contractor licenses required.

Lee County authorizes the issuance of contractor licenses, as authorized by F.S. ch. 489 and Lee County Ordinance No. 96-20, granting the privilege of engaging in the contracting business within the jurisdiction of Lee County. The Town of Fort Myers Beach desires to restrict those engaging in the contracting business to those holding the same categories of licensure as required by Lee County:

(1) state-certified contractors holding an active state certificate of competency;
(2) state-registered contractors holding an active state registration and Lee County certificate of competency. A Lee County certificate of competency alone is not sufficient if state statute requires that the contractor also hold a state certificate or registration;
(3) Locally licensed contractors holding an active Lee County certificate of competency; or
(4) Restricted specialty contractors holding an active Lee County restricted certificate of competency.

Sec. 6-232. Contractors required to be state-certified.

In accordance with F.S. ch. 489, the following types of contractors must hold a valid state certification in order to contract in the Town of Fort Myers Beach:

(1) General contractor
(2) Building contractor
(3) Residential contractor
(4) Class A air conditioning contractor
(5) Class B air conditioning contractor
(6) Commercial pool/spa contractor
(7) Residential pool/spa contractor
(8) Swimming pool servicing contractor
(9) Sheet metal contractor
(10) Mechanical contractor
(11) Plumbing contractor
(12) Residential solar water heating contractor
(13) Underground utilities and excavation contractor
(14) Asbestos abatement contractor
(15) Roofing contractor
(16) Pollutant storage system contractor

Sec. 6-233. Contractor categories licensed by Lee County.

(a) The Town of Fort Myers Beach accepts Lee County certificates of competency in the following specialty categories:

(1) Alarm system contractor I
(2) Alarm system contractor II
(3) Aluminum specialty structures contractor
(4) Aluminum (without concrete) contractor
(5) Aluminum (non-structural) contractor
(6) Asphalt sealing and coating contractor
(7) Awning contractor
(8) Cabinet and millwork contractor
(9) Carpentry contractor
(10) Concrete coatings contractor
(11) Concrete forming and placing contractor
(12) Concrete placing and finishing (flatwork) contractor
(13) Court (outdoor) contractor
(14) Demolition contractor

(15) Dredging contractor
(16) Drywall contractor
(17) Excavation contractor
(18) Fence erection contractor
(19) Finish carpentry contractor
(20) Garage door contractor
(21) Glass and glazing contractor
(22) Gunite contractor
(23) Gutter and downspout contractor
(24) Insulation (building) contractor
(25) Insulation (all types) contractor
(26) Irrigation sprinkler contractor
(27) Journeyman air conditioning
(28) Journeyman electrician
(29) Journeyman mechanical
(30) Journeyman plumber
(31) Marciting contractor
(32) Marine contractor
(33) Masonry contractor
(34) Master electrical contractor
(35) Painting contractor
(36) Paver block contractor
(37) Paving contractor
(38) Pile driving contractor
(39) Plastering/stucco contractor
(40) Reinforcing steel contractor
(41) River rock contractor
(42) Sandblasting contractor
(43) Sign contractor – limited
(44) Sign contractor – restricted
(45) Structural steel erection contractor
(46) Terrazo contractor
(47) Tile and marble contractor

(b) The Town of Fort Myers Beach also accepts certain older Lee County certificates of competency that the county has determined to be vested with respect to the scope of work allowed under the certificate category. These certificates may be in the following categories:

(1) Air conditioning contractor – Class A
(2) Air conditioning contractor – Class B
(3) Air conditioning contractor – Class C
(4) Alteration and repair (non-structural) contractor
(5) Building contractor
(6) Cement, concrete and masonry contractor
(7) Cement finishing contractor
(8) Demolition contractor
(9) Dredging and landfilling contractor
(10) Exposed aggregate contractor
(11) Flooring contractor
(12) General contractor
(13) Glazing and window installation contractor
(14) Mechanical contractor
(15) Mobile home alteration and repair (including aluminum work) contractor
(16) Paint and roof painting contractor
(17) Paving and sealing contractor
(18) Plastering, lathing, stucco, and drywall contractor
(19) Plumbing contractor
(20) Pool contractor – Class A
(21) Pool contractor – Class C
(22) Remodeling contractor
(23) Residential contractor
(24) Roofing contractor
(25) Roof painting contractor
(26) Roof spraying contractor
(27) Seawall and dock contractor
(28) Sign contractor – electrical
(29) Sign contractor – non-electrical
(30) Solar water heating contractor
(31) Tile contractor
(32) Tile, terrazo, river rock, and marble contractor
(33) Waterproofing contractor
(34) Underground utility contractor

Sec. 6-234. Delegation of authority to the Lee County Construction Licensing Board.

(a) The Town of Fort Myers Beach hereby delegates to Lee County and the Lee County Construction Licensing Board the authority to make decisions regarding:

(1) The categories of certificates of competency that Lee County may require or issue;
(2) The requirements for obtaining and retaining Lee County certificates of competency;
(3) The issuance, revocation, and cancellation of Lee County certificates of competency;
(4) Disciplinary actions concerning activities within the town by holders of a Lee County certificate of competency or by state certified or registered contractors; and
(5) Any other matter within the authority of the Lee County Construction Licensing Board.

(b) The policies, procedures, and safeguards applicable to the Lee County Construction Licensing Board according to Lee County Ordinance No. 96-20 are hereby adopted by the Town of Fort Myers Beach for all actions of the Board regarding violations alleged to have occurred within the town.

(c) The town attorney will provide legal advice to the Lee County Construction Licensing Board when warranted.

Sec. 6-235. Owner-builder exemption.

(a) Owners of property may act as their own contractor and provide direct on-site supervision themselves of all work not performed by licensed contractors when building or improving:

(1) One-family or two-family residences on the owner's property for the occupancy or use of the owners and not offered for sale or lease; and

(2) Commercial buildings on the owner's property at a cost not to exceed $25,000 for the occupancy or use of the owners and not offered for sale or lease.

(b) If, within one year of completion, an owner-builder sells, leases, or offers for sale or lease any building constructed or improved under an owner-builder exemption, the town can presume the construction or improvement was undertaken for the purposes of sale or lease.

(c) This section does not exempt any person the owner-builder employs, or has a contract with, to act in the capacity of a contractor. The owner cannot delegate the owner's responsibility to directly supervise all work to any other person unless that person is duly licensed in accordance with this ordinance and the work performed is within the scope of that contractor's license.

(d) To qualify for exemption under this section, an owner must personally appear and sign the building permit application. The owner must also execute a disclosure statement prepared by the building official acknowledging compliance with all applicable regulations.

Sec. 6-236. Other exemptions.

The licensing provisions of this article do not apply to:

(1) Any employee of a duly licensed contractor who is acting within the scope of the employer's license or with the employer's knowledge and permission. However, if the employer is not licensed to perform the type of services the employee is contracting to perform, then the employee is not exempt if the employee:

a. Holds himself or his employer out to be licensed or qualified by a licensee to perform services outside the scope of the employer's license;

b. Leads the consumer to believe that the employee has an ownership or management interest in the company; or

c. Performs any of the acts which constitute contracting for services outside the scope of the employer's license.

The intent of this subsection is to place equal responsibility on the unlicenced business and its employees for the protection of the consumers in contracting transactions.

(2) An authorized employee of the United States, the state, the county, the town, or any political subdivision of the state, if the employee does not hold himself out for hire or otherwise engage in contracting except in accordance with his employment.

(3) Contractors and employees working on bridges, roads, streets, highways, or railroads, including services incidental thereto, that are under the responsible charge of a professional engineer, duly licensed general contractor, the county, or the state.

(4) A registered professional engineer or architect acting within the scope of his practice or any person exempted by the law regulating engineers and architects, including a person doing design work as specified in F.S. § 481.229(1)(b). However, an engineer or architect cannot act as a contractor unless properly licensed in accordance with this article.

(5) An architect or landscape architect licensed under F.S. ch. 481 or a professional engineer licensed under F.S. ch. 471 who offers or renders design-build services. However, a state-certified general contractor must perform the construction services under the design-build contract.

Sec. 6-237. Penalties.

Penalties for violations of this article shall be as authorized by Lee County through its Ordinance 96-20, as may be amended from time to time.

Secs. 6-238--6-330. Reserved.

ARTICLE III. COASTAL CONSTRUCTION CODE

DIVISION 1. GENERALLY

Sec. 6-331. Origin.

The Florida legislature adopted a Coastal Zone Protection Act in 1985 (F.S. § 161.52 et seq.), as later amended by Laws of Florida 2000-141, with requirements for enforcement by local governments. This article contains relevant requirements of that act plus other local regulations, which will reduce the harmful consequences of natural disasters on sensitive coastal areas including the entire Town of Fort Myers Beach.

Sec. 6-332. Intent of article; applicability of article.

The purpose of this article is to provide minimum standards for the design and construction of buildings and structures to reduce the harmful effects of hurricanes and other natural disasters throughout the town. These standards are intended to specifically address design features which affect the structural stability of the beach, dunes, and topography of adjacent properties. In the event of a conflict between this article and other portions of this code, the requirements resulting in the more restrictive design will apply. No provisions in this article will be construed to permit any construction in any area where prohibited by state or federal regulation.

(a) ***Applicability generally.*** The requirements of this article will apply to the following types of construction:

(1) New construction as defined herein;
(2) Substantial improvements to existing structures as defined in § 6-405 of this code; and
(3) Any construction which would change or alter the character of the shoreline, e.g., excavation, grading, or paving. This article does not apply to minor work in the nature of normal beach cleaning or debris removal, which is regulated by article I of ch. 14.

(b) ***Construction seaward of mean high water.*** Structures or construction extending seaward of the mean high-water line which are regulated by F.S. § 161.041, e.g. groins, jetties, moles, breakwaters, beach nourishment, inlet dredging, etc., are specifically exempt from the provisions of this article. In addition, this article does not apply to those portions of piers, pipelines, or outfalls which are located seaward of the mean high-water line and are regulated pursuant to the provisions of F.S. § 161.053.

(c) ***Certification of compliance.*** All plans for buildings must be signed and sealed by an architect or engineer registered in the state. Upon completion of the building and prior to the issuance of a certificate of occupancy, a statement must be filed with the director signed and sealed by an architect or engineer registered in the state in substantially the following form: "To the best of my knowledge and belief the above-described construction of all structural loadbearing components complies with the permitted documents and plans submitted to the Town of Fort Myers Beach."

Sec. 6-333. Definitions.[2]

The following words, terms, and phrases, when used in this article, will have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. Words or phrases not defined will be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

Beach or ***shore*** has the same meaning given the word "beach" in § 14-1.

Coastal construction control lines have been established by the state department of environmental protection in accordance with F.S. § 161.053. The most recent lines at Fort Myers Beach were established in 1991, and a copy of the aerials depicting these coastal construction lines are recorded in the public records at Plat Book 48, Pages 15-34. These and the previous (1978) coastal construction control lines may also be reviewed at town hall.

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

Construction means the carrying out of any building, clearing, filling, excavation. When appropriate to the context, the term "construction" refers to the act of construction or the result of construction. Construction also includes substantial improvements to existing structures as defined in § 6-405 of this code.

Director means the person to whom the town council has delegated authority for enforcing this article.

Dune has the same meaning given it in § 14-1.

Major structure includes, but is not limited to, residential, commercial, institutional, or other public buildings and other construction having the potential for substantial impact on coastal zones (also see definitions of *minor structure* and *minor habitable structure* below).

Mean high-water line means the intersection of the tidal plane of mean high water with the shore. Mean high water is the average height of high waters over a 19-year period. (See F.S. § 177.27(15).)

Minor structure includes, but is not limited to, pile-supported elevated dune and beach walkover structures; beach access ramps and walkways; stairways; pile-supported elevated viewing platforms, gazebos, and boardwalks; lifeguard support stands; public and private bathhouses; sidewalks, driveways, parking areas, shuffleboard courts, tennis courts, handball courts, racquetball courts and other uncovered paved areas; earth retaining walls; and sand fences, privacy fences, ornamental walls, ornamental garden structures, aviaries, and other ornamental construction. It shall be characteristic of minor structures that they are considered expendable under design wind, wave, and storm forces.

Nonhabitable major structure includes, but is not limited to, swimming pools and public piers.

100-year storm means a shore-incident hurricane or any other storm with accompanying wind, wave and storm surge intensity having a one percent chance of being equaled or exceeded in any given year, during any 100-year interval.

Sec. 6-334. Variances.

Requests for variances from the provisions of this article shall be processed and decided in the same manner as for variances under ch. 34 of this code.

Secs. 6-335--6-360. Reserved.

DIVISION 2. COASTAL CONSTRUCTION STANDARDS

Sec. 6-361. Generally.

The following minimum standards will apply to all construction in the Town of Fort Myers Beach.

Sec. 6-362. Reserved.

Sec. 6-363. Reserved.

Sec. 6-364. Special requirements near beaches.

(a) ***Major structures.*** Nonhabitable major structures must be designed to produce the minimum adverse impact on the beach and dune system.

(1) Locational criteria for major structures are found in § 6-366(b).
(2) Structural and permitting criteria for major structures are found in ch. 31 of the Florida Building Code and in ch. 62B of the Florida Administrative Code.
(3) All sewage treatment and public water supply systems must be floodproofed to prevent infiltration of surface water anticipated from a 100-year storm event.
(4) Underground utilities, excluding pad transformers and vaults, must be floodproofed to prevent infiltration of surface water expected from a 100-year storm event, or must otherwise be designed to function when submerged under such storm conditions.

(b) ***Minor structures.*** Minor structures must be designed to produce the minimum adverse impact on the beach and dune system and adjacent properties and to reduce the potential for water and wind blown material.

(1) Locational criteria for minor structures are found in § 6-366(b).

(2) Construction of a rigid coastal or shore protection structure designed primarily to protect a minor structure is not permitted; see article II of ch. 26 for detailed regulations.

Sec. 6-365. Reserved.

Sec. 6-366. Location of construction near beaches.

(a) Except for beach renourishment and for minor structures such as lifeguard support stands and beach access ramps, all construction must be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability. In addition to complying with all other provisions of this code, major structures must be built landward of the 1978 coastal construction control line except where a major structure may be specifically allowed by this code to extend across this line. The 1978 coastal construction control line is depicted on the Future Land Use Map as the seaward edge of land-use categories allowing urban development and as the landward edge of the Recreation land-use category. This line is also the landward edge of the EC (Environmentally Critical) zoning district.

(b) Occasional minor structures are permitted by right in the EC zoning district if they are placed on private property and do not alter the natural landscape or obstruct pedestrian traffic (examples are mono-post shade structures, movable picnic tables, beach volleyball courts, and similar recreational equipment, see § 34-652). Artificial lighting and signs may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process or unless explicitly permitted by §§ 14-5 or 27-51.

(1) Other provisions of this code provide for certain other minor structures in the EC zoning district:
   a. Perpendicular dune walkovers are permitted by right in accordance with § 10-415(b) and subsection (d) below.
   b. Some temporary structures such as tents may be permitted through a temporary use permit for special events held on the beach, in accordance with § 14-11.
   c. Licensed beach vendors may place rental equipment and/or a temporary 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. Title.

This article shall be known as the *Floodplain Management Regulations* of Fort Myers Beach, hereinafter referred to as "these regulations" or as article IV of chapter 6 of this code.

Sec. 6-402. Scope.

The provisions of these regulations shall apply to all development that is wholly within or partially within any flood hazard area, including but not limited to the subdivision of land; filling, grading, and other site improvements and utility installations; construction, alteration, remodeling, enlargement, improvement, replacement, repair, relocation or demolition of buildings, structures, and facilities that are exempt from the *Florida Building Code*; placement, installation, or replacement of manufactured homes and manufactured buildings; installation or replacement of tanks; placement of recreational vehicles; installation of swimming pools; and any other development.

Sec. 6-403. Intent.

The purposes of these regulations and the flood load and flood resistant construction requirements of the *Florida Building Code* are to establish minimum requirements to safeguard the public health, safety, and general welfare and to minimize public and private losses due to flooding through regulation of development in flood hazard areas to:

(1) Minimize unnecessary disruption of commerce, access and public service during times of flooding;
(2) Require the use of appropriate construction practices in order to prevent or minimize future flood damage;
(3) Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential;
(4) Manage the alteration of flood hazard areas, watercourses, and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain;
(5) Minimize damage to public and private facilities and utilities;
(6) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas;
(7) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events; and
(8) Meet the requirements of the National Flood Insurance Program for community participation as set forth in the Title 44 Code of Federal Regulations, Section 59.22.

Sec. 6-404. Coordination with the *Florida Building Code*.

These regulations are intended to be administered and enforced in conjunction with the *Florida Building Code*. Where cited, ASCE 24 refers to the edition of the standard that is referenced by the *Florida Building Code.*

Sec. 6-405. Warning.

The degree of flood protection required by these regulations and the *Florida Building Code*, as amended by this community, is considered the minimum reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur. Flood heights may be increased by man-made or natural causes. These regulations do not imply that land outside of mapped special flood hazard areas, or that uses permitted within such flood hazard areas, will be free from flooding or flood damage. The flood hazard areas and base flood elevations contained in the Flood Insurance Study and shown on Flood Insurance Rate Maps and the requirements of Title 44 Code of Federal Regulations, Sections 59 and 60 may be revised by the Federal Emergency Management Agency, requiring the town to revise these regulations to remain eligible for participation in the National Flood Insurance Program. No guaranty of vested use, existing use, or future use is implied or expressed by compliance with these regulations.

Sec. 6-406. Disclaimer of Liability.

These regulations shall not create liability on the part of the Town Council of Fort Myers Beach or by any officer or employee thereof for any flood damage that results from reliance on these regulations or any administrative decision lawfully made thereunder.

Secs. 6-407—6-410. Reserved.

DIVISION 2. APPLICABILITY

Sec. 6-411. General.

Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable.

Sec. 6-412. Areas to which these regulations apply.

These regulations shall apply to all flood hazard areas within the Town of Fort Myers Beach, as established in § 6-413 of these regulations.

Sec. 6-413. Basis for establishing flood hazard areas.

The Flood Insurance Study for Lee County, Florida and Incorporated Areas dated August 28, 2008**,** and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of these regulations and shall serve as the minimum basis for establishing flood hazard areas. There are no designated or undesignated Floodways within the town limits. The Flood Insurance Study and Flood Insurance Rate Maps that establish flood hazard areas are on file at Town Hall. These flood insurance rate maps show base flood elevations and coastal high-hazard areas (Zone V) for the entire town and are available for inspection at town hall and at the Lee County Department of Community Development office, 1500 Monroe Street, Fort Myers, or can be viewed online at the FEMA Map Service Center *msc.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***
Bowditch	120673 0553F
Bowditch – Lovers Lane	120673 0554F
Lovers Lane – Gulfview Avenue	120673 0558F
Gulfview Avenue – Mound Road	120673 0566F
Mound Road – Buccaneer Drive	120673 0567F
Buccaneer Drive – Big Carlos Pass	120673 0569F

Sec. 6-414. Submission of additional data to establish flood hazard areas.

To establish flood hazard areas and base flood elevations, pursuant to division 5 of these regulations, the Floodplain Administrator may require submission of additional data. Where field surveyed topography prepared by a Florida licensed professional surveyor or digital topography accepted by the town indicates that ground elevations:

(1) Are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as flood hazard area and subject to the requirements of these regulations and, as applicable, the requirements of the *Florida Building Code*.

(2) Are above the closest applicable base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the special flood hazard area.

Sec. 6-415. Other laws.

The provisions of these regulations shall not be deemed to nullify any provisions of local, state or federal law.

Sec. 6-416. Abrogation and greater restrictions.

These regulations supersede any ordinance in effect for management of development in flood hazard areas. However, it is not intended to repeal or abrogate any existing ordinances including but not limited to land development regulations, zoning ordinances, stormwater management regulations, or the *Florida Building Code*. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern. These regulations shall not impair any deed restriction, covenant or

easement, but any land that is subject to such interests shall also be governed by these regulations.

Sec. 6-417. Interpretation.

In the interpretation and application of these regulations, all provisions shall be:

(1) Considered as minimum requirements;
(2) Liberally construed in favor of the governing body; and
(3) Deemed neither to limit nor repeal any other powers granted under state statutes.

Secs. 6-418—6-420. Reserved.

DIVISION 3. DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR

Sec. 6-421. Designation.

The town's Planning Coordinator is designated as the Floodplain Administrator. The Floodplain Administrator may delegate performance of certain duties to other employees.

Sec. 6-422. General.

The Floodplain Administrator is authorized and directed to administer and enforce the provisions of these regulations. The Floodplain Administrator shall have the authority to render interpretations of these regulations consistent with the intent and purpose of these regulations and may establish policies and procedures in order to clarify the application of its provisions. Such interpretations, policies, and procedures shall not have the effect of waiving requirements specifically provided in these regulations without the granting of a variance pursuant to division 7 of these regulations.

Sec. 6-423. Guidance documents.

Technical guidance for meeting the requirements of these regulations and the flood provisions of the *Florida Building Code* is contained in FEMA publications, including but not limited to the following:

(1) Technical Bulletin 1, *Openings in Foundation Walls and Walls of Enclosures*
(2) Technical Bulletin 2, *Flood Damage-Resistant Materials*
(3) Technical Bulletin 3, *Non-Residential Floodproofing – Requirements and Certification*
(4) Technical Bulletin 4, *Elevator Installation*
(5) Technical Bulletin 5, *Free-of-Obstruction Requirements*
(6) Technical Bulletin 6, *Below-Grade Parking Requirements*
(7) Technical Bulletin 7, *Wet Floodproofing Requirements*
(8) Technical Bulletin 8, *Corrosion Protection for Metal Connectors in Coastal Areas*
(9) Technical Bulletin 9, *Design and Construction Guidance for Breakaway Walls*
(10) Technical Bulletin 10, *Ensuring that Structures Built on Fill in or Near Special Flood Hazard Areas are Reasonably Safe from Flooding*
(11) FEMA 348, *Protecting Building Utilities from Flood Damage*

Sec. 6-424. Applications and permits.

The Floodplain Administrator, in coordination with other pertinent offices of the town, shall:

(1) Review applications and plans to determine whether proposed new development will be located in flood hazard areas;
(2) Review applications for modification of any existing development in flood hazard areas for compliance with the requirements of these regulations;
(3) Interpret flood hazard area boundaries where such interpretation is necessary to determine the exact location of boundaries; a person contesting the determination shall have the opportunity to appeal the interpretation;
(4) Provide available flood elevation and flood hazard information;
(5) Determine whether additional flood hazard data shall be obtained from other sources or shall be developed by an applicant;
(6) Review applications to determine whether proposed development will be reasonably safe from flooding;
(7) Issue floodplain development permits or approvals for development other than buildings and structures that are subject to the *Florida Building Code*, including buildings, structures and facilities exempt from the *Florida Building Code*, when compliance with these regulations is demonstrated, or

disapprove the same in the event of noncompliance; and

(8) Coordinate with and provide comments to the Building Official to assure that applications, plan reviews, and inspections for buildings and structures in flood hazard areas comply with the applicable provisions of these regulations.

Sec. 6-425. Substantial improvement and substantial damage determinations.

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

(1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by an MAI-certified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made; any appraisal used for purposes of substantial improvement/substantial damage determinations must be current to within one year of the work commencing;

(2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;

(3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in the definition of "substantial improvement"; and

(4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the *Florida Building Code* and these regulations is required.

Sec. 6-426. Modifications of the strict application of the requirements of the *Florida Building Code*.

The Floodplain Administrator shall review requests submitted to the Building Official that seek approval to modify the strict application of the flood load and flood resistant construction requirements of the *Florida Building Code* to determine whether such requests require the granting of a variance pursuant to division 7 of these regulations.

Sec. 6-427. Notices and orders.

The Floodplain Administrator shall coordinate with appropriate local agencies for the issuance of all necessary notices or orders to ensure compliance with these regulations.

Sec. 6-428. Inspections.

The Floodplain Administrator shall make the required inspections as specified in division 6 of these regulations for development that is not subject to the *Florida Building Code,* including buildings, structures and facilities exempt from the *Florida Building Code*. The Floodplain Administrator shall inspect flood hazard areas to determine if development is undertaken without issuance of a permit.

Sec. 6-429. Other duties of the Floodplain Administrator.

The Floodplain Administrator shall have other duties, including but not limited to:

(1) Establish, in coordination with the Building Official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to § 6-424 of these regulations;

(2) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within 6 months of such data becoming available;

(3) Review required design certifications and documentation of elevations specified by these regulations and the *Florida Building Code* and these regulations to determine that such certifications and documentations are complete;
(4) Notify the Federal Emergency Management Agency when the corporate boundaries of Fort Myers Beach are modified; and
(5) Advise applicants for new buildings and structures, including substantial improvements, that are located in any unit of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act (Pub. L. 97-348) and the Coastal Barrier Improvement Act of 1990 (Pub. L. 101-591) that federal flood insurance is not available on such construction; areas subject to this limitation are identified on Flood Insurance Rate Maps as "Coastal Barrier Resource System Areas" and "Otherwise Protected Areas."

Sec. 6-430. Floodplain management records.

Regardless of any limitation on the period required for retention of public records, the Floodplain Administrator shall maintain and permanently keep and make available for public inspection all records that are necessary for the administration of these regulations and the flood resistant construction requirements of the *Florida Building Code*, including Flood Insurance Rate Maps; Letters of Change; records of issuance of permits and denial of permits; determinations of whether proposed work constitutes substantial improvement or repair of substantial damage; required design certifications and documentation of elevations specified by the *Florida Building Code* and these regulations; notifications to adjacent communities, FEMA, and the state related to alterations of watercourses; assurances that the flood carrying capacity of altered watercourses will be maintained; documentation related to appeals and variances, including justification for issuance or denial; and records of enforcement actions taken pursuant to these regulations and the flood resistant construction requirements of the *Florida Building Code*. These records shall be available for public inspection at Town Hall.

Secs. 6-431—6-440. Reserved.

DIVISION 4. PERMITS

Sec. 6-441. Permits required.

Any owner or owner's authorized agent (hereinafter "applicant") who intends to undertake any development activity within the scope of these regulations, including buildings, structures and facilities exempt from the *Florida Building Code*, which is wholly within or partially within any flood hazard area, shall first make application to the Floodplain Administrator, and the Building Official if applicable, and shall obtain the required permit(s) and approval(s). No such permit or approval shall be issued until compliance with the requirements of these regulations and all other applicable codes and regulations has been satisfied. No person may undertake a series of any improvements, additions, and/or demolitions that connect two or more existing structures in a manner that evades the requirements of these regulations and the *Florida Building Code*.

Sec. 6-442. Floodplain development permits or approvals.

Floodplain development permits or approvals shall be issued pursuant to these regulations for any development activities not subject to the requirements of the *Florida Building Code*, including buildings, structures and facilities exempt from the *Florida Building Code*. Depending on the nature and extent of proposed development that includes a building or structure, the Floodplain Administrator may determine that a floodplain development permit or approval is required in addition to a building permit.

Sec. 6-443. Buildings, structures and facilities exempt from the *Florida Building Code*.

Pursuant to the requirements of federal regulation for participation in the National Flood Insurance Program (44 C.F.R. Sections 59 and 60), floodplain development permits or approvals shall be required for the following buildings, structures and facilities that are exempt from the *Florida Building Code* and any further exemptions provided by law, which are subject to the requirements of these regulations:

(1) Railroads and ancillary facilities associated with the railroad.
(2) Nonresidential farm buildings on farms, as provided in section 604.50, F.S.
(3) Temporary buildings or sheds used exclusively for construction purposes.
(4) Mobile or modular structures used as temporary offices.
(5) Those structures or facilities of electric utilities, as defined in section 366.02, F.S., which are directly involved in the generation, transmission, or distribution of electricity.
(6) Chickees constructed by the Miccosukee Tribe of Indians of Florida or the Seminole Tribe of Florida. As used in this paragraph, the term "chickee" means an open-sided wooden hut that has a thatched roof of palm or palmetto or other traditional materials, and that does not incorporate any electrical, plumbing, or other non-wood features.
(7) Family mausoleums not exceeding 250 square feet in area which are prefabricated and assembled on site or preassembled and delivered on site and have walls, roofs, and a floor constructed of granite, marble, or reinforced concrete.
(8) Temporary housing provided by the Department of Corrections to any prisoner in the state correctional system.
(9) Structures identified in section 553.73(10)(k), F.S., are not exempt from the *Florida Building Code* if such structures are located in flood hazard areas established on Flood Insurance Rate Maps

Sec. 6-444. Application for a permit or approval.

To obtain a floodplain development permit or approval the applicant shall first file an application in writing on a form furnished by the town. The information provided shall:

(1) Identify and describe the development to be covered by the permit or approval.
(2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
(3) Indicate the use and occupancy for which the proposed development is intended.
(4) Be accompanied by a site plan or construction documents as specified in division 5 of these regulations.
(5) State the valuation of the proposed work.
(6) Be signed by the applicant or the applicant's authorized agent.
(7) Give such other data and information as required by the Floodplain Administrator.

Sec. 6-445. Validity of permit or approval.

The issuance of a floodplain development permit or approval pursuant to these regulations shall not be construed to be a permit for, or approval of, any violation of these regulations, the *Florida Building Codes*, or any other ordinance of the town. The issuance of permits based on submitted applications, construction documents, and information shall not prevent the Floodplain Administrator from requiring the correction of errors and omissions.

Sec. 6-446. Expiration.

A floodplain development permit or approval shall become invalid unless the work authorized by such permit is commenced within 180 days after its issuance, or if the work authorized is suspended or abandoned for a period of 180 days after the work commences. Extensions for periods of not more than 180 days each shall be requested in writing and justifiable cause shall be demonstrated.

Sec. 6-447. Suspension or revocation.

The Floodplain Administrator is authorized to suspend or revoke a floodplain development permit or approval if the permit was issued in error, on the basis of incorrect, inaccurate or incomplete information, or in violation of these regulations or any other ordinance, regulation or requirement of the town.

Sec. 6-448. Other permits required.

Floodplain development permits and building permits shall include a condition that all other applicable state or federal permits be obtained before commencement of the permitted development, including but not limited to the following:

(1) The South Florida Water Management District; section 373.036, F.S.
(2) Florida Department of Health for onsite sewage treatment and disposal systems; section 381.0065, F.S. and Chapter 64E-6, F.A.C.

(3) Florida Department of Environmental Protection for construction, reconstruction, changes, or physical activities for shore protection or other activities seaward of the coastal construction control line; section 161.141, F.S.
(4) Florida Department of Environmental Protection for activities subject to the Joint Coastal Permit; section 161.055, F.S.
(5) Florida Department of Environmental Protection for activities that affect wetlands and alter surface water flows, in conjunction with the U.S. Army Corps of Engineers; Section 404 of the Clean Water Act.
(6) Federal permits and approvals.

Secs. 6-449—6-450. Reserved.

DIVISION 5. SITE PLANS AND CONSTRUCTION DOCUMENTS

Sec. 6-451. Information for development in flood hazard areas.

The site plan or construction documents for any development subject to the requirements of these regulations shall be drawn to scale and shall include, as applicable to the proposed development:

(1) Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), and ground elevations if necessary for review of the proposed development.
(2) Location of the proposed activity and proposed structures, and locations of existing buildings and structures; in coastal high hazard areas, new buildings shall be located landward of the reach of mean high tide or the 1978 Coastal Construction Control Line, whichever is further inland.
(3) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
(4) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.
(5) Delineation of the Coastal Construction Control Line or notation that the site is seaward of the coastal construction control line, if applicable.
(6) Extent of any proposed alteration of sand dunes or mangrove stands, provided such alteration is approved by the Florida Department of Environmental Protection.
(7) Existing and proposed alignment of any proposed alteration of a watercourse.

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

Sec. 6-452. Additional analyses and certifications.

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

(1) 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 Floodplain Administrator 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 Floodplain Administrator 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.

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

Sec. 6-453. Submission of additional data.

When additional hydrologic, hydraulic, or other engineering data, studies, and additional analyses are submitted to support an application, the applicant has the right to seek a Letter of Map Change from FEMA to change the base flood elevations, change floodway boundaries, or change boundaries of flood hazard areas shown on FIRMs, and to submit such data to FEMA for such purposes. The analyses shall be prepared by a Florida licensed engineer in a format required by FEMA. Submittal requirements and processing fees shall be the responsibility of the applicant.

Secs. 6-454—6-460. Reserved.

DIVISION 6. INSPECTIONS

Sec. 6-461. General.

Development for which a floodplain development permit or approval is required shall be subject to inspection.

Sec. 6-462. Development other than buildings and structures.

The Floodplain Administrator shall inspect all development to determine compliance with the requirements of these regulations and the conditions of issued floodplain development permits or approvals.

Sec. 6-463. Buildings, structures and facilities exempt from the *Florida Building Code*.

The Floodplain Administrator shall inspect buildings, structures and facilities exempt from the *Florida Building Code* to determine compliance with the requirements of these regulations and the conditions of issued floodplain development permits or approvals.

Sec. 6-464. Buildings, structures and facilities exempt from the *Florida Building Code*, lowest floor inspection.

Upon placement of the lowest floor, including basement, and prior to further vertical construction, the owner of a building, structure or facility exempt from the *Florida Building Code*, or the owner's authorized agent, shall submit to the Floodplain Administrator the certification of elevation of the lowest floor prepared and sealed by a Florida licensed professional surveyor.

Sec. 6-465. Buildings, structures and facilities exempt from the *Florida Building Code*, final inspection.

As part of the final inspection, the owner or owner's authorized agent shall submit to the Floodplain Administrator a final certification of elevation of the lowest floor or final documentation of the height of the lowest floor above the highest adjacent grade; such certifications and documentations shall be prepared as specified in § 6-464 of these regulations.

Sec. 6-466. Manufactured homes.

The Floodplain Administrator shall inspect manufactured homes that are installed or replaced in flood hazard areas to determine compliance with the requirements of these regulations and the conditions of the issued permit. Upon placement of a manufactured home, certification of the elevation of the lowest floor shall be submitted to the Floodplain Administrator.

Secs. 6-467—6-470. Reserved.

DIVISION 7. VARIANCES AND APPEALS

Sec. 6-471. General.

The Town Council shall hear and decide on requests for appeals and requests for variances from the strict application of these regulations. Pursuant to section 553.73(5), F.S., the Town Council shall

hear and decide on requests for appeals and requests for variances from the strict application of the flood resistant construction requirements of the *Florida Building Code*. This section does not apply to Section 3109 of the *Florida Building Code, Building.*

Sec. 6-472. Appeals.

The Town Council shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the administration and enforcement of these regulations. Any person aggrieved by the decision of Town Council may appeal such decision to the Circuit Court, as provided by Florida Statutes.

Sec. 6-473. Limitations on authority to grant variances.

The Town Council shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in § 6-476 of these regulations, the conditions of issuance set forth in § 6-477 of these regulations, and the comments and recommendations of the Floodplain Administrator and the Building Official. The Town Council has the right to attach such conditions as it deems necessary to further the purposes and objectives of these regulations.

Sec. 6-474. Historic buildings.

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

Sec. 6-475. Functionally dependent uses.

A variance is authorized to be issued for the construction or substantial improvement necessary for the conduct of a functionally dependent use, as defined in these regulations, is the minimum necessary considering the flood hazard, and all due consideration has been given to use of methods and materials that minimize flood damage during occurrence of the base flood.

Sec. 6-476. Considerations for issuance of variances.

In reviewing requests for variances, the Town Council shall consider all technical evaluations, all relevant factors, all other applicable provisions of the *Florida Building Code*, these regulations, and the following:

(1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
(2) The danger to life and property due to flooding or erosion damage;
(3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
(4) The importance of the services provided by the proposed development to the town;
(5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
(6) The compatibility of the proposed development with existing and anticipated development;
(7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
(8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;
(9) The expected heights, velocity, duration, rate of rise and debris and sediment transport of the floodwaters, and the effects of wave action, if applicable, expected at the site; and
(10) 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, streets, and bridges.

Sec. 6-477. Conditions for issuance of variances.

Variances shall be issued only upon:

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

(2) Determination by the Town Council that:

a. Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;

b. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws and ordinances; and

c. The variance is the minimum necessary, considering the flood hazard, to afford relief;

(3) Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the Office of the Clerk of the Court in such a manner that it appears in the chain of title of the affected parcel of land; and

(4) If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the Floodplain Administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as $25 for $100 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

Secs. 6-478—6-480. Reserved.

DIVISION 8. VIOLATIONS

Sec. 6-481. Violations.

Any development that is not within the scope of the *Florida Building Code* but that is regulated by these regulations that is performed without an issued permit, that is in conflict with an issued permit, or that does not fully comply with these regulations, shall be deemed a violation of these regulations. A building or structure without the documentation of elevation of the lowest floor, other required design certifications, or other evidence of compliance required by these regulations or the *Florida Building Code* is presumed to be a violation until such time as that documentation is provided.

Sec. 6-482. Authority.

For development that is not within the scope of the *Florida Building Code* but that is regulated by these regulations and that is determined to be a violation, the Floodplain Administrator is authorized to serve notices of violation or stop work orders to owners of the property involved, to the owner's agent, or to the person or persons performing the work.

Sec. 6-483. Unlawful continuance.

Any person who shall continue any work after having been served with a notice of violation or a stop work order, except such work as that person is directed to perform to remove or remedy a violation or unsafe condition, shall be subject to penalties as prescribed by law.

Secs. 6-484—6-490. Reserved.

DIVISION 9. DEFINITIONS

Sec. 6-491. Scope.

Unless otherwise expressly stated, the following words and terms shall, for the purposes of these regulations, have the meanings shown in this section.

Sec. 6-492. Terms defined in the *Florida Building Code*.

Where terms are not defined in these regulations and are defined in the *Florida Building Code*, such terms shall have the meanings ascribed to them in that code.

Sec. 6-493. Terms not defined.

Where terms are not defined in these regulations or the *Florida Building Code*, such terms shall have ordinarily accepted meanings such as the context implies.

Sec. 6-494. Definitions.

Alteration of a watercourse. A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

Appeal. A request for a review of the Floodplain Administrator's interpretation of any provision of these regulations. A request for a variance from the terms of these regulations is not an appeal.

ASCE 24. A standard titled *Flood Resistant Design and Construction* that is referenced by the *Florida Building Code*. ASCE 24 is developed and published by the American Society of Civil Engineers, Reston, VA.

Base flood. A flood having a 1-percent chance of being equaled or exceeded in any given year. The base flood is commonly referred to as the "100-year flood" or the "1-percent-annual chance flood."

Base flood elevation. The elevation of the base flood, including wave height, relative to the North American Vertical Datum (NAVD) as specified on the Flood Insurance Rate Map (FIRM).

Basement. The portion of a building having its floor subgrade (below ground level) on all sides.

Coastal construction control line. The line established by the State of Florida pursuant to section 161.053, F.S., and recorded in the official records of the community, which defines that portion of the beach-dune system subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions.

Coastal high hazard area. A special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. Coastal high hazard areas are also referred to as "high hazard areas subject to high velocity wave action" or "V Zones" and are designated on Flood Insurance Rate Maps (FIRM) as Zone V1-V30, VE, or V.

Design flood. The flood associated with the greater of the following two areas:

(1) Area with a floodplain subject to a 1-percent or greater chance of flooding in any year; or
(2) Area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Design flood elevation. The elevation of the "design flood," including wave height, relative to the datum specified on the community's legally designated flood hazard map.

Development. Any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, tanks, temporary structures, temporary or permanent storage of equipment or materials, mining, dredging, filling, grading, paving, excavations, drilling operations, or any other land disturbing activities.

Existing building and *existing structure*. Any buildings and structures for which the "start of construction" commenced before August 31, 1984.

Existing manufactured home park or subdivision. 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) was completed prior to August 31, 1984.

Expansion to an existing manufactured home park or subdivision. The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the

construction of streets, and either final site grading or the pouring of concrete pads).

Federal Emergency Management Agency (FEMA). The federal agency that, in addition to carrying out other functions, administers the National Flood Insurance Program.

Flood or flooding. A general and temporary condition of partial or complete inundation of normally dry land from:

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

Flood damage-resistant materials. Any construction material capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair.

Flood hazard area. The greater of the following two areas:

(1) The area within a floodplain subject to a 1-percent or greater chance of flooding in any year.
(2) The area designated as a flood hazard area on the community's flood hazard map, or otherwise legally designated.

Flood Insurance Rate Map (FIRM). The official map of Fort Myers Beach on which the Federal Emergency Management Agency has delineated both special flood hazard areas and the risk premium zones for Fort Myers Beach, including base flood elevations and coastal high hazard areas (V zones).

Flood Insurance Study (FIS). The official report provided by the Federal Emergency Management Agency that contains the Flood Insurance Rate Map,), the water surface elevations of the base flood, and supporting technical data.

Floodplain Administrator. The town's Planning Coordinator who has been designated by the town manager to implement, administer, and enforce these floodplain regulations.

Floodplain development permit or approval. An official document or certificate issued by the town, or other evidence of approval or concurrence, which authorizes performance of specific development activities that are located in flood hazard areas and that are determined to be compliant with these regulations.

Florida Building Code. The family of codes adopted by the Florida Building Commission, including: *Florida Building Code, Building; Florida Building Code, Residential; Florida Building Code, Existing Building; Florida Building Code, Mechanical; Florida Building Code, Plumbing; Florida Building Code, Fuel Gas.*

Functionally dependent use. A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water, including only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities; the term does not include long-term storage or related manufacturing facilities.

Highest adjacent grade. The highest natural elevation of the ground surface prior to construction next to the proposed walls or foundation of a structure.

Historic structure. Any structure that is:

(1) Individually listed in the National Register of Historic Places; or
(2) A contributing resource within a National Register of Historic Places listed district; or
(3) Designated as historic property under an official municipal, county, special district or state designation, law, ordinance or resolution either individually or as a contributing property in a district, provided the local program making the designation is approved by the Department of the Interior (the Florida state historic preservation officer maintains a list of approved local programs); or
(4) Determined eligible by the Florida State Historic Preservation Officer for listing in the National Register of Historic Places, either individually or as a contributing property in a district.

Letter of Map Change (LOMC). An official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. Letters of Map Change include:

Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a

designated special flood hazard area. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.

Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.

Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.

Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed flood protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

Light-duty truck. As defined in 40 C.F.R. 86.082-2, any motor vehicle rated at 8,500 pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

(1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
(2) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or
(3) Available with special features enabling off-street or off-highway operation and use.

Lowest floor. The lowest floor of the lowest enclosed area of a building or structure, including basement, but excluding any unfinished or flood-resistant enclosure, other than a basement, usable solely for vehicle parking, building access or limited storage provided that such enclosure is not built so as to render the structure in violation of the non-elevation requirements of the *Florida Building Code* or ASCE 24.

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

Manufactured home. A structure, transportable in one or more sections, which is eight (8) feet or more in width and greater than four hundred (400) square feet, and which is built on a permanent, integral chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle" or "park trailer."

Manufactured home park or subdivision. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value. The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in these regulations, the term refers to 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 of the structure will be determined (for the structure only) by the Lee County Property Appraiser, by a private appraisal acceptable to the Floodplain Administrator, or by an independent appraisal commissioned by the Floodplain Administrator. 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 or repairs are completed. Any proposed value submitted via a 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 Floodplain Administrator, 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 Floodplain Administrator, with the full cost paid to the town prior to initiation of the process.

National Geodetic Vertical Datum (NGVD). Corrected in 1929, NGVD is a vertical control that was previously used as a reference for establishing varying elevations within the floodplain. The use of NGVD 29 on FEMA maps and in these floodplain regulations was discontinued as of August 28, 2008. To convert a known elevation in Fort Myers Beach that had been measured relative to NGVD 29, subtract 1.18 feet to determine its elevation relative to NAVD 88 (NGVD – 1.18 feet = NAVD 88).

New construction. For the purposes of administration of these regulations and the flood resistant construction requirements of the *Florida Building Code*, structures for which the "start of construction" commenced on or after August 31, 1984 and includes any subsequent improvements to such structures.

New manufactured home park or subdivision. 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.

North American Vertical Datum of 1988 (NAVD 88). A vertical control datum used as a reference for establishing varying elevations within the floodplain. For purposes of this chapter, NAVD 88 replaced NGVD 29 on August 28, 2008. To convert a known elevation in Fort Myers Beach that has been measured relative to NGVD 29, subtract 1.18 feet to determine its elevation relative to NAVD 88 (NGVD – 1.18 feet = NAVD 88).

Park trailer. A transportable unit which has a body width not exceeding fourteen (14) feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances.

Recreational vehicle. A vehicle, including a park trailer, which is:

(1) Built on a single chassis;
(2) Four hundred (400) 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.

Reinforced pier. 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 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 standards are met.

Registered architect. 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. 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. 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. Any work, as described by the categories of work defined herein, undertaken in an existing building.

Repair. The patching, restoration and/or minor replacement of materials, elements, components, equipment and/or fixtures for the purposes of maintaining such materials, elements, components, equipment and/or fixtures in good or sound condition.

Repetitive loss structure. Buildings and structures that have sustained flood-related damage on two or more separate occasions during any five-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.

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

Special flood hazard area. An area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. Special flood hazard areas are shown on FIRMs as Zone AE or VE. The entire Town of Fort Myers Beach has been designated a special flood hazard area by the Federal Emergency Management Agency.

Start of construction. The date of issuance for new construction and substantial improvements to existing structures, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement is within 180 days of the date of the issuance. The actual start of construction means either the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns.

Permanent construction does not include land preparation (such as clearing, grading, or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. 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.

Substantial damage. Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50 percent of the market value of the building or structure before the damage occurred. The term also includes flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the costs of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

Substantial improvement. Any combination of repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure taking place during a 5-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started, 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," regardless of the actual repair work performed. For each building or structure, the 5-year period begins on the date of the first improvement or repair of that building or structure. The term does not, however, include either:

(1) Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
(2) Costs of alterations or improvements whose express purpose is the mitigation of future storm damage, provided the costs of such measures, plus the costs of any other improvements, 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 impact resistant glass, strengthening of roof attachments, floors, or walls, and minor measures to reduce flood damage.
    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 towards any costs associated with a lateral or vertical addition to an existing structure or to the complete replacement of an existing structure.

Variance. A grant of relief from the requirements of these regulations, or the flood resistant construction requirements of the *Florida Building Code*, which permits construction in a manner that would not otherwise be permitted by these regulations or the *Florida Building Code*.

Watercourse. A river, creek, stream, channel or other topographic feature in, on, through, or over which water flows at least periodically.

Secs. 6-495—6-500. Reserved.

DIVISION 10. FLOOD RESISTANT DEVELOPMENT

Subdivision I. Buildings and Structures

Sec. 6-501. Design and construction of buildings, structures and facilities exempt from the *Florida Building Code*.

Pursuant to § 6-443 of these regulations, buildings, structures, and facilities that are exempt from the *Florida Building Code*, including substantial improvement or repair of substantial damage of such buildings, structures and facilities, shall be designed and constructed in accordance with the flood load and flood resistant construction requirements of ASCE 24. Structures exempt from the *Florida Building Code* that are not walled and roofed buildings shall comply with the requirements of subdivision VII of this division.

Sec. 6-502. Buildings and structures seaward of the coastal construction control line.

If extending, in whole or in part, seaward of the coastal construction control line and also located, in whole or in part, in a flood hazard area:

(1) Buildings and structures shall be designed and constructed to comply with the more restrictive applicable requirements of the *Florida Building Code, Building* Section 3109 and Section 1612 or *Florida Building Code, Residential* Section R322.
(2) Minor structures and non-habitable major structures as defined in section 161.54, F.S., shall be designed and constructed to comply with the intent and applicable provisions of these regulations and ASCE 24.

Subdivision II. Subdivisions

Sec. 6-503. Minimum requirements.

Subdivision proposals, including proposals for manufactured home parks and subdivisions, shall be reviewed to determine that:

(1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
(2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and
(3) Adequate drainage is provided to reduce exposure to flood hazards.

Sec. 6-504. Subdivision plats.

Where any portion of proposed subdivisions, including manufactured home parks and subdivisions, lies within a flood hazard area, the following shall be required:

(1) Delineation of flood hazard areas, floodway boundaries and flood zones, and design flood elevations, as appropriate, shall be shown on preliminary plats ;
(2) Compliance with the site improvement and utilities requirements of subdivision III of this division.

Subdivision III. Site Improvements, Utilities and Limitations

Sec. 6-505. Minimum requirements.

All proposed new development shall be reviewed to determine that:

(1) Such proposals are consistent with the need to minimize flood damage and will be reasonably safe from flooding;
(2) All public utilities and facilities such as sewer, gas, electric, communications, and water systems are located and constructed to minimize or eliminate flood damage; and

(3) Adequate drainage is provided to reduce exposure to flood hazards.

Sec. 6-506. Sanitary sewage facilities.

All new and replacement sanitary sewage facilities, private sewage treatment plants (including all pumping stations and collector systems), and on-site waste disposal systems shall be designed in accordance with the standards for onsite sewage treatment and disposal systems in Chapter 64E-6, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the facilities and discharge from the facilities into flood waters, and impairment of the facilities and systems.

Sec. 6-507. Water supply facilities.

All new and replacement water supply facilities shall be designed in accordance with the water well construction standards in Chapter 62-532.500, F.A.C. and ASCE 24 Chapter 7 to minimize or eliminate infiltration of floodwaters into the systems.

Sec. 6-508. Limitations on placement of fill.

Subject to the limitations of these regulations, fill shall be designed to be stable under conditions of flooding including rapid rise and rapid drawdown of floodwaters, prolonged inundation, and protection against flood-related erosion and scour. In addition to these requirements, if intended to support buildings and structures (Zone A only), fill shall comply with the requirements of the *Florida Building Code*.

Sec. 6-509. Limitations on sites in coastal high hazard areas (Zone V).

In coastal high hazard areas, alteration of sand dunes and mangrove stands shall be permitted only if such alteration is approved by the Florida Department of Environmental Protection and only if the engineering analysis required by § 6-452(3) of these regulations demonstrates that the proposed alteration will not increase the potential for flood damage. Construction or restoration of dunes under or around elevated buildings and structures shall comply with Sec. § 6-527(3) of these regulations.

Subdivision IV. Manufactured Homes

Sec. 6-510. General.

All manufactured homes installed in flood hazard areas shall be installed by an installer that is licensed pursuant to section 320.8249, F.S., and shall comply with the requirements of Chapter 15C-1, F.A.C. and the requirements of these regulations.

(1) If located seaward of the coastal construction control line, all manufactured homes shall comply with the more restrictive of the applicable requirements.
(2) New installations of manufactured homes shall not be permitted in coastal high hazard areas (Zone V).

Sec. 6-511. Foundations.

All new manufactured homes, if permitted, and replacement manufactured homes installed in flood hazard areas shall be installed on permanent, reinforced foundations that:

(1) In flood hazard areas (Zone A) other than coastal high hazard areas, are designed in accordance with the foundation requirements of the *Florida Building Code, Residential* Section R322.2 and these regulations.
(2) In coastal high hazard areas (Zone V), are designed in accordance with the foundation requirements of the *Florida Building Code, Residential* Section R322.3 and these regulations.

Sec. 6-512. Anchoring.

All new manufactured homes and replacement manufactured homes shall be installed using methods and practices which minimize flood damage and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse or lateral movement. Methods of anchoring include, but are not limited to, use of over-the-top or frame ties to ground anchors. This anchoring requirement is in addition to applicable state and local anchoring requirements for wind resistance.

Sec. 6-513. Elevation.

Manufactured homes that are placed, replaced, or substantially improved shall comply with §§ 6-514 or 6-515 of these regulations, as applicable.

Sec. 6-514. General elevation requirement.

Unless subject to the requirements of § 6-515 of these regulations, all manufactured homes that are placed, replaced, or substantially improved on sites located: (a) outside of a manufactured home park or subdivision; or (b) in an existing manufactured home park or subdivision upon which a manufactured home has incurred "substantial damage" as the result of a flood, shall be elevated such that the bottom of the frame is at or above the elevation required, as applicable to the flood hazard area, in the *Florida Building Code, Residential* Section R322.2 (Zone A) or Section R322.3 (Zone V).

Sec. 6-515. Elevation requirement for certain existing manufactured home parks and subdivisions.

Manufactured homes that are not subject to § 6-514 of these regulations, including manufactured homes that are placed, replaced, or substantially improved on sites located in an existing manufactured home park or subdivision, unless on a site where substantial damage as result of flooding has occurred, shall be elevated such that either the:

(1) Bottom of the frame of the manufactured home is at or above the elevation required, as applicable to the flood hazard area, in the *Florida Building Code, Residential* Section R322.2 (Zone A) or Section R322.3 (Zone V); or
(2) Bottom of the frame is supported by reinforced piers or other foundation elements of at least equivalent strength that are not less than 36 inches in height above grade.

Sec. 6-516. Enclosures.

Enclosed areas below elevated manufactured homes shall comply with the requirements of the *Florida Building Code, Residential* Section R322 for such enclosed areas, as applicable to the flood hazard area.

Sec. 6-517. Utility equipment.

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

Subdivision V. Recreational Vehicles and Park Trailers

Sec. 6-518. Temporary placement.

Recreational vehicles and park trailers placed temporarily in flood hazard areas shall:

(1) Be on the site for fewer than 180 consecutive days; or
(2) Be fully licensed and ready for highway use, which means the recreational vehicle or park model is on wheels or jacking system, is attached to the site only by quick-disconnect type utilities and security devices, and has no permanent attachments such as additions, rooms, stairs, decks and porches.

Sec. 6-519. Permanent placement.

Recreational vehicles and park trailers that do not meet the limitations in § 6-518 of these regulations for temporary placement shall meet the requirements of §§ 6-510 through 6-517 of these regulations for manufactured homes.

Subdivision VI. Tanks

Sec. 6-520. Underground tanks.

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

Sec. 6-521. Above-ground tanks, not elevated.

Above-ground tanks that do not meet the elevation requirements of § 6-522 of these regulations shall:

(1) Be permitted in flood hazard areas (Zone A) other than coastal high hazard areas, provided the tanks are anchored or otherwise designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic and hydrostatic loads during conditions of the design flood, including the effects of buoyancy assuming the tank is empty and the effects of flood-borne debris.
(2) Not be permitted in coastal high hazard areas (Zone V).

Sec. 6-522. Above-ground tanks, elevated.

Above-ground tanks in flood hazard areas shall be attached to and elevated to or above the design flood elevation on a supporting structure that is designed to prevent flotation, collapse or lateral movement during conditions of the design flood. Tank-supporting structures shall meet the foundation requirements of the applicable flood hazard area.

Sec. 6-523. Tank inlets and vents.

Tank inlets, fill openings, outlets and vents shall be:

(1) At or above the design flood elevation or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the design flood; and
(2) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the design flood.

Subdivision VII. Other Development

Sec. 6-524. General requirements for other development.

All development, including man-made changes to improved or unimproved real estate for which specific provisions are not specified in these regulations or the *Florida Building Code*, shall:

(1) Be located and constructed to minimize flood damage;
(2) Be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the design flood;
(3) Be constructed of flood damage-resistant materials; and
(4) Have mechanical, plumbing, and electrical systems above the design flood elevation, except that minimum electric service required to address life safety and electric code requirements is permitted below the design flood elevation provided it conforms to the provisions of the electrical part of building code for wet locations.

Sec. 6-525. Concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses in coastal high hazard areas (Zone V).

In coastal high hazard areas, concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses are permitted beneath or adjacent to buildings and structures provided the concrete slabs are designed and constructed to be:

(1) Structurally independent of the foundation system of the building or structure;
(2) Frangible and not reinforced, so as to minimize debris during flooding that is capable of causing significant damage to any structure; and
(3) Have a maximum slab thickness of not more than four (4) inches.

Sec. 6-526. Decks and patios in coastal high hazard areas (Zone V).

In addition to the requirements of the *Florida Building Code*, in coastal high hazard areas decks and patios shall be located, designed, and constructed in compliance with the following:

(1) A deck that is structurally attached to a building or structure shall have the bottom of the lowest horizontal structural member at or above the design flood elevation and any supporting members that extend below the design flood elevation shall comply with the foundation requirements that apply to the building or structure, which shall be designed to accommodate any increased loads resulting from the attached deck.

(2) A deck or patio that is located below the design flood elevation shall be structurally independent from buildings or structures and their foundation systems, and shall be designed and constructed either to remain intact and in place during design flood conditions or to break apart into small pieces to minimize debris during flooding that is capable of causing structural damage to the building or structure or to adjacent buildings and structures.
(3) A deck or patio that has a vertical thickness of more than twelve (12) inches or that is constructed with more than the minimum amount of fill necessary for site drainage shall not be approved unless an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to the building or structure or to adjacent buildings and structures.
(4) A deck or patio that has a vertical thickness of twelve (12) inches or less and that is at natural grade or on nonstructural fill material that is similar to and compatible with local soils and is the minimum amount necessary for site drainage may be approved without requiring analysis of the impact on diversion of floodwaters or wave runup and wave reflection.

Sec. 6-527. Other development in coastal high hazard areas (Zone V).

In coastal high hazard areas, development activities other than buildings and structures shall be permitted only if also authorized by the appropriate federal, state or local authority; if located outside the footprint of, and not structurally attached to, buildings and structures; and if analyses prepared by qualified registered design professionals demonstrate no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures. Such other development activities include but are not limited to:

(1) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;
(2) Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less than the design flood or otherwise function to avoid obstruction of floodwaters; and
(3) On-site sewage treatment and disposal systems defined in 64E-6.002, F.A.C., as filled systems or mound systems.

Sec. 6-528. Nonstructural fill in coastal high hazard areas (Zone V).

In coastal high hazard areas:

(1) Minor grading and the placement of minor quantities of nonstructural fill shall be permitted for landscaping and for drainage purposes under and around buildings.
(2) Nonstructural fill with finished slopes that are steeper than one unit vertical to five units horizontal shall be permitted only if an analysis prepared by a qualified registered design professional demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent buildings and structures.
(3) Where authorized by the Florida Department of Environmental Protection or applicable local approval, sand dune construction and restoration of sand dunes under or around elevated buildings are permitted without additional engineering analysis or certification of the diversion of floodwater or wave runup and wave reflection if the scale and location of the dune work is consistent with local beach-dune morphology and the vertical clearance is maintained between the top of the sand dune and the lowest horizontal structural member of the building.

CHAPTERS 7--9 RESERVED

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 10
DEVELOPMENT ORDERS AND ENGINEERING STANDARDS

ARTICLE I. IN GENERAL

ARTICLE II. DEVELOPMENT ORDERS AND PLATS

ARTICLE IV. STORMWATER DISCHARGES AND EROSION CONTROL (NPDES REQUIREMENTS)

ARTICLE I.
IN GENERAL

Sec. 10-1. Definitions and rules of construction.

(a) ***Rules of construction and analogous words and terms.*** For the purpose of this chapter, the following analogous words and terms shall be interpreted to have similar meanings when not inconsistent with the context:

(1) The word "constructed" includes the words "erected," "built," "installed," "rebuilt," and "repaired."
(2) The word "lot" includes the word "plot," "parcel," or "tract."
(3) The word "structure" includes the word "building."
(4) The word "subdivider" includes the word "developer," and the word "developer" includes the word "subdivider."
(5) Where this chapter refers to a specific federal, state, county, or town agency, department, or division, it shall be interpreted to mean "or any succeeding agency authorized to perform similar functions or duties."

(b) ***Definitions.*** Except where specific definitions are used within a specific section of this chapter for the purpose of such sections, the following terms, phrases, words, and their derivations will have the meaning given in this subsection when not inconsistent with the context:

Abutting means any property that is immediately adjacent to, or contiguous with, or that is located immediately across from any street, canal, easement or water body, not to exceed 25 feet from the other property.

Access point means an accessway or driveway which provides vehicle access to a single parcel of land.

Accessway means land that is used or intended to be used for ingress or egress to abutting parcels of land and is not dedicated to the public. Accessways include access points to commercial, and other types of developments, except a single parcel of land containing two or fewer dwelling units in a single structure.

Applicant means any individual, firm, association, syndicate, copartnership, corporation, trust, or other legal entity, or their duly authorized representative, conducting activities under this chapter.

Application for a development order means the submission of the documents as required in this chapter to the director for review.

Building means any structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind which has enclosing walls for 50 percent of its perimeter. The term "building" shall be construed as if followed by the words "or part thereof."

Connection means a driveway, accessway, street, or other means of providing access to or from local or major streets.

Consultant means an architect, attorney, engineer, environmentalist, landscape architect, planner, surveyor, or other person engaged by the developer to prepare documents required for a development order.

Controlled water depth means the vertical distance measured from the waterbody control elevation to the deepest point of the proposed waterbody.

Cul-de-sac means a turnaround at the end of a dead-end street.

Current pertains to the regulations in effect at the time an application for a development order is presented for acceptance or approval.

Dead-end street means a street having only one end open for vehicular access and closed at the other end.

Decision of the director means any act of the director in interpreting or applying this chapter to a particular request for a requirement waiver, limited review processing, or a development order, or any other request or matter relating thereto. In cases where making a decision involves the practice of engineering, as defined in F.S. § 471.005(6), where such decision shall be made only by a professional engineer or someone supervised by a professional engineer pursuant to F.A.C. § 21H-26.001, the

director must be a professional engineer, registered in the state. If the director is not a registered professional engineer, the director shall adopt the decision of a designated professional engineer, or the person who is designated to act on behalf of that professional engineer and who is supervised by that professional engineer, as the basis for whatever final formal decision is made by the director.

Density has the same meaning as in ch. 34 of this code.

DEP means the Florida Department of Environmental Protection.

Developer means any individual, firm, association, syndicate, copartnership, corporation, trust, or other legal entity commencing development.

Development means:
(1) A subdivision, as defined in this chapter; or
(2) Any improvement to land, as defined in this chapter.

Development area means the total horizontal area of the development property less any area within any existing public street right-of-way or easement.

Development order means a document issued by the director granting approval of the development based upon the submittal of the application for a development order, plans for development, plats, and all other documentation as applicable and required by this chapter.

Development permit has the same meaning as given for that term in F.S. § 163.3164(7).

Director means the person to whom the town manager has delegated the authority to administer this chapter, or that person's designee. He shall oversee the intake of applications for completeness, oversee the review of plans for compliance with this chapter, and issue notifications to applicants.

Division and ***dividing of land*** mean:
(1) The act of describing, by metes and bounds, platting, or otherwise, one or more parcels of land which are lesser parcels of the original parcel or a recombination of lesser parcels or original parcels with another parcel for the purpose of conveying any interest in a parcel of land;
(2) The act of describing, by metes and bounds, platting, or otherwise, an easement or fee for accessway or right-of-way purposes;
(3) The act of conveying any of the interests in land described in subsection (1) or (2) of this definition; or
(4) The commencement of construction of a street, or a portion thereof, which is not platted.

Drainage system includes the roadside swales, curb and gutter, valley gutter, inlet piping, lateral swales, and related structures used to collect and transmit stormwater runoff from streets and lots to the detention or retention areas and percolation areas.

Driveway means a type of access point which provides vehicle access from a street to a single parcel of land containing two or fewer dwelling units in a single structure and from which vehicles may legally enter or leave the street in a forward or backward motion.

Dwelling unit has the same meaning as in ch. 34 of this code.

Easement means a grant of a right to use land for specified purposes. It is a nonpossessory interest in land granted for limited use purposes. Where the term "easement" is preceded by the term "street" or any other adjective, the preceding term describes the easement's purpose.

Engineer means a professional engineer duly registered and licensed by the state of Florida.

Excavation means the stripping, grading, or removal by any process of natural minerals or deposits, including but not limited to peat, sand, rock, shell, soil, fill dirt, or other extractive materials, from their natural state and location.

Excavation depth means the vertical distance measured from the lowest existing natural grade along the bank of the proposed excavation to the deepest point of the proposed excavation.

FDOT means the Florida Department of Transportation.

Historic district means a geographically definable area possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also be composed of individual elements separated geographically but linked by association or history. A district may or may not be designated as a historic resource pursuant to ch. 22.

Historic resource means any prehistoric or historic district, site, building, object, or other real or personal property of historical, architectural, or archaeological value. These properties or resources may include but are not limited to monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken, or abandoned ships, engineering works, treasure trove, artifacts, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to history, government or culture. These resources may or may not be designated as an historic resource pursuant to ch. 22.

Impervious surface means those surfaces which do not absorb water, and includes all water bodies, structures, driveways, streets, sidewalks, other areas of concrete, asphalt, compacted layers of limerock or shell, and certain parking areas. In the case of storage yards, areas of stored materials constitute impervious surfaces.

Improvement to land means any change to land or to any structure on the land, and shall include any movement or grading of land, except grading which is incidental to the removal of exotic vegetation and which is not prohibited by ch. 22; clearing of indigenous plant communities; and the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; provided, however, that any change to a building which does not involve a change in the building floor area shall not be deemed an improvement to land.

Indigenous plant communities means those plant species which are characteristic of the major plant communities of the town as listed in § 10-413. Areas where invasive exotic vegetation has exceeded 75% of the plant species by quantity will not be considered indigenous plant communities.

Intersection means the general area where two or more roads, streets, accessways, or access points join or cross.

LBR means limerock bearing ratio.

Lot means a parcel of land considered as a unit.

Native means a plant of a species that occurred within the current Florida state boundary prior to European contact, according to the best available scientific and historical documentation. Certain Florida native plants occurred in indigenous plant communities in southwest Florida prior to significant human impacts and alterations of the landscape.

Owner means any person having a legal or equitable interest in property.

Parcel. See *Lot*.

Parking lot access means an accessway which provides vehicle access from a street to a parking lot containing 5 or more parking spaces, but from which vehicles are restricted to entering or leaving the street in a forward motion only.

Parking lot aisle means the portions (lanes) of a parking lot which provide direct access to individual parking spaces.

PCP (permanent control point) means a marker as defined in F.S. ch. 177.

Pedestrian way means a paved, surfaced path or way which is specifically designated or intended to be open to pedestrian travel, whether such facilities are intended for the exclusive use of pedestrians or not.

Permit means any official document or certificate required or issued by the town authorizing performance of a specified activity.

Person means any individual, partnership, association, corporation, trust, or other legal entity.

Plat means a plat as defined by F.S. ch. 177, as amended.

Private street means a street that:
(1) Is not dedicated to the public; or

(2) Has been dedicated to the public but the offer has not been accepted by the board through express action at a public hearing.

PRM (permanent reference monument) means a monument as defined in F.S. ch. 177.

Public street means a street that has been dedicated to the public and where the public, through use of the street, or the governing body, through express action at a public hearing, has accepted the offer of dedication. Regardless of the governing body's acceptance of the offer of public dedication, the governing body may or may not have accepted the street for maintenance purposes.

Roadway is a general term denoting land, property or interest therein, usually in a strip, acquired for or devoted to transportation purposes, including the travelway, shoulders, and swales, but which has not been accepted by the board.

SFWMD means the South Florida Water Management District.

Sidewalk means a paved pedestrian way within or immediately adjoining a street right-of-way or easement.

Site-related road improvements means road capital 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 access points and roads;
(2) Median cuts made necessary by those access points or roads;
(3) Right and left turn and deceleration or acceleration lanes leading to or from those access points or roads;
(4) Traffic control measures for those access points or roads;
(5) Sidewalks on the development property or on an abutting right-of-way.
(6) Roads or intersection improvements whose primary purpose at the time of construction is to provide access to the development.

Stormwater management system includes the detention or retention areas, percolation trenches, discharge structures, and outfall channels provided to control the rate of stormwater runoff within and from a development.

Street.

(1) The term "street" means:
   a. An accessway which affords the principal means of ingress or egress for two or more parcels of land; or
   b. A right-of-way or roadway which affords the principal means of ingress or egress for a parcel of land; or
   c. Any public thoroughfare that can support travel by motor vehicles.
(2) The term "street" is synonymous with the term "avenue," "boulevard," "drive," "lane," "place," "road," or "way," or similar terms.
(3) The following definitions distinguish and rank streets according to their different functional classifications:
   a. ***Street, major*** means streets that carry large volumes of traffic or that collect traffic from intersecting local streets and accessways. Access to abutting properties is a secondary function. Major streets in the town can be further classified as follows:
      1. *Arterial streets:* Matanzas Pass Sky Bridge, Estero Boulevard from the Sky Bridge to the Big Carlos Pass Bridge, and the Big Carlos Pass Bridge.
      2. *Major collector streets:* Estero Boulevard from the Sky Bridge to the entrance of Bowditch Point Park.
      3. *Minor collector streets:* Old San Carlos Boulevard, Crescent Street, Lenell Road, and Bay Beach Lane.
   b. ***Street, local*** means all streets other than major streets, whose primary function is to serve adjacent properties. Through volume service is not a function of local streets.
   c. ***Alley*** means a narrow service access to the rear of urban buildings that can provide service areas, vehicular and parking access, and public utilities, but which is not intended for general traffic circulation.

Street right-of-way is a general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to transportation purposes, which has been dedicated to the public and accepted by the appropriate public body.

Street stub means a street having one end open for vehicular traffic and the other terminated without a turnaround for vehicles.

Structure means that which is built or constructed. The term "structure" shall be construed as if followed by the words "or part thereof."

Subdivider means a person who creates a subdivision.

Subdivision.

(1) The act of subdividing land is a type of development. The term "subdivision" means the following:
   a. The division of a lot or tract into two or more lots, or two lots into three or more lots, or similar lot divisions; or
   b. The division of a lot, the result of which is the extension of an existing street or the establishment of a new street; or
   c. Creation of a condominium as defined in F.S. chs. 718 and 721, except that condominium developments are exempt from the provisions of this code that require platting under F.S. ch. 177.

(2) The following divisions are exempt from this definition:
   a. A division of land pursuant to a development platted or approved by the county prior to January 28, 1983, provided that all required improvements have been made or that a security for the performance of the improvements has been posted and is current;
   b. The division of land for the conveyance of land to a federal, state, county, or municipal government entity, or a public utility; and
   c. The division of land by judicial decree.

(3) The combination or recombination of up to 3 lots of record is not a subdivision provided that all resulting lots comply with ch. 34, the Fort Myers Beach Comprehensive Plan and all other applicable provisions of this code. Specific provisions relating to the recombination of up to 3 lots are contained in § 10-217.

(4) Subdivision includes resubdivision or redivision and, when appropriate to the context, shall also mean the process of subdivision or the land subdivided.

Surplus material means material that absolutely must be excavated in order to comply with permit requirements and which cannot reasonably be expected to be used on the same premises for any purpose.

Surveyor means a professional land surveyor duly registered and licensed by the state.

Turn lane means a width of pavement required to protect the health, safety, and welfare of the public and reduce adverse traffic impacts from turning movements generated by a development on to and off of a street. Turn lanes shall include and enhance turning, acceleration, deceleration, or storage movements of vehicles as required by this chapter.

Two-family has the same meaning as in ch. 34 of this code.

Unified control means that a single property owner or entity has been authorized by all owners of the property to represent them and to encumber the parcel with covenants and restrictions applicable to development of the property as approved by the town.

Water system means a system of pipes, pumps, water treatment plants, or water sources, and all other appurtenances or equipment needed to treat, transport and distribute water.

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

Sec. 10-2. Purpose of chapter.

(a) This chapter supplements the other chapters of this code by providing processes to review site plans for subdivisions of land and for multifamily, commercial, and institutional developments. Site plans and related submissions that meet the goals, standards, and regulations set forth in this code and in the Fort Myers Beach Comprehensive Plan are issued development orders that authorize the actual development of land.

(b) This chapter also provides engineering and environmental regulations that supplement other portions of this code. For example, this chapter includes standards for:

(1) Mandatory construction of sidewalks during development along major streets; see § 10-289.
(2) Approved piping materials for use in rights-of-way; see § 10-296(d).
(c) Driveways that cross drainage swales, including residential driveways; see § 10-296(o).
(4) Stormwater discharge and erosion control requirements; see § 10-601–608.

Sec. 10-3. Interpretation of chapter.

(a) This chapter shall be construed to be the minimum regulations necessary for the purpose of meeting the general and specific requirements named in this chapter. The provisions of this chapter are regulatory.

(b) Where any provision of this chapter imposes a restriction different from that imposed by any other provision of this chapter or any other ordinance, regulation, or law, other than definitions, the provision which is more restrictive shall apply. The definitions contained in this chapter shall be controlling for all provisions of this chapter, and definitions of these same terms contained in other duly adopted ordinances and regulations of the town shall not be construed to be applicable in this chapter.

Sec. 10-4--10-5. Reserved.

Sec. 10-6. Enforcement of chapter; penalty.

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 chapter.

Sec. 10-7. General requirements.

(a) Development in the town must be in compliance with this chapter, as well as local, state, and federal air, water, and noise pollution standards.

(b) Development in the town must be in compliance with the Fort Myers Beach Comprehensive Plan and all applicable town ordinances.

(c) Development orders or permits 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, in accordance with procedures set forth in article II of ch. 2.

(d) Except as otherwise provided for in this chapter, permits for development, including building permits, shall only be issued after the issuance of, and in compliance with, a development order. No development permit, building permit, or tree removal permit shall be issued on a parcel of land, or any portion thereof, that is the subject of existing violations of this code, regardless of whether the applicant or his principal owned the property at the time the violation occurred. However, this subsection shall not prevent issuance of a permit for the specific purpose of resolving or abating the violation.

(e) During development and construction activities, the developer must take every reasonable precaution to avoid dust and debris from blowing onto adjacent properties. When, in the director's opinion, conditions are such that dust or debris is adversely affecting adjacent properties, a stop work order may be issued until the conditions are mitigated. The proposed method of mitigation, which may include temporary silt fencing, sprinkling the area with water, seeding, or sodding, or other similar measures, must be approved by the director.

(f) During development and construction activities, the developer must take every reasonable precaution to avoid undue noise or activities that might cause unreasonable impacts or nuisance to adjacent properties. If, in the director's opinion, construction activities could be, or are, generating noise, nuisance, or other adverse impacts that may unreasonably affect adjacent properties, he may establish reasonable working hours or other conditions for construction activities as a condition of the development order. If the stipulated working hours or conditions are violated, a stop work order may be issued until the conditions are mitigated.

(g) All developments must remain in compliance with the terms and conditions of the approved development order even after issuance of a certificate of compliance.

(h) Improvements constructed pursuant to a development order may not be placed into service or

otherwise used until the required certificate of compliance has been issued for the development order.

Sec. 10-8. Design goals.

Development will be approved and a development order will be issued when the development is designed so as to reasonably achieve the following:

(1) ***Preservation of ecological integrity.*** The development shall protect the town's natural, historic, and scenic resources, including air, surface, and subsurface waters, and shall preserve their ecological integrity. No new bridges, or any new causeways which require filling of wetlands or submerged lands, shall be constructed to any undeveloped island.

(2) ***Circulation.*** There must be adequate circulation, ingress, and egress to the development for both pedestrians and motorists. Additionally, the development shall also achieve the following:
   a. Ingress and egress areas shall be of sufficient width to provide for servicing of utilities, refuse collection, and access for emergency vehicles.
   b. Development shall not cause traffic hazards or congestion which results from excessive exit and entrance points along major streets.
   c. In order to evaluate traffic patterns, traffic circulation, and traffic impacts of a development, a traffic impact statement shall be prepared in accordance with the requirements of this chapter.
   d. In order to mitigate the traffic impacts of a development, a traffic impact mitigation plan shall be prepared in accordance with the requirements of this chapter.

(3) ***Water and sewage systems.*** All new development must connect to the public potable water and sanitary sewer systems.

(4) ***Drainage and stormwater management.*** The development must be designed in accordance with applicable runoff, retention, and attenuation requirements of SFWMD and this chapter. The development must be designed to avoid flooding or erosion damage to adjacent property and the town drainage system and to avoid the creation of stagnant pools that would encourage mosquito breeding. The development must provide a method of continual maintenance and operation through legal documentation and must ensure proper stormwater management so as to reduce the potential impacts of flooding.

(5) ***Landscaping and buffering.*** Adequate landscaping, including buffers, to preserve compatibility with uses outside the proposed development must be provided.

(6) ***Fire protection.*** The development must include an adequate fire protection system.

(7) ***Density and intensity.*** The development must have a density no higher than that which can be adequately supported by the facilities existing or agreed upon by the developer at the time the development order is issued, and in no case may the density exceed the allowable density and intensity as set forth in the Fort Myers Beach Comprehensive Plan or ch. 34.

(8) ***Historic resources.*** The development must provide for the identification, recognition, protection, or mitigation of the historical and archaeological resources of the town, as provided by the historic preservation element of the Fort Myers Beach Comprehensive Plan and by ch. 22 of this code. Every effort must be made to locate required open space so as to protect archaeological sites.

(9) ***Outdoor lighting.*** All outdoor lighting must be designed and maintained:
   a. To curtail and reverse the degradation of the night-time visual environment by minimizing light pollution, glare, and light trespass through the form and use of outdoor lighting;
   b. To conserve energy and resources while maintaining night-time safety, utility, security, and productivity; and
   c. To protect nesting sea turtles and sea turtle hatchlings by having all artificial lighting comply with the provisions of article II of ch. 14.

Sec. 10-9. Specific requirements.

The remaining articles of this chapter provide more specific requirements for obtaining the development approvals that are required by this code.

Secs. 10-10--10-50. Reserved.

ARTICLE II. DEVELOPMENT ORDERS AND PLATS

DIVISION 1. GENERALLY

Secs. 10-51--10-80. Reserved.

DIVISION 2. DEVELOPMENT ORDERS

Subdivision I. In General

Secs. 10-81--10-100. Reserved.

Subdivision II. Procedures

Sec. 10-101. Applicability of requirements.

(a) ***Development orders.*** All developments, as defined in this chapter, including subdivisions, are required to obtain a development order prior to commencing any land development activities or receiving any development permit, including a building permit, with the exception of the following, which are not subject to review pursuant to this chapter except as noted herein:

(1) Construction of a single family or two-family dwelling unit (and accessory structures as defined in ch. 34) on a single buildable lot (or two lots in the case of a two-family dwelling);
(2) For the installation of propane or LNG tanks incidental to the permitted use on a parcel up to a maximum capacity of 2001 gallons;
(3) Signs that are regulated by ch. 30 of this code;
(4) Any development which has already received a building permit that is still in effect;
(5) Temporary construction trailers;
(6) Beach renourishment projects;
(7) The replacement of existing utility lines; or
(8) Public capital improvements in accordance with article VI of ch. 2.

(b) ***Subdivision plats.*** All subdivisions requiring a development order must also have a subdivision plat meeting the standards of F.S. ch. 177 approved by the town and recorded in the public records prior to the issuance of building permits. However, plats are not required for lot splits granted under the limited review process. Standards and procedures for the approval of plats are contained in division 5 of this article.

(c) ***Installation of improvements.*** All improvements specified on the development order drawings, and in the conditions and documents contained in the development order, must be installed by the developer at the developer's expense, unless otherwise approved within the development order documents.

(d) ***Site-related improvements.*** Developers shall be responsible for the full cost of site-related improvements as defined in this chapter.

Sec. 10-102. Employment of engineers and design consultants.

An engineer shall be employed by the developer to design all required improvements such as streets, drainage structures, drainage systems, bridges, bulkheads, water and sewage facilities, etc. All plans, drawings, reports, and calculations shall be prepared, signed, and sealed by the appropriate licensed professional, such as engineers, architects, landscape architects, land surveyors, and attorneys, registered in the state. Other specialized consultants, such as environmental consultants, archaeologists, etc., may be required to assist in the preparation of the plans, drawings, reports, and other documents required as development order submittals.

Sec. 10-103. Prior zoning approvals for development order submittals.

(a) Any applicant who submits an application for development order approval on a project with planned development zoning will have the submittal reviewed for full compliance with the adopted master concept plan and any conditions of approval concurrently for compliance with this chapter. No development orders shall be issued for the project in question until the plans have been determined to be

in compliance with the terms of the zoning approval.

(b) For developments that require rezoning, the applicant may make application for a development order and the rezoning simultaneously. The development order will be reviewed for compliance with the requirements of this chapter and the requirements of ch. 34 for the proposed zoning of the property. No approval of the development order will be granted until the proposed rezoning is approved and a zoning resolution signed by the mayor.

Sec. 10-104. Deviations and variances.

(a) ***Provisions where administrative deviations are authorized.*** The director is hereby authorized to grant administrative deviations from the technical standards in the following sections in this chapter:

(1) § 10-285 (intersection separations);
(2) § 10-289 (sidewalk widths);
(3) § 10-296, Table 10-2, items (1)–(7) (road specifications);
(4) § 10-296(j) (intersection designs);
(5) § 10-296(k) (culs-de-sac);
(6) § 10-322 (swale sections);
(7) § 10-329(c)(1) (setbacks for water retention/detention excavation from private property);
(8) § 10-385(c) (water mains);
(9) § 10-416(c) (landscaping of parking and vehicle use areas);
(10) § 10-441–470 (mass transit facilities).

(b) ***Criteria for administrative deviations.*** Administrative deviations shall be granted only where the director finds that the following criteria have been met:

(1) That the alternative proposed to the standards contained herein is based on sound engineering practices (not applicable to division 7 of article III of this chapter);
(2) That the alternative is no less consistent with the health, safety, and welfare of abutting landowners and the general public than the standard from which the deviation is being requested;
(3) For division 7 of article III of this chapter, the required facility would unnecessarily duplicate existing facilities; and
(4) The granting of the administrative deviation is not inconsistent with any specific policy directive of the town council, any other ordinance, or any Fort Myers Beach Comprehensive Plan provision.

(c) ***Submittal requirements.*** The submittal requirements for an administrative deviation shall include the following:

(1) A completed application form provided by the director;
(2) Plans, sealed by a registered professional engineer where appropriate, that accurately reflect the applicant's alternative proposal;
(3) A written statement showing how the proposed alternative meets the criteria in subsection (b) above; and
(4) Any other materials and/or calculations requested by the director to aid in the decision.

(d) ***When submittals may be made.*** Requests for administrative deviations may be submitted contemporaneously with the applicant's original development order application, or at any time thereafter, so long as the application has not been withdrawn.

(e) ***Refusals.*** Administrative deviations may not be unreasonably refused.

(f) ***Appeal of director's decision.*** The director's final decision may be appealed in accordance with the procedures in § 34-86. The town council shall grant the appeal only upon a finding that the criteria in subsection (b) above have been met.

(g) ***Variances.*** Requests to vary or deviate from the terms of those sections of this chapter that are not listed in subsection (a) above must be filed in accordance with the procedures set out for variances and deviations in ch. 34, except for those matters where this chapter specifically states that variances may not be granted. Applicants for administrative deviations that have been denied by the director may also apply for variances or deviations in accordance with the procedures and criteria in ch. 34.

(h) ***Pursuant of variances or deviation concurrently with development order.*** The applicant may pursue approval of variances and deviations concurrently with an application for a development order. The development order will be reviewed but cannot be approved until all of the

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

applicant prior to review of the minor change submittal.

(d) Any change which is requested as a result of a violation revealed during final inspection will not be processed as a minor change, but instead will be considered and reviewed as an amendment and shall be subject to the provisions of § 10-118.

(e) Applications for minor changes 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.

(f) Any number of minor changes will be allowed; however, only two separate submittals or applications will be allowed for either single or multiple minor changes on small projects and only 4 separate submittals will be allowed for either single or multiple minor changes on large projects. Minor changes required due to conflicts in the requirements of other governmental agencies or utility companies will not be counted towards the maximum of two separate minor change submittals.

Sec. 10-121. Transfer.

Development orders run with the land and are transferable to subsequent owners of property that is covered by a development order. In order for a subsequent owner of property that is covered by a development order to ensure that the development order file is current, the new owner of the property must submit the following documents:

(1) A recorded deed or current title opinion to prove ownership of the property.
(2) A list of all owners of the property.
(3) A statement signed by the applicant, under oath, that he is the authorized representative of the owner(s) of the property and has full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of the issuance of a development order in accordance with this code. The signed statement also constitutes an acknowledgment that the property will not be transferred, conveyed, sold, or subdivided unencumbered by the covenants and restrictions imposed as part of the development order.

Sec. 10-122. Violation of development order.

(a) Where construction is commenced for improvements not authorized by a development order, the applicant shall be issued a stop work order until an application to amend or correct the development order has been submitted and approved.

(b) An application to amend or correct a development order after construction has commenced in violation of the original development order shall be charged an application fee equal to 4 times the original development order application base fee.

(c) Submittal of the application and payment of the application fee does not protect the applicant from the remedies described in § 10-6. Any of these forms of relief can be sought or maintained by the town until the problem is abated.

(d) Failure to maintain a development in compliance with a development order issued and approved under a certificate of compliance or certificate of occupancy constitutes a violation of this chapter and § 10-183.

Sec. 10-123. Extensions.

(a) The town council may grant two-year extensions of time for a development order provided:

(1) The applicant requests the extension, in writing, prior to the expiration date of the development order;
(2) The applicant's request identifies the reasons for the extension;
(3) All surety or performance bonds are extended by the developer;
(4) The development order is in compliance with the Fort Myers Beach Comprehensive Plan and this code; and
(5) The development order does not conflict with any incipient policies of the town council.

(b) The granting of an extension is a matter of discretion and not of right.

Sec. 10-124. Coordination of review.

The review of development orders is a multidiscipline review process involving zoning,

transportation, stormwater management, utilities, environmental issues, etc. The director may obtain assistance and advice, as appropriate, from other town or county departments to ensure compliance with this chapter.

Secs. 10-125--10-150. Reserved.

Subdivision III. Submittals

Sec. 10-151. Generally.

(a) Except as may be specifically waived by the director in accordance with § 10-152, the documents and graphics required to apply for a development order shall be as specified in this subdivision.

(b) All drawings shall be drawn on 24-inch by 36-inch sheets at an appropriate scale. If more than one sheet is required, appropriate match lines shall be indicated. The director may allow electronic submittals of work-in-progress drawings. These submittals must be on 3.5-inch floppy disks and include at least one 24- by 36-inch hard copy print. Final drawings must be submitted as 24- by 36-inch hard copy prints in order to be stamped "approved."

(c) All drawings shall be oriented so that north is towards the top or left of the drawing. A title block shall appear in the lower righthand corner or along the right side of the sheet. Each sheet shall be signed and, where appropriate, sealed by the consultant preparing the drawing.

(d) The following information shall be provided on all submitted drawings other than plats:

(1) The name of the proposed development and the date the drawing was completed. If a revision, the revision dates shall be included.
(2) The name, address, and telephone number of the person preparing the drawings.
(3) The name and address of the developer.
(4) North arrow and scale.

Sec. 10-152. Requirement waiver.

The director may waive the requirement for any submittal item which he deems unnecessary for an adequate review of the proposed development. Such a waiver of the required number or nature of submittals shall not constitute a change in the substantive standards or requirements of this chapter.

Sec. 10-153. Application form and contents.

The application form for development order approval shall be obtained from the director. The following information, at a minimum, shall be included in any application form for a development order:

(1) ***Sworn statement of authorization.*** A statement signed by the applicant, under oath, that he is the authorized representative of the owner(s) of the property and has full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of the issuance of a development order in accordance with this code. The signed statement also constitutes an acknowledgment that the property will not be transferred, conveyed, sold, or subdivided unencumbered by the covenants and restrictions imposed as part of the development order.
(2) ***Owner, applicant, and developer information.***
    a. The name of the proposed development.
    b. The name, address, and telephone number of the applicant.
    c. The name, address, and telephone number of the developer.
    d. The name of the property owner.
    e. The name of all persons or entities having an ownership interest in the property, including the names of all stockholders and beneficiaries of trusts. Disclosure with respect to a beneficial ownership interest in any entity registered with the U.S. Securities and Exchange Commission or registered pursuant to F.S. ch. 517, whose interest is for sale to the general public, is exempt from the provision of this subsection.
    f. A listing of the professional consultants employed in preparing the application or submitted documents. The names, addresses, and telephone numbers shall be provided for consultants such as but not limited to architects, engineers, attorneys, landscape architects, planners, and surveyors.

(3) ***Property information.***
   a. A legal description for the property and STRAP number.
   b. The date the property was acquired.
   c. The property dimensions and area.

(4) ***General development information.***
   a. The present zoning classification of the property.
   b. Required rezoning, variance, and special exception information.
   c. Existing development order applications and approvals on the property.
   d. Federal, state, and local permits and stipulations affecting the development order applications.

(5) ***Proposed development.***
   a. Type of proposed development.
   b. Approximate acreage and percentage of total land area for each proposed use to be developed.
   c. Acreage and percentage of total area of ground cover of structures and other impervious surfaces, and open space.
   d. Proposed number and height of all structures.
   e. Number of dwelling units and lots if a subdivision.
   f. Types and uses of proposed structures.
   g. Parking and loading area information.
   h. Proposed recreational facilities information.
   i. Project phasing information.

(6) ***Permits required for development.***
   a. State and federal permit information.
   b. Local permit information.

Sec. 10-154. Additional required submittals.

The following additional items shall be submitted with an application for development order approval:

(1) ***Legal description.*** A legal description for the property shall be submitted. If the application includes multiple abutting parcels or consists of other than one or more undivided platted lots, the legal description must specifically describe the perimeter boundary of the total property, by metes and bounds with accurate bearings and distances for every line, but need not describe each individual parcel. The director has the right to reject any legal description which is not sufficiently detailed to locate the property on official maps.

(2) ***Title assurance.*** Title assurance in the form of either a title certification by an attorney or a title insurance policy shall be required.

(3) ***Boundary survey.*** A boundary survey prepared by a surveyor, meeting the minimum technical standards for land surveying in the state, as set out in F.A.C. ch. 61 G 17-6, shall be submitted. For projects of ten acres or more, the survey must be tied to the state plane coordinate system for the Florida West Zone (North American Datum of 1983/1990 Adjustment). Boundaries must be clearly marked with a heavy line and must include the entire area to be developed. The Federal Emergency Management Agency flood zone and required finished floor elevations shall be shown.

(4) ***Plat.*** If the development is a subdivision, a plat meeting the requirements of F.S. ch. 177 shall be submitted.

(5) ***Zoning resolution.*** A copy of the most recent zoning resolution for the subject property, and any other pertinent zoning resolutions, special exceptions, or variance documents, shall be submitted.

(6) ***Existing conditions and improvements drawing.*** An existing conditions and improvements drawing showing at a minimum the following:
   a. **Area location map.** An area location map showing the location of the property to be developed in relation to major streets.
   b. **Coastal construction control lines.** 1978 and current (1991) coastal construction control lines, if these lines cross the subject property (see § 6-333(a).
   c. **Street network.** The location and name of abutting streets together with the number of lanes, the widths of rights-of-way and easements, and the location and purpose of abutting utility easements. The established centerline of streets on or abutting the property shall be shown.
   d. **Topography.** Existing elevations based on the National Geodetic Vertical Datum of 1929. Sufficient spot elevations based on the National Geodetic Vertical Datum of 1929 shall be shown to indicate the slope of the land and any rises, depressions, ditches, etc., that occur, but in no case shall spot elevations be shown

at a spacing greater than 200 feet. Spot elevations shall be shown beyond the development boundary extending a minimum of 25 feet. The director may direct a closer grid pattern or elevations more than 25 feet beyond the development boundary to provide sufficient satisfactory information.

e. **Wetlands.** Identification of wetlands as defined in ch. 34. The applicant may be required to flag these areas for site inspection.
f. **Existing vegetation.** Identification of existing vegetation. The map shall include the edges of all areas of mangrove, coastal scrub (beach/dune), and tropical hardwoods, and indicate all protected trees.
g. **Existing buildings.** The location of all existing buildings and structures on the property. If buildings or structures are to be moved or razed, this should be noted.
h. **Other improvements.** The location and size of all wells, bikeways, pedestrian ways, curbs, gutters, storm drains, and manholes on or abutting the property.
i. **Zoning.** The zoning classifications for the subject property, as well as the zoning and actual use of all abutting properties.
j. **Historic/archaeological sites.** The nature and location of any known or recorded historical or archaeological sites as listed on the Florida Master Site File, and the location of any part of the property which is located within level 1 or level 2 zones of archaeological sensitivity pursuant to ch. 22. A description of proposed improvements that may impact archaeological resources shall also be provided.
k. **Public transit.** The location of existing and proposed public transit service areas, and bus routes and stops, including passenger amenities, e.g., shelters, lighting, benches, bikeways, pedestrian ways, passenger parking, bicycle racks, etc.
l. **Hydrology.** A diagram depicting the existing surface hydrology of the property.

(7) ***Proposed development plan drawings.*** Proposed development plan drawings showing at a minimum the following:

a. **Lot lines.** If the development is a subdivision, all lot lines and lot numbers.
b. **Phasing plan.** For phased development orders, the applicant must submit a phasing plan with the stages numbered in sequence. The phasing plan must show how each phase fits into the master plan for the continuance of streets, bikeways, pedestrian ways, drainage, stormwater management, potable water, fire protection, sewage collection, landscaping, and buffers. Specific requirements for phased projects are specified in § 10-117.
c. **Proposed buildings or proposed structures.** The building envelope, that is, the perimeter of the area within which the building will be built, the finished floor elevation and height of all buildings and structures, the maximum number of dwelling units or gross floor area, and no less than the minimum number of required parking spaces, including the number of spaces for the handicapped, shall be shown.
d. **Open space and recreation**. All proposed open space and recreation areas and facilities shall be shown and identified as either public or private. If common facilities, including but not limited to recreation areas or facilities and common open space, are proposed, a statement shall be included explaining how the area or facilities shall be permanently operated and maintained, and identifying who will be responsible for such maintenance. A list of the facilities to be constructed within each park or recreational area shall be provided or shown on the drawings.
e. **Access.** Proposed vehicular ingress and egress for the development.
f. **Streets.** Proposed streets within the development.
g. **Sidewalks.** Proposed location of bikeways and pedestrian ways, with ingress to and egress from the development, as well as to or from common open space areas.

h. **Transit.** Where applicable, the proposed location and type of public transit amenities to be provided.

i. **Parking and service areas.** All off-street parking areas and all landscaped areas to be reserved for future parking spaces pursuant to § 34-2017(d), and all service areas for delivery of goods or services, shall be shown for all developments that are not subdivisions.

j. **Utilities.** A statement indicating the proposed method intended to provide water, sewer, electricity, telephone, refuse collection, and street lighting, including but not limited to a plan showing the location and size of all water mains and services, fire hydrants, sewer mains and services, and pumping stations, together with plan and profile drawings showing the depth of utility lines and points where utility lines cross one another or cross storm drain or water management facilities. The location of services shall be shown.

k. **Drainage and stormwater management plan.** A drawing showing the location of all curbs and gutters, inlets, culverts, swales, ditches, water control structures, water retention or detention areas, and other drainage or water management structures or facilities shall be submitted. Sufficient elevations shall be shown to adequately show the direction of flow of stormwater runoff from all portions of the site. A copy of all drawings and calculations submitted to SFWMD shall also be submitted.

l. **Landscaping and buffering**. A landscaping plan shall be submitted showing not less than the required landscaping, open space, and perimeter buffer areas, and including:
   1. Title of project, including project owner's and preparer's name, and drawn at the same scale as the development order plans, with dimensions and north arrow.
   2. A tree location map or aerial photographic overlay which depicts the precise location of all protected trees (see § 14-380), the proposed preservation or relocation of existing trees, and the planting of any new trees required by this chapter.
   3. All proposed landscaping, open space, and buffering, with code-required landscaping highlighted.
   4. Vehicle use areas (parking, aisles, driveways).
   5. Roadways and access points.
   6. Overhead and underground utilities.
   7. All easements.
   8. Construction vegetation protection barricades.
   9. Permanent vegetation protection techniques.
   10. Details for mulch and tree/palm staking.
   11. Reference chart that include graphic plant symbols; botanical and common names; plant quantities, height, and spread; and plant spacing and native status. All areas of dune vegetation, as defined in § 14-1, must be shown.
   12. The narrative and calculations to demonstrate that the proposals will comply with this code.

m. **Irrigation.** An irrigation plan may be a separate drawing or may be combined with the landscaping and buffering plan; or it may be omitted if an irrigation system is not required (see § 10-417). A conceptual irrigation plan must indicate:
   1. Type of automated irrigation system proposed.
   2. All landscaped areas, including parking lot islands, will be adequately sleeved for irrigation.
   3. A moisture (rain) sensor will be included in the irrigation system and located on the site so that it will receive all rainfall.
   4. Irrigation system will be designed to eliminate the application of water to impervious areas, including roads, drives, and other vehicle use areas.
   5. Irrigation system will be designed to avoid impacts on indigenous plant communities that will be retained on the development site.

n. **Historical and archaeological resources.** The plan shall show the outline of historic buildings and approximate extent of archaeological

sites. Where this information is not available from published sources, a professionally conducted archaeological survey may be required.

o. **Excavations.** Where applicable, the location of all excavations shall be shown, including the outline or boundaries of the excavation, both the outline of the top of the bank and the outline when the lake is at its maintained elevations, the depth of all excavations, the controlled water depth, and the slopes of all excavations.

p. **Wetlands.** A description of impacts on wetlands and mitigation measures.

(8) ***Exterior lighting plan, photometrics, and calculations.*** An exterior lighting plan and photometric information must be submitted in accordance with the requirements of §§ 10-8(9) and 34-1831–1833.

(9) ***Aerial photograph.*** A recent aerial photograph of the property and all properties within 660 feet of the perimeter of the property, with a scale of one inch equals 200 or 300 feet, shall be submitted.

(10) ***Traffic impact statement.*** A traffic impact statement (TIS) shall be submitted, which shall survey current and anticipated traffic conditions and public transportation in order to identify potential traffic problems posed by the proposed development. Adverse traffic impacts created by the development, both on-site and off-site, shall be mitigated by the applicant as specified in the traffic impact mitigation plan and development order. Criteria for traffic impact statements are specified in article III, division 2, of this chapter.

(11) ***Traffic impact mitigation plan.*** When required by the director, a traffic impact mitigation plan shall be submitted, which shall be based on the approved traffic impact statement and shall identify in detail those on- and off-site road and intersection improvements necessary to mitigate the proposed development's adverse impacts by maintaining or restoring adopted levels of service on the public roads providing immediate access to the site, including any major to which the adjacent street is tributary. Criteria for traffic impact mitigation plans are specified in article III, division 2, of this chapter.

(12) ***Hazardous materials emergency plan.*** Any applicant for a new marina or an expansion to an existing marina shall be required to submit a hazardous materials emergency plan, which shall be subject to the approval of the county division of emergency management and the fire district. The plan shall also provide for annual monitoring for capacity and effectiveness of implementation. At the minimum, the plan shall comply with the spill prevention control and countermeasure plan (SPCC) as called for in the federal oil pollution prevention regulations, 40 CFR 112, as amended.

(13) ***Protected species survey.*** A species survey shall be submitted, if applicable, as required by article III, division 8, of this chapter.

(14) ***Protected species habitat management plan.*** A management plan for protected species habitat shall be submitted, if applicable, as required by article III, division 8, of this chapter.

(15) ***Certificate to dig; historic preservation forms and reports.*** When applicable, an archaeological/historic resources certificate to dig shall be submitted to the director. Florida Master Site File forms for historical or archaeological resources, facade, or other historic or scenic easements related to the subject property or reports prepared by a professional archaeologist as may be required by ch. 22 shall be submitted.

(16) ***Historical/archaeological impact assessment.*** An impact assessment for historical or archaeological resources describing the following treatments: demolition, relocation, reconstruction, rehabilitation, adaptive use, excavation, filling, digging, or no impact, shall be submitted.

(17) ***Exotic vegetation removal plan.*** An exotic vegetation removal plan, as specified in article III, division 6, of this chapter, shall be submitted to the director.

(18) ***Calculations and other pertinent materials.*** The director may also require submission of calculations in support of all proposed drawings, plans, and specifications. Calculations, data, and reports to substantiate engineering designs, soil condition, flood hazards, compensation of floodplain storage (see § 10-253), wet

season water table, etc., may be required. Prior to the release of the drawings approved by the director, construction of the development shall be limited to clearing and grubbing for construction of accessways to and within the site and to pollution control facilities required during the construction phase. If such work is done prior to approval of construction plans, a tree removal permit will be required.

(19) ***Emergency preparedness plan.*** Prior to final approval of a development order for a nursing home, assisted living facility (ALF) or developmentally disabled housing project, an emergency preparedness plan acceptable to the director shall be submitted. To be approved, such plan must comply with the applicable criteria in F.A.C. chs. 59A-3, 59A-4, and 59A-5, as they may be amended.

(20) ***State permits.*** Prior to final approval of a development order, copies of permits issued by SFWMD or DEP shall be submitted. Copies of all other necessary state land development permits shall be submitted prior to the commencement of any construction work on the site.

(21) ***Operation and maintenance covenants.*** Where applicable, a copy of the covenants used for the maintenance and operation of the improvements required by this chapter including but not limited to private streets and adjacent drainage, drainage and storm water management systems, utilities, public water and sewage systems, on-site bikeways, on-site pedestrian ways, open space, parks, recreation areas, and buffers.

(22) ***Articles of incorporation or other legal documents for assignment of maintenance.*** The developer must submit a copy of the legal documents creating the legal mechanism to ensure that the drainage system, on-site bikeways, on-site pedestrian ways, roadways, and rights-of-way are continuously maintained.

(23) ***Opinion of probable construction costs.*** The developer's consultant must prepare and submit the estimated cost of installing all streets, drainage systems, water management systems, potable water treatment and distribution systems, sewage collection and treatment systems, bikeways, pedestrian ways, park and recreation improvements, landscaping, and buffers as follows:

a. Subdivisions: on-site and off-site improvements.
b. All other developments: off-site improvements.

The opinion of probable cost must include an estimated date of completion for the work.

(24) ***Assurance of completion of improvements.*** Assurance of completion of the development improvements as specified in subsections a. and b. is required for all off-site improvements prior to commencing any off-site or on-site development. Assurance of completion of the development improvements for on-site subdivision improvements will be required prior to the acceptance of the subdivision plat. Those on-site subdivision improvements which have been constructed, inspected, and approved by the director may be excluded from the requirements of subsections a. and b.

a. **Surety or cash performance bond.** Security in the form of a surety or cash performance bond must be posted and made payable to the town in an amount equal to 110 percent of the full cost of installing the required improvements approved by the town. If the proposed improvement will not be constructed within one year of issuance of the final development order, the amount of the surety or cash performance bond must be increased by 10 percent compounded for each year of the life of the surety or bond. Alternatively, the surety or cash performance bond may be renewed annually at 110 percent of the cost of completing the remaining required improvements if approved by the director. Prior to acceptance, bonds must be reviewed and approved by the town attorney.
b. **Other types of security.** The board may accept letters of credit or escrow account agreements or other forms of security provided that the reasons for not obtaining the bond are stated and the town attorney approves the document.

Secs. 10-155--10-170. Reserved.

DIVISION 3. LIMITED REVIEW PROCESS

Sec. 10-171. Generally.

Developments meeting the criteria in §§ 10-173 and 10-174 shall be entitled to receive a development order in accordance with the procedures in this division. For developments meeting the criteria in this division, no site improvement, tree clearing, or building permits shall be issued prior to approval of the development order.

Sec. 10-172. Legal effect of approval.

Approval of a development order for a development described in this division may require additional permits before development may commence. All applications shall be reviewed by the director for compliance with the Fort Myers Beach Comprehensive Plan, the remainder of this code, other applicable regulations, and any special conditions imposed on a prior zoning approval.

Sec. 10-173. General requirements for limited review process.

Development orders being processed in accordance with the procedures in this division shall be reviewed for compliance with the following general requirements:

(1) The development shall comply with the general and specific requirements of §§ 10-7 and 10-8;
(2) The development shall have no significant adverse effect upon surrounding land uses;
(3) The development shall have no significant adverse effect upon public facilities in the area;
(4) The development shall not adversely effect the environmental quality of the area; and
(5) The development proposal shall be consistent with the Fort Myers Beach Comprehensive Plan.

The director is authorized to impose conditions consistent with the provisions of this chapter in order to mitigate adverse impacts generated by the proposed development.

Sec. 10-174. Types of development entitled to limited review.

The following types of development may be processed in accordance with this division:

(1) A cumulative addition or enlargement of an existing impervious area, provided that the addition or enlargement does not increase the total impervious cover area by more than 2,500 square feet and there is no increase in the rate of runoff from the project site.
(2) Any out-of-door type recreational facilities, such as swimming pools, tennis courts, tot lots, and other similar facilities, provided the total cumulative additional impervious area does not exceed 8,000 square feet.
(3) Any one-time subdivision of land into 4 or less lots where zoning district regulations permit such subdivision; provided, however, that:
    a. Each lot must meet or exceed all requirements of the zoning district in which located;
    b. Each lot abuts and has access to an existing improved road right-of-way or easement meeting at least the minimum construction standards required by this chapter;
    c. No significant alteration of existing utility installations is involved;
    d. No change in drainage will occur which adversely affects the surrounding properties; and
    e. No new road rights-of-way or road easements or upgrading of road rights-of-way or road easements to minimum standards contained in this chapter is required.
(4) *Reserved.*
(5) Any improvements for public water access purposes in town-owned or town-maintained rights-of-way.
(6) Any development for fenced or screened outdoor storage as defined in ch. 34, provided that the yard consists solely of a stabilized grassed surface, a surface water management system, buffers, and fencing; and provided further that site access complies with the provisions of this chapter and ch. 34.
(7) The installation of new utility lines in existing right-of-ways or easements.
(8) Any other improvement to land determined by the director to have insignificant impacts

on public facilities in accordance with applicable standards of measurement in this chapter (vehicular trips, amount of impervious surface, gallons per day, etc.).

Sec. 10-175. Required submittals.

The following submittals are required to apply for a development order in accordance with this division:

(1) A completed application, which shall be made on the application forms provided by the director.
(2) A plan, which shall depict the site and location of all buildings or structures on it.
(3) An area location map.
(4) An aerial photograph (most current available from the county) at a scale of one inch equals 200 or 300 feet.
(5) A written description of the proposal and the reasons why it should be approved.
(6) A copy of any building permit and approved site plan, if applicable.
(7) Any additional necessary or appropriate items which the director may require. Additional data may include copies of deeds, sealed surveys, calculations, SFWMD permits, and other state, federal, or local permits.

Sec. 10-176. Appeals.

If the director denies an application for a development order processed pursuant to this division, the applicant may file an appeal of the director's written decision in accordance with the procedures set forth in § 34-86 for appeals of administrative decisions.

Secs. 10-177--10-180. Reserved.

DIVISION 4. INSPECTIONS AND CERTIFICATE OF COMPLIANCE

Sec. 10-181. Inspection of improvements generally.

A professional engineer registered in the state shall inspect and certify the construction of all required improvements such as streets, drainage structures, drainage systems, bridges, bulkheads, water and sewer facilities, landscaping and buffers, and all other improvements, for substantial compliance with the development order drawings and plans.

Sec. 10-182. Inspection of work during construction.

(a) ***Periodic inspection required; correction of deficiencies.*** The director or his designated agent shall periodically inspect all construction of streets and drainage improvements, including those improvements which are not to be dedicated to the public but are subject to this chapter. The director will immediately call to the attention of the developer, or the developer's engineer, any nonconforming work or deficiencies in the work. Correction of deficiencies in the work is the responsibility of the developer. It is the responsibility of the developer to notify the director 24 hours before a phase of the work is ready for inspection to schedule the inspection. Inspection reports that document the results of the inspection shall be prepared by the town inspector.

(b) ***Specific inspections.***

(1) Inspections of the following phases of work are required:
    a. Drainage pipe after pipe joints are cemented or sealed.
    b. Headwall footings.
    c. Roadway subgrade.
    d. Roadway base.
    e. Asphalt prime coat and all surface courses.
    f. Final site inspection.
(2) The thickness of the roadway base shall be measured under the direction of the town inspector at intervals of not more than 200 lineal feet in holes through the base of not less than 3 inches in diameter. Where

compacted base is deficient by more than one-half inch, the contractor shall correct such areas by scarifying and adding material for a distance of 100 feet in each direction from the edge of the deficient area, and the affected area shall then be brought to the required state of compaction and to the required thickness and cross section.

(3) Seeding and mulching or sodding over all unpaved areas within rights-of-way or roadways will be required at the time of final inspection.

(4) Inspection requirements for water and sewer utility systems are specified in § 10-357.

(c) ***Testing of roadway subgrade, base, and shoulders.*** The developer shall have the roadway subgrade, base, and shoulders tested for limerock bearing ratio and compaction by a certified testing laboratory. The location and quantity of tests shall be determined by the director. There shall be a minimum of one test per 1,000 feet, or two per project. Prior to acceptance by the town, a copy of the test results shall be furnished to the director.

Sec. 10-183. Final inspection and certificate of compliance.

(a) Upon completion of all development required under the approved development order, or phase thereof, an inspection shall be performed by the developer's engineer or his designated representative. Upon finding the development to be completed and in substantial compliance with the approved development order documents, the engineer shall submit a signed and sealed letter of substantial compliance to the director along with a final inspection request. No final inspection will be performed by the town until the letter of substantial compliance has been accepted. The letter of substantial compliance may include a submittal for a minor change with highlighted plans showing minor changes which do not substantially affect the technical requirements of this chapter as described in § 10-120. Letters of substantial compliance shall be in a form approved by the director or town attorney.

(b) Substantial compliance means that the development, as determined by an on-site inspection by a professional engineer or his designated representative, is completed to all the specifications of the approved development order plans and that any deviation between the approved development order plans and actual as-built construction is so inconsequential that, on the basis of accepted engineering practices, it is not significant enough to be shown on the development site plans.

(c) Upon acceptance of the letter of substantial compliance and a request for final inspection, the director or his designated representative shall perform the final inspection. If the final inspection reveals that the development or phase thereof is in substantial compliance with the approved development order, a certificate of compliance will be issued. A certificate of compliance is required prior to the issuance of a certificate of occupancy from the building official. If the final inspection reveals that the development or phase thereof is not in substantial compliance with the approved development order, a list of all deviations shall be forwarded to the engineer. All deviations must be corrected per the amendment and minor change procedure and a new letter of substantial compliance submitted and accepted prior to a reinspection by the director. Applications for amendments, minor changes, inspections, and reinspections shall be charged a fee in accordance with the adopted fee schedule.

(d) If more than one building is covered by the development order, a certificate of compliance for streets, utilities, parking areas, and drainage serving each building shall be required prior to receiving a certificate of occupancy from the building official. If a final inspection is requested for only a portion of a development, that portion must be an approved phase of the development in accordance with the development order plans.

(e) A development project must remain in compliance with the development order, including all conditions, after a letter of substantial compliance, certificate of compliance, or certificate of occupancy has been issued. This requirement applies to any property covered by the development order, whether or not it continues to be owned by the original developer. For purposes of determining compliance, the terms of the development order as issued, or subsequently amended in accordance with this chapter, will control. The standards applicable to review for compliance purposes will be based upon the regulations in effect at the time the development order, or any applicable amendment, was issued.

(f) Improvements constructed pursuant to a development order may not be placed into service or otherwise utilized until the required certificate of compliance has been issued for the development order.

Secs. 10-184--10-210. Reserved.

DIVISION 5. PLATS AND VACATIONS

Subdivision I. Plats

Sec. 10-211. Required.

All subdivisions as defined in this chapter are required to have a plat of the parcel of land containing the subdivision, showing all of the information required by F.S. ch. 177 pt. I, by this chapter, and by any adopted administrative code, and recorded in the official records of the county, prior to the approval of any building permits. Plats are not required for lot splits granted under the limited review process.

Sec. 10-212. Preparation and submission.

Plats must be prepared in compliance with F.S. ch. 177, and must contain all of the elements specified there. Review copies of the plat must be submitted with the application for development order approval. The initial plat submittal must include a boundary survey of the lands to be platted, in accordance with F.S. § 177.041.

Sec. 10-213. Technical requirements.

Technical requirements for plats shall be the same as required by Lee County's administrative code AC-13-19 at the time the plat is approved. References in AC-13-19 to the county's land development code and to county commissioners and other county officials shall be interpreted to refer to the town's land development code and town officials, except for references to the county clerk.

Sec. 10-214. Contents.

Plats must depict the entire parcel of land that is being subdivided.

Sec. 10-215. Waiver of requirements.

Subdivisions approved in accordance with the limited review process in §§ 10-171 through 10-176 are not subject to the requirements of this division.

Sec. 10-216. Monuments.

(a) ***Permanent reference monuments.***

(1) Permanent reference monuments (PRM's) must be placed as required by F.S. ch. 177, as amended, and approved by a licensed, registered state professional land surveyor, on the boundary of all developments.

(2) Monuments must be set in the ground so that the top is flush or no more than one-half foot below the existing ground. Subsurface PRM's must be exposed for inspection when a plat is submitted for review. If development of the subdivision occurs after a plat is reviewed, the PRM's must be raised or lowered to be flush or no more than one-half foot below the finished ground. Subsurface PRM's must be exposed for inspection at the time of final inspection of the development.

(b) ***Permanent control points.*** Permanent control points (PCP's) must be installed in accordance with F.S. ch. 177. When a plat is recorded prior to construction of the subdivision improvements, the PCP's must be set following completion of construction. The surveyor must certify that the PCP's have been set and must record the certification in the official record books of the county.

(c) ***Monuments*.** Monuments must be installed in accordance with F.S. § 177.091(9).

Sec. 10-217. Lot recombinations.

The director may permit the combination or recombination of up to 3 lots of record provided the resulting lots comply with ch. 34, the Fort Myers Beach Comprehensive Plan, and all other applicable provisions of this chapter.

(1) *Application.* The application for a lot recombination must be made in writing on

the form provided by the director and must include:

a. A copy of the plat book and page, if applicable;
b. Copies of the most recent deeds for all of the affected lots;
c. Copies of the deeds establishing that the lots are lots of record, if the lots are unplatted;
d. A statement, signed by the applicant under oath, that he is the authorized representative of the owner(s) of the property and has full authority to secure the approval(s) requested;
e. An area location map;
f. A survey sketch showing the existing and proposed lot lines and the existing and proposed legal descriptions of the affected lots; and
g. A written explanation of the reasons for the request.

(2) *Relocation of easements.* All easements that are affected by a proposed lot recombination must be vacated and relocated, if applicable, in accordance with the Florida Statutes.
(3) *Appeals.* A denial of a lot recombination request is an administrative decision which may be appealed in accordance with the procedures set forth in § 34-86.
(4) *Combinations.* The combination of two or more lots of records into one lot is not a "division" and is not subject to the approval process described in this section; provided, however, that any easements that are affected by such combinations shall be vacated and relocated, if applicable, in accordance with the Florida Statutes.

Subdivision II. Vacation of Platted Rights-of-Way and Easements

Sec. 10-218. Purpose and intent.

It is the purpose and intent of this subdivision to establish procedures for the town to follow in considering the vacating of platted rights-of-way and easements. The procedures established by this subdivision are intended to ensure that the vacation of platted rights-of-way and easements are legally effective, according to the law of Florida, and that the property rights of private landowners and public and private utility providers are protected.

Sec. 10-219. Petitions to vacate platted rights-of-way and easements.

All petitions seeking to vacate platted rights-of-way and easements must comply with the requirements below.

(a) All petitions seeking to vacate platted rights-of-way and easements must be submitted to the town department of community development with a duplicate copy submitted to the department of public works, on forms provided by the town.

(b) The petition must include the following:
(1) Notarized signatures of fee simple owners of record of all real property that abuts the right-of-way or easement sought to be vacated; and
(2) Certificate(s) showing that all property taxes have been paid in full for all real property that abuts the right-of-way or easement sought to be vacated; and
(3) A legal description of the area sought to be vacated and a recent survey prepared and executed by a registered surveyor showing the area sought to be vacated and indicating the location of all existing improvements including, but not limited to, drainage facilities, all public and private utilities, surface water management facilities, pavement, buildings, and other physical features within 100 feet of the real property that is the subject of the petition; and
(4) A copy of the plat containing the right-of-way or easement sought to be vacated; and
(5) A printed list containing the names, addresses, and signatures of all real property owners holding legal interest in the real property subject to or affected by the requested vacation; and
(6) A printed list of the names of all current real property owners, STRAP numbers, and mailing addresses of property that is within a 500-foot radius of the right-of-way or easement sought to be vacated, including two (2) sets of mailing labels for the real property owners on this list; and
(7) A statement of the reason(s) the petitioner(s) is (are) seeking the vacation; and

(8) Signed letters of no objection from:
   a. The town department of public works
   b. Florida Power and Light
   c. The local cable television company serving the town
   d. The local telephone company serving the town
   e. The local liquid propane gas company serving the town
   f. Lee County or other provider of sanitary sewer services
   g. Lee County Sheriff s Office
   h. Fort Myers Beach Fire Control District
   i. Any other provider of private or public utilities whose facilities or infrastructure may be affected by the vacation, as determined by the director following review of an otherwise complete petition.

   If any of the foregoing companies or agencies determine that the requested vacation may not be in the best interest of the public, the petitioner may offer an alternative or replacement right-of-way or easement. The affected company or agency shall not, however, be under any obligation to accept the offered alternative. Where a petitioner has offered to provide a replacement right-of-way or easement, town council shall not take action on the petition to vacate until the legal instrument(s) necessary to grant the alternative or replacement right-of-way or easement has been approved in form and content by the affected company or agency, properly executed by the granting or conveying property owner, and delivered to the town to be held in trust pending the town council's consideration of the requested vacation.

(9) Payment of the applicable fee in accordance with the schedule of fees adopted by resolution of the town council. In the absence of a resolution by the town council, the director will charge fees that are comparable to the fees charged by the board of county commissioners for similar applications.

(10) Statement from the Lee County director of community development or designee whether vacation by Lee County is required.

Sec. 10-220. Procedure.

(a) After receipt of a complete petition for vacation of platted rights-of-way or easements, the director of community development will prepare a staff report that analyzes whether the requested vacation furthers the adopted goals, objectives, and policies of the comprehensive plan and the adopted capital improvements program (CIP).

(b) The completed staff report will be provided to the town public works director, town finance director, and any other applicable town staff for review and comment. All written staff comments will be included in the packet provided to the local planning agency and subsequently to the town council.

(c) The petition, together with the staff report and staff comments, will be scheduled for consideration by the local planning agency in a public hearing. The town will publish a notice of the public hearing on the petition to vacate in a newspaper of general circulation once a week for two (2) weeks prior to the public hearing. The first legal notice must appear at least fifteen (15) days prior to the date of the public hearing. An affidavit of publication confirming legal notice of the public hearing must be presented to the local planning agency at the time of the public hearing. The local planning agency shall consider the petition and shall make a recommendation to the town council on whether to approve the vacation request. At the public hearing, the local planning agency shall consider the following in determining whether to recommend approval of the request:

(1) Whether the right-of-way or easement no longer serves a public purpose;
(2) Whether there is no reasonably foreseeable public use for the right-of-way or easement;
(3) Whether vacation of the right-of-way or easement is in the public interest;
(4) Whether the right-of-way or easement has been improved, and the extent to which it is currently, or in the future will be, utilized by the general public;
(5) Whether the vacation is proposed in conjunction with an application for development approval for adjacent property;
(6) Whether the proposed vacation would deny access to any private property;
(7) Whether the proposed vacation is consistent with the comprehensive plan; and

(8) Whether any utilities are located in the right-of-way and, if so, whether those utilities should be relocated, at the petitioner's expense, or whether it is desirable for the town to reserve a public utility easement over the area to be vacated.

(d) After the public hearing before the local planning agency, the petition shall be scheduled and advertised for public hearing before the town council. At the public hearing, town council may, upon consideration of the recommendation of the local planning agency and the items contained in § 10-220(c) above, approve the petition and vacate the right-of-way or easement. Approval of the vacation shall be by resolution and if the vacation is of a public street or right-of-way, the resolution may state that the town is retaining a public utility easement for utilities and/or drainage over the area that is being vacated.

(e) Upon adoption of the resolution vacating the right-of-way or easement, the town clerk shall record a certified copy of the resolution in the public records of Lee County and shall provide the petitioner(s) with a copy of the resolution.

(f) The adoption and recording of the resolution in the public records shall have the effect of vacating the described right-of-way or easement. If a public street right-of-way is vacated, the resolution shall specify whether easements are being reserved over the vacated area for utilities and drainage.

Secs. 10-221--10-250. Reserved.

ARTICLE III. ENGINEERING AND ENVIRONMENTAL DESIGN STANDARDS[1]

DIVISION 1. GENERALLY

Sec. 10-251. Applicability.

All lands proposed for development shall be suitable for the various purposes proposed in the request for approval. In addition to the standards contained in this chapter, the developer shall demonstrate to the satisfaction of the director that the proposed development is specifically adapted and designed for the uses anticipated, including lot configuration, access, and internal circulation. The developer shall also demonstrate that the proposed development complies with all other provisions of the Fort Myers Beach Comprehensive Plan, this code, and other laws, ordinances, and regulations, as applicable.

Sec. 10-252. General design standards.

The size, shape, and orientation of a lot and the siting of buildings shall be designed to provide development logically related to trees, topography, solar orientation, natural features, streets, and adjacent land uses. All development shall be designed to maximize the preservation of natural features, trees, tree masses, wetlands, beaches, and sites which have historical or archaeological significance, scenic views, or similar assets. The U.S. Secretary of the Interior's Standards for Rehabilitation are the recommended guidelines for all development involving historic resources.

Sec. 10-253. Consideration of flood hazards.

Development plans must comply with applicable coastal and floodplain regulations as set forth in articles III and IV of ch. 6.

Sec. 10-254. Street names.

Street names shall not be used which will duplicate or be confused with the names of existing streets. New streets that are an extension of or in alignment with existing streets shall bear the same name as that borne by such existing streets. All courts and circles should have one name only. All proposed street names shall be approved in writing by the director and be indicated on the plat, if any, and on the site plan.

Sec. 10-255. Placement of structures in easements.

No buildings or structures shall be placed in easements where placing a building or structure in the easement is contrary to the terms of the easement or interferes with the use of the easement.

Sec. 10-256. Off-street parking and loading requirements.

(a) Off-street parking requirements for developments that are subject to this chapter are specified in ch. 34, article IV, division 26. The development order drawings shall show all parking areas to be provided on the project. Off-street parking for all projects that are subject to this chapter shall comply with the off-street parking requirements specified in ch. 34.

(b) Off-street loading requirements for developments that are subject to this chapter are specified in ch. 34, article IV, division 25. The development order drawings shall show all off-street loading areas to be provided on the project.

Sec. 10-257. Refuse disposal facilities.

All storage areas for refuse must be adequately shielded by a landscaped screen or fencing along at least three sides.

Secs. 10-258--10-284. Reserved.

[1] ***Cross reference(s)--****Buildings and building regulations, ch. 6; design standards in articles III & IV of zoning regulations, ch. 34; commercial design standards, 34-991 et seq.*

DIVISION 2. TRANSPORTATION, ROADWAYS, STREETS, and SIDEWALKS

Sec. 10-285. Connection separation.

(a) ***Generally.*** In addition to meeting the other provisions of this section, when a street or accessway is constructed or improved, it must be spaced a minimum distance from all other streets or accessways as shown in Table 10-1, which is based on the type of street to which it is being connected.

TABLE 10-1. CONNECTION SEPARATION

When Connected to this Street Type:	*Centerline Distance:*
Major street	250 feet
Local street	125 feet
Accessway	60 feet

(b) Driveways to a single residential building of two dwelling units or less on local streets may be spaced closer than the connection spacing requirements specified in Table 10-1.

(c) Where existing lots are being developed or redeveloped, the director shall determine whether new access points can be assigned, or existing access points can be consolidated or eliminated, to achieve the minimum connection spacings in Table 10-1. To this end, the director shall balance spacing and safety concerns, and may require that access points on corner lots be placed on the less-traveled street or may authorize lesser separation distance if joint access with the adjoining property can be provided to preserve or maximize driveway connection separation distances.

(d) Approval of connection locations does not imply that such connection is permitted a crossover through any median divider in existence now or in the future. In these instances, approval of the median opening or turning movement will be determined on a case-by-case basis. The purpose of this subsection is to make it clear that even though a parcel may be entitled to access to the road system, there is no entitlement to a median opening or left-in movement in conjunction with an approved access point.

(e) The town and other entities having maintenance jurisdiction over roads in the town retain the right to modify or restrict access, turning movements, median openings, and the use of traffic control devices on or affecting public rights-of-way as they deem necessary to address both operational and safety issues. This provision is applicable to existing as well as future development. No deviation or variance may be granted from this subsection.

Sec. 10-286. Traffic impact statements.

(a) Traffic impact statements shall survey current and anticipated traffic conditions and public transportation in order to identify potential traffic problems posed by the proposed development.

(b) Adverse site-related traffic impacts shall be mitigated by the applicant as specified in the traffic impact mitigation plan (when required by the director) and final development order.

(c) Traffic impact statements shall provide information regarding the development's traffic generation and impacts at the development's access points onto the adjacent street system.

(1) The level of detail required in a traffic impact statement is based on the number of vehicle trips that the proposed development will add to the adjacent road system.
(2) The traffic impact statement must be prepared in accordance with the current edition of the forms, procedures, and guidelines provided by the director.
(3) The developer or his representative shall assume full occupancy and a reasonable build-out of the development in the preparation of the traffic impact statement.
(4) The traffic impact statement must be prepared by qualified professionals in the fields of civil or traffic engineering or transportation planning.
(5) The traffic impact statement shall be submitted to the director for review of sources, methodology, technical accuracy, assumptions, findings, and approval.
(6) Approval of the traffic impact statement by the director may be revoked after one year has expired since the date of approval if the

assumptions upon which the traffic impact statement was approved are no longer valid.

(7) A significant change in the development proposal may result in the previous approval of the traffic impact statement being revoked at any time.

Sec. 10-287. Traffic impact mitigation plan.

A traffic impact mitigation plan shall be submitted when required by the director based on findings of adverse impact through the traffic impact statement process. The traffic impact mitigation plan shall be based on the approved traffic impact statement and shall identify in detail those on-site and off-site road and intersection improvements necessary to mitigate the proposed development's adverse impacts by maintaining or restoring adopted levels of service on the public road segments providing immediate access to the site, including any collector or arterial to which the adjacent street is tributary.

(1) The function of the traffic impact mitigation plan is to:
   a. Identify the responsibility for various road improvements falling to the several participants in the development process;
   b. Relate the various needed improvements to the occupancy and use of developed land, particularly regarding the relative timing of occupancy and availability of the road improvements; and
   c. Clearly identify the parties who will be responsible for the costs of the improvements.

(2) It shall be a fundamental policy assumption that road improvements specified by the traffic impact mitigation plan shall be over and above the required improvements to the Fort Myers Beach Comprehensive Plan's road network which are to be funded by the roads impact fee.

(3) Approval or approval with conditions of the development order shall be contingent on a finding by the director that the traffic impact mitigation plan:
   a. Is reasonably based on the assumptions and findings embodied in the approved traffic impact statement;
   b. Meets or exceeds the minimum actions required to alleviate the adverse impacts on the surrounding or adjacent road network; and
   c. Is consistent with all other local policy, particularly the Fort Myers Beach Comprehensive Plan and ch. 2, article VI, division 2, pertaining to roads impact fees, and any applicable development agreements.

(4) Timely implementation of the traffic impact mitigation plan shall be a condition of the final development order, and no certificate of occupancy or other permit to occupy or use developed land shall be issued until the traffic impact mitigation plan is implemented and improvements are in place in proportion to the demand the development generates.

Sec. 10-288. Turn lanes.

(a) Access to any street, road, or accessway will not be permitted unless turn lanes are constructed by the applicant where turning volumes make such improvements necessary to protect the health, safety, and welfare of the public or to reduce adverse traffic impacts on the adjacent street system.

(b) Turn lanes must be designed in accordance with standards set forth by Lee County. Wherever turn lanes are installed, the surface materials of the added lane must match the surface materials of the existing lanes. If the addition of turn lane(s) requires a lateral shift of the centerline or other lanes, the entire shifted area must be re-surfaced to create matching surfaces throughout. New and replacement pavement markings must be provided.

Sec. 10-289. Sidewalks.

(a) ***Pedestrian and bicycle facilities.*** The Town of Fort Myers Beach has committed to dramatically improving its facilities for pedestrians and bicyclists. The goals are to construct a quiet network of "hidden paths" on the bay side of Estero Island; to construct bicycle facilities where space is available; and to have a complete system of sidewalks on both sides of all major streets. Preliminary designs for many of the bicycle facilities and sidewalks are contained in the Estero Boulevard Streetscape Plan (WilsonMiller, June 2000) and the Old San Carlos Boulevard / Crescent Street Master Plan (Dover, Kohl & Partners, February 1999).

(b) ***Sidewalks required.*** Development that abuts a major street (as defined in this chapter) shall construct a sidewalk for the entire length of the property's frontage on the major street, unless a sidewalk has already been built at that location and remains in good physical condition.

(1) This requirement applies to all new buildings and also to "substantial improvements" to such buildings as defined in § 6-405.
(2) A sidewalk meeting all requirements of this section must be shown on the development order plans.
(3) The sidewalk must be completed prior to issuance of a certificate of compliance unless the developer posts a bond or other surety acceptable to the town as assurance of its completion.
(4) The sidewalks required by this section are site-related improvements.

(c) ***Location of sidewalk.*** This sidewalk may be constructed in the public right-of-way or the developer may choose to construct it outside the public road right-of-way on his own property.

(1) If the developer opts to construct the facility across his property in this manner, a perpetual sidewalk easement must be granted to the town for the full width and length of the sidewalk.
(2) The exact placement of all sidewalks, including location and elevation, is subject to approval:
    a. By the town manager, and
    b. For sidewalks on county rights-of-way, also by Lee County DOT.

(d) ***Width of sidewalk.*** Minimum sidewalk widths are determined by a property's category on the Future Land Use Map and the exact location of the sidewalk, as follows:

(1) *Pedestrian Commercial category:*
    a. 8 feet for sidewalks that are separated from the travel lane, parking lane, or paved shoulder by a planting strip at least 5 feet wide.
    b. 10 feet for sidewalks that immediately abut a travel lane, parking lane, or paved shoulder.
    c. 2 additional feet of width is required wherever this sidewalk immediately abuts a building.
(2) *All other categories:*
    a. 6 feet for sidewalks that are separated from the travel lane, parking lane, or paved shoulder by a planting strip at least 5 feet wide.
    b. 8 feet for sidewalks that immediately abut a travel lane, parking lane, or paved shoulder.
    c. 2 additional feet of width is required wherever this sidewalk immediately abuts a building.
(3) *Exceptions:* If consistent with the provisions of § 10-104, the director may permit minor administrative deviations where physical constraints preclude these minimum sidewalk widths. However, in no case shall an administrative deviation permit a sidewalk that is less than 5 feet wide.

(e) ***Construction specifications.*** The standard specifications for sidewalks are as follows:

(1) When plans have been prepared by the town for a specific area, the sidewalk shall be designed and built in accordance with those plans.
(2) In the absence of such plans, standard sidewalks shall be built as follows:
    a. Material: 4" Portland cement concrete (6" for driveway crossings)
    b. Base: 4" limerock base
    c. Subgrade: 6" type B subgrade
(3) The applicant may submit an alternate design, subject to the approval of the director, provided it is structurally equal to or better than the standard in subsection (e)(2).
(4) There may be no sudden elevation changes that would present a hazard to pedestrians.

(f) ***Maintenance.*** Sidewalks constructed in accordance with this section will be publicly maintained if constructed in the right-of-way, and may also be publicly maintained if constructed on a perpetual sidewalk easement that is accepted by the town council.

Sec. 10-290. Local streets.

Local streets shall be designed to discourage excessive speed and to discourage but not prohibit through traffic.

Sec. 10-291. Access to street required.

General requirements for access are as follows:

(1) The development must be designed so as not to create remnants and landlocked areas, unless those areas are established as common areas.

(2) All development must abut and have access to a public or private street constructed or improved to meet the standards in § 10-296. Any development order will contain appropriate conditions requiring the street to be constructed or improved as may be appropriate in order to meet the standards in § 10-296. Direct access for all types of development to major streets must be in accordance with the intersection separation requirements specified in this chapter.

Sec. 10-292. Public streets to connect to existing public street.

All streets that are dedicated to the use of the public shall connect to or be an extension of an existing public street. Entrance gates are not allowed (see § 34-1749).

Sec. 10-293. Private streets.

Private streets may be permitted and approved provided:

(1) They comply with the street design standards and the street construction specifications in this chapter;

(2) The appropriate notation is made on the site plan and the plat to identify it as a private street;

(3) All private streets shall be maintained through a covenant which runs with the land in the form of, but not limited to, a homeowners' or condominium association or such other legal mechanisms as will assure the owners of the abutting property that the street shall be continually maintained. The owners of the abutting property shall be provided with a legal right to enforce the assurance that the road be continually maintained. Legal documents which provide for the continual maintenance shall only be accepted after they are reviewed by the town attorney for compliance with this section; and

(4) Entrance gates are not allowed on private streets (see § 34-1749), except for entrance gates that may have been approved through the binding agreement that settled litigation over development rights in Bay Beach (see § 34-651).

Sec. 10-294. Continuation of existing street pattern.

The proposed street layout shall be coordinated with the street system of the surrounding area. Streets in a proposed development shall be connected to streets in the adjacent area to provide for proper traffic circulation.

Sec. 10-295. Street stubs to adjoining property.

Street stubs to adjoining areas shall be provided where deemed necessary by the director to give access to such areas or to provide for proper traffic circulation. Street stubs shall be provided with a temporary cul-de-sac turnaround within the minimum required platted right-of-way. When adjoining lands are subsequently developed, the developer of the adjoining land shall pay the cost of extending the street and restoring it to its original design cross section. All interconnections shall be designed to discourage but not prohibit use by through traffic.

Sec. 10-296. Street design and construction standards.

(a) ***Generally.*** All streets and alleys shall be designed in accordance with the criteria in *Traditional Neighborhood Development Street Design Guidelines* or *Neighborhood Street Design Guidelines* (or successor recommended practices) published by the Institute of Transportation Engineers, and constructed and improved in accordance with the specifications set out in this section, as well as the other requirements of this division.

(b) ***Right-of-way or easement width.*** All local streets to be established and constructed in accordance with this chapter shall have right-of-way or roadway easement widths selected in accordance with the design criteria in *Traditional Neighborhood Development Street Design Guidelines* or *Neighborhood Street Design Guidelines* (or successor recommended practices) published by the Institute of Transportation Engineers.

(c) ***Street design and construction standards.*** All street improvements shall comply with the standards and specifications listed in Table 10-2 for the applicable development category.

(d) ***Street development categories.*** For purposes of interpreting the specifications contained in Table 10-2, development categories are defined as follows (with densities computed in accordance with § 34-632):

(1) **Category A** shall include streets and alleys in commercial developments and all developments not described in categories B and C.
(2) **Category B** shall include streets and alleys in residential developments denser than 4 dwelling units per acre.
(3) **Category C** shall include streets and alleys in residential developments with 4 or fewer dwelling units per acre.

TABLE 10-2. MINIMUM CONSTRUCTION SPECIFICATIONS FOR STREET IMPROVEMENTS

Category	Minimum Specifications
A B C	**1.** ***Construction in drainage swales.*** Allowable construction in drainage swales shall be as specified in § 10-296(o).
A B C	**2.** ***Piping materials.*** The types of piping materials allowed in rights-of-way shall be as specified in Lee County's land development code.
A B C	**3.** ***Curb and gutter type B, F, and drop or shoulder (valley).*** See FDOT Roadway and Traffic Design Standards, current edition.
A B C	**4.** ***Roadside swales.*** Roadside swales may be used in excessively drained and somewhat excessively drained to moderately well-drained soils, except where closed drainage is required by the director Roadside swales within street rights-of-way must have side slopes no steeper than 3 horizontal to one vertical. Normal swale sections must be a minimum of 12 inches deep. Where run-off is accumulated or carried in roadway swales and flow velocities in excess of two feet per second are anticipated, closed drainage or other erosion control measures must be provided. The director may grant deviations from these requirements under the provisions of § 10-104. However, no violations of SFWMD requirements or any other regulatory requirements may occur through the granting of any such deviations.
	5. ***Subgrade.***
A	a. 12-inch-thick (minimum), stabilized subgrade LBR 40. If the LBR value of the natural soil is less than 40, the subgrade must be stabilized in accordance with section 160 of the FDOT standard specifications.
B C	b. Six-inch-thick (minimum), stabilized subgrade LBR 40. If the LBR value of the natural soil is less than 40, the subgrade must be stabilized in accordance with section 160 of the FDOT standard specifications.
	6. ***Pavement base.***
A	a. Eight-inch compacted limerock.
B C	b. Six-inch compacted limerock. Any deviation from these standards must meet the specifications established by FDOT standards.
	7. ***Wearing surface.***
A	a. One-and-one-half-inch asphaltic concrete of FDOT type S-III.*
B C	b. For roads to be publicly maintained, one-and-one-half-inch asphaltic concrete of FDOT type S-III*. The applicant may install two three-quarter-inch-thick courses of asphalt concrete with the second course to be placed after substantial build-out of the

TABLE 10-2. MINIMUM CONSTRUCTION SPECIFICATIONS FOR STREET IMPROVEMENTS

Category	Minimum Specifications
	development. An assurance of completion is required for the second course of asphalt. This provision is subject to the approval of the director.** For roads to be privately maintained, one-inch asphaltic concrete of FDOT type S-III is acceptable. ** However, the applicant may submit a request for an administrative deviation in accordance with § 10-104 for an alternative design, including but not limited to Portland cement concrete, for public or private streets. The design will be subject to structural analysis for comparison with asphaltic concrete.* *** The use of paver block is permitted subject to approval of the director at time of development order approval without the need to file for an administrative deviation pursuant to § 10-104.*
A B C	**8.** ***Grassing and mulching.*** Prior to the acceptance of the streets or the release of the security, the developer will be responsible for ensuring that all swales, parkways, medians, percolation areas, and planting strips are sodded, seeded, or planted, and mulched in accordance with section 570 of the FDOT standard specifications.
A B C	**9.** ***Street name and regulatory signs.*** Street name and regulatory signs will be installed by the developer at all intersections and on the streets in the development prior to the acceptance of the streets or the release of the security. Regulatory signs will not be required at parking lot entrances for parking lots containing less than 25 parking spaces.
A B C	**10.** ***Street lighting.*** Street lighting may be installed at the developer's option and expense. Where street lighting is to be provided, the streetlight improvements must be maintained and operated through a covenant which runs with the land in the form of deed restrictions, a homeowners' or condominium association, or such other legal mechanisms as will assure the beneficiaries of the service that the street lighting will be continually operated and maintained. Regardless of the method chosen to provide for the continual maintenance and operation of the streetlights, the beneficiaries of the service must be provided with a legal right to enforce the assurance that the lighting will be continually operated and maintained. The legal documents which provide for the continual maintenance and operation of the lighting may only be accepted after they are reviewed and approved by the town attorney for compliance with this section. In the alternative, the town may satisfy this requirement by establishing a street lighting assessment which includes operation and maintenance of the streetlights.
A B C	**11.** ***Street and intersection improvements; traffic control devices.*** a. The developer must design and construct such traffic control devices and acceleration, deceleration, turning, or additional lanes, referred to in this subsection as traffic improvements, as may be needed. b. Traffic control devices and acceleration, deceleration, turning, and additional lanes must be indicated on the development plan. These traffic control devices must be designed and shown on the development plans as per MUTCD standards. c. Traffic control devices installed in accord with Table 9-4-11b may be mounted on a nonstandard type of support system as described in the Traffic Control Devices Handbook (FHWA publication), provided that mounting height, location standards, and all other standards as described in sections 2A-24 through 2A-27 of the MUTCD may not be compromised, and all such supports must be of break away design. The sign support system may not provide borders around the sign that have the effect of changing the required shape, message, or border area of the sign. An enforceable agreement providing for maintenance and upkeep of such signs by the installer must be provided to the director. This agreement must include the name, address, and phone number of a contact person who will represent the installing party.
A B C	**12.** ***Underdrains.*** Underdrains may be required on both sides of streets if, in the opinion of the director, soils data indicate that such drains would be necessary. In cases where there is a prevalence of soils that exhibit adverse water table characteristics, underdrains or fill or some other acceptable alternative that will provide necessary measures to maintain the structural integrity of the road will be required. The determination of need will be made by reference to the applicable portions of the most recent edition of the Soil Survey for Lee County, Florida, as prepared by the U.S. Department of Agriculture, Soil Conservation Service, or according

TABLE 10-2. MINIMUM CONSTRUCTION SPECIFICATIONS FOR STREET IMPROVEMENTS

Category	Minimum Specifications
	to information generated by the developer's engineer. a. Wherever road construction or lot development is planned in areas having soil types with unacceptable water table characteristics, underdrains or fill must be provided and shown on the engineering plans. Underdrains must be designed with outlets at carefully selected discharge points. Erosion control measures must be provided as needed at all discharge points. b. Wherever road cuts in otherwise suitable soils indicate that the finish grade will result in a road surface to water table relationship that adversely exceeds the degree of limitation stated above, underdrains or other acceptable alternative that will provide necessary measures to maintain the structural integrity of the road will be required.

(e) ***Conformance with state standards.*** All construction materials, methods, and equipment shall conform to the requirements of the FDOT Standard Specifications for Road and Bridge Construction, current edition, and such other editions, amendments, or supplements as may be adopted by the FDOT.

(f) ***Dedication of right-of-way and completion of improvements.*** Prior to acceptance of the streets or the release of security, the developer shall dedicate such rights-of-way and complete such improvements, or provide funds for the completion or installation of such improvements in conformance with the standards and specifications of this chapter.

(g) ***Reserved.***

(h) ***Reserved.***

(i) ***Reserved.***

(j) ***Intersection design***. Intersections shall be designed in accordance with the criteria in *Traditional Neighborhood Development Street Design Guidelines* or *Neighborhood Street Design Guidelines* (or successor recommended practices) published by the Institute of Transportation Engineers. This shall include the angles of intersecting streets and the radius of curbs and property lines at intersections.

(k) ***Culs-de-sac.***

(1) Dead-end streets, designed to be so permanently, are generally not permitted but may be unavoidable due to adjoining wetlands, canals, or preserves. When the director deems a dead-end street to be unavoidable, the dead end shall be provided with a cul-de-sac that is designed in accordance with criteria in *Traditional Neighborhood Development Street Design Guidelines* or *Neighborhood Street Design Guidelines* (or successor recommended practices) published by the Institute of Transportation Engineers.

(l) ***Reserved.***

(m) ***Privately maintained accessways.*** The following privately maintained accessways shall not be required to meet the minimum roadway right-of-way widths specified in subsection (b) of this section:

(1) Parking lot aisles (as defined in this chapter) – minimum dimensions are provided in division 26, article IV, chapter 34;
(2) Parking lot accesses (as defined in this chapter) – minimum dimensions are provided in division 26, article IV, chapter 34;
(3) Driveways (as defined in this chapter); and
(4) Accessways which meet the following three requirements:
    a. Provide vehicle access to 100 or fewer multifamily residential units;

b. Meet the dimensional requirements for parking lot accesses in division 26, article IV, chapter 34; and
c. Provide for utility easements in accordance with § 10-355(1) if utilities are to be located in or adjacent to the accessway.

(n) ***Streets and driveways in wetlands.*** Notwithstanding other provisions of this chapter, new roads or driveways permitted in wetlands in accordance with policy 4-B-9 or 6-D-4 of the Fort Myers Beach Comprehensive Plan shall be bridged so that the predevelopment volume, direction, distribution, and surface water hydroperiod will be maintained.

(o) ***Work in town, county, or state right-of-way.***

(1) Except for emergency repair work, no individual, firm, or corporation may commence any work within public rights-of-way or easements without first having obtained a permit from the entity with maintenance responsibility. For the purposes of this section only, "work" means:
   a. excavation, grading, or filling activity of any kind, except the placement of sod on existing grade; or
   b. construction activity of any kind except the placement of a mail or newspaper delivery box in accordance with § 34-638.
(2) The town will not issue a permit for any private road to connect to any town- or county-maintained road without approval of drainage plans prepared by a registered engineer. (See § 10-296 for approved utility piping materials.)
(3) For single residential buildings of two dwelling units or less on town- or county-maintained streets, the county department of transportation will do all necessary field survey work to establish the proper grade, pipe diameter, and length for driveway culverts. Prior to beginning construction, a residential driveway permit must be obtained from the Lee County Department of Community Development in accordance with the county's administrative code AC 11-12.
(4) *Construction in drainage swales.* There are three conditions of roadside drainage (not including curb and gutter) which govern the construction of any structure in the drainage swale:
   a. *Condition A.* Drainage swales of 0.7 feet (8 ¼ inches) or less below the edge of road pavement, or swales or ditches designed to provide driveway access without culvert pipe.
   b. *Condition B.* Drainage swales beginning 0.70 feet (8 ¼ inches) below the edge of the road to:
      1. *Residential.* Depth equal to 0.70 feet plus pipe diameter and the top wall thickness (i.e., 2.15 feet (25 ¾ inches)) for 15-inch RCP; or
      2. *Commercial.* Depth equal to one foot plus the pipe diameter and the top wall thickness (i.e., 2.45 feet (29 3/8 inches)) for 15-inch RCP.
   c. *Condition C.* Beginning at:
      1. *Residential.* Depth equal to 0.70 feet plus the pipe diameter and the top wall thickness; or
      2. *Commercial.* Depth equal to one foot plus the pipe diameter and the top wall thickness and to any depth greater than the above.
(5) No pipe, either driveway or continuous swale pipe, will be permitted under Condition A. For this condition, driveways must be paved following the slope of the designed swale grade.
(6) For Condition B, property owners may install a properly sized pipe in the swale for driveway purposes providing they meet the conditions of subsections (1) and (2) in the section of specifications of structures.
(7) For Condition C, the owners may install either properly sized driveway pipe or continuous pipe across the property. If continuous property pipe is proposed, one or more standard catch basins with grates will be required as dictated by the specific conditions of the area.

Secs. 10-297--10-320. Reserved.

DIVISION 3. SURFACE WATER MANAGEMENT

Sec. 10-321. Generally.

(a) ***Stormwater system required; design to be in accordance with SFWMD requirements.*** A stormwater management system shall be provided for the adequate control of stormwater runoff that originates within a development or that flows onto or across the development from adjacent lands.

(1) Development parcels exceeding the thresholds for a SFWMD environmental resource permit shall have stormwater management systems designed in accordance with SFWMD requirements and shall provide for the attenuation/retention of stormwater from the site. Issuance of a SFWMD permit shall be accepted as compliance with this division, and review of these projects shall be limited to external impacts and wet season water table elevation.

(2) Development parcels larger than one acre but falling below the thresholds for a SFWMD individual environmental resource permit (2 acres impervious surface or 10 acres total project area) will have their drainage plan reviewed and approved by the director for compliance with the Basis of Review for Environmental Resource Permit Applications (SFWMD). For purposes of this review:

a. Landowners are encouraged to provide required retention/detention of stormwater underground rather than in surface impoundments. If surface impoundments are used, they must be placed in the rear yard of all lots.

b. "Dry flood-proofing" of sidewalk-level commercial and professional space is the preferred method of flood protection in the Future Land Use Map's Pedestrian Commercial category (see § 6-472(4)). The town deems dry flood-proofed floor space to be equivalent to elevating commercial floor space above the 100-year flood elevation for purposes of compliance with the building floor elevation requirements in the Basis of Review.

c. The limitation on land uses provided by the Fort Myers Beach Comprehensive Plan provides reasonable assurances that hazardous materials will not enter the municipal drainage system, thus eliminating the need for the retention/detention pretreatment described in subsection 5.2.2(a) in the Basis of Review.

d. The town encourages SFWMD to use these same interpretations when reviewing permit applications for development parcels within the town.

(3) Development parcels one acre or smaller shall also comply with § 10-321(a)(2) except that on-site retention or detention of stormwater to SFWMD standards is not required if both of the following conditions are met:

a. *Rainfall from building roofs.* Rainfall is collected from roofs of buildings and directed to depressed and permeable landscaped areas or to underground infiltration chambers instead of to hard surfaces; and

b. *Other impervious surfaces.* At least 50% of hard surfaces on the site (excluding buildings) are surfaced with one of the following permeable surfaces placed over a well-drained base:

1. Porous (pervious) asphalt or concrete.
2. Paving brick or blocks laid with sufficient space between each unit to allow for infiltration of stormwater.
3. Clean (washed) angular gravel (such as FDOT #57 stone). When used for parking spaces or aisles, gravel surfaces shall be stabilized in accordance with § 34-2017(b)(1).
4. Proprietary cellular or modular porous paving systems installed in accordance with manufacturers' specifications.

(4) For purposes of stormwater management calculations, the assumed water table must be established by the design engineer in accordance with sound engineering practice. The director will review the stormwater management system on all development order projects for compliance with this chapter and may require substantiation of all calculations and assumptions involved in the design of stormwater management system.

(b) ***Stormwater discharges and erosion control.***

(1) Illicit stormwater and non-stormwater discharges are not permitted into municipal separate storm sewer systems. See detailed regulations in article IV of this chapter.

(2) Construction activity must utilize best management practices for sediment and erosion control. See detailed regulations in article IV of this chapter.

(c) ***Crown elevation of local subdivision streets.*** Minimum elevation of the crown of new streets shall be 5.5 feet above mean sea level. In order to accommodate differences in elevation between interior streets and exterior streets, when such exterior streets exist below the minimum elevation, elevation variations along the interior streets necessary to provide a sloped lowering of the interior streets to meet the existing exterior street elevations shall be permitted in accordance with applicable generally accepted engineering standards if approved by the director.

(d) ***Caution to plan adequate elevation and drainage facilities.*** Some areas may require street crown elevations exceeding the minimums stated in this section, and subdivision designers are cautioned to plan both adequate elevation and drainage facilities to prevent any flooding which could endanger health or property.

Sec. 10-322. Roadside swales.

Roadside swales within street rights-of-way shall have side and back slopes no steeper than 3 to 1. Normal swale sections shall be a minimum of 12 inches deep and a maximum of 36 inches below the outside edge of the street pavement. Runoff may be accumulated and carried in the swales in the right-of-way. Where flow velocities in excess of two feet per second are anticipated, curb and gutter or other erosion control measures shall be provided.

Sec. 10-323. Rear lot line swales and ditches.

Rear lot line swales and ditches should be used only where adequate provisions for maintenance are provided.

Sec. 10-324. Open channels and outfall ditches.

Drainage plans shall provide that stormwater be collected in properly designed systems of swales, underground pipes, inlets, and other appurtenances, and be conveyed to an ultimate positive outfall. Where permitted, open drainageways shall retain natural characteristics and be designed and protected so that they do not present a hazard to life and safety. Protection against scour and erosion shall be provided as required by the director.

Sec. 10-325. Reserved.

Sec. 10-326. Inlet spacing.

Drainage inlets for roadways with closed drainage systems shall be designed in accordance with state department of transportation guidelines. Inlets shall have the capacity to handle the design flow.

Sec. 10-327. Dedication of drainage system; maintenance covenant.

(a) All necessary drainage easements and structures shall be dedicated to the appropriate entity or association at no expense to the town. Dedication for drainage ditches shall include a suitable berm (shoulder) width for maintenance operations. The berm shall be cleared of trees, shrubs, and other obstructions and shall have adequate vehicular access. Suitable maintenance areas for the other drainage structures shall be located in drainage easements or rights-of-way. Dedications shall appear in the recorded plat or by deed.

(b) The stormwater management system shall not be dedicated or accepted by the town. This system shall be maintained through a covenant which runs with the land in the form of, but not limited to, deed restrictions, a homeowners' or condominium association, or such other legal mechanisms as will assure the beneficiaries of the stormwater management system that the drainage will be continually maintained. Regardless of the method chosen to provide for the continual maintenance of the stormwater management system, the beneficiaries shall be provided with a legal right to enforce the assurance that the drainage will be continually maintained. The legal documents which provide for the continual maintenance of the

stormwater management system shall be accepted only after they are received and approved by the town attorney for compliance with this section.

Sec. 10-328. Reserved.

Sec. 10-329. Excavations.

(a) ***Applicability.*** This section provides the permitting and development order requirements for all excavations except:

(1) The removal of surplus material generated from the construction of roads, sewer lines, storm sewers, water mains, or other utilities;
(2) Moving materials for purposes of surface water drainage (swales, ditches, or dry retention), provided that excavated materials are not removed from the premises;
(3) The temporary removal of topsoil from a lot for landscaping purposes; or
(4) The removal of surplus material resulting from the excavation of a building foundation or swimming pool that is authorized by a valid building permit.

(b) ***Excavation types and required approvals.*** Excavations are generally constructed for stormwater retention or as a development site amenity. Except as specifically provided in this chapter:

(1) All excavations require a development order and are also subject to permitting requirements of SFWMD; and
(2) Excavations whose fill material will be relocated off the development site may be required to obtain planned development zoning in accordance with ch. 34, article III, division 6.

(c) ***Standards.*** All new excavations regulated by this section will be subject to the following standards:

(1) *Setbacks for excavations.*
    a. No excavations will be allowed within:
        1. Twenty-five feet of an existing street right-of-way line or easement for a local street;
        2. Fifty feet of any private property line under separate ownership unless granted an administrative deviation in accordance with § 10-104. In no event may the setback for an excavation from a private property line may be less than 25 feet. This setback does not apply to lots developed concurrently with the excavation for water retention when part of a development order.
    b. All excavation setbacks must be measured from the mean high water (MHW) or the waterbody control elevation line.
(2) *Maximum controlled water depth.* Excavations may not have a controlled water depth greater than 12 feet.
(3) *Excavation bank slopes.* The design of shorelines of excavations must be sinuous rather than straight to provide increased length and diversity of the littoral zone. Sinuous means serpentine, bending in and out, wavy, or winding. The banks of all excavations regulated by this section must be sloped at a ratio not greater than 4 horizontal to 1 vertical from the top of the excavation to a water depth of 4 feet below the dry season water table. The slopes must be not greater than 2 horizontal to 1 vertical thereafter, except where the director determines that geologic conditions would permit a stable slope at steeper than a 2 to 1 ratio. Excavation bank slopes must comply with the shoreline configuration, slope requirements, and planting requirements for mimicking natural systems as specified in § 10-418 of Lee County's land development code.

***Cross reference(s)**--Excavations generally, § 34-1651.*

Secs. 10-330--10-350. Reserved.

DIVISION 4. UTILITIES

Sec. 10-351. Generally.

Connections to potable water systems and sanitary sewer systems shall be designed and constructed in accordance with county, state, and federal standards.

Sec. 10-352. Connection to potable water system.

All developments must connect to the town's potable water system.

Sec. 10-353. Connection to sanitary sewer system.

(a) All developments must connect to the Lee County sanitary sewer system.

(b) By January 1, 2005, all septic tanks remaining in the incorporated area of the Town of Fort Myers Beach must be disconnected and must be properly abated in accordance with state regulations. Connections to those septic tanks must be rerouted into Lee County's sanitary sewer system.

Sec. 10-354. Connection to reuse water system.

Wherever reuse water is available and a connection is technically feasible, the irrigation of grassed or landscaped areas shall be provided for through the use of a second water distribution system supplying treated wastewater effluent or reuse water. This reuse water system shall be separate and distinct from the potable water distribution system and shall be constructed and operated in accordance with the rules of the state department of environmental regulation, specifically F.A.C. ch. 17-610.

Sec. 10-355. Easements; location of water and sewer lines.

Water distribution and sewage collection lines shall not be installed under the paved traveled way of any major street except as necessary to cross under the street. Unless otherwise permitted by the town and county, water distribution and sewage collection lines that cross under major streets shall be installed perpendicular to the street and for county roads shall comply with the requirements of the county administrative code for utility construction activities in county-owned or county-maintained roadway and drainage rights-of-way and easements.

(1) For all new local roads or accessways in proposed developments, utility easements shall be provided; actual width shall be determined on a case-by-case basis.
(2) Sewage collection lines may be installed under the traveled way of local streets.
(3) Utility easements shall be shown on the site plan, and electric, telephone, and cablevision lines shall be installed within the easements. Water distribution lines and sewage collection lines shall be installed within the right-of-way or within the easements.

Sec. 10-356. Reserved.

Sec. 10-357. Inspection of water and sewer systems; piping materials.

(a) The director shall periodically inspect all construction of water and sewage systems.

(b) The director shall immediately call to the attention of the developer and his engineer any failure of work or material.

(c) The director may suspend work that is not in conformity with approved plans and specifications, and shall require inspections as necessary.

(d) After required improvements have been installed, the developer's engineer shall be required to submit certification, including as-built drawings, to the town that the improvements have been constructed substantially according to approved plans and specifications.

(e) Approved utility piping materials for use in rights-of-way are listed in § 10-296(d).

Secs. 10-358--10-380. Reserved.

DIVISION 5. FIRE SAFETY [2]

Sec. 10-381. Generally.

Fire protection systems shall be designed and constructed in accordance with town, county, state, and federal standards, including the requirements established by the Florida Fire Prevention Code, as may be amended.

Sec. 10-382. Reserved.

Sec. 10-383. Variances.

Lee County's construction board of adjustments and appeals has been granted jurisdiction to grant variances from the provisions of this division. The procedures and criteria applicable to the variance proceedings are set forth in § 6-71 *et seq.*

Sec. 10-384. Minimum standards for all developments.

(a) ***Building classes.*** Building classes for purposes of this section are as follows:

(1) One and two dwelling unit developments.
(2) Multifamily developments with three to 6 dwelling units per building and not exceeding two stories in height.
(3) Multifamily developments with more than 6 dwelling units per building, or more than two stories in height, and all commercial areas.
(4) Hazardous storage areas (as defined in the building code).

(b) ***Fire department access.*** Except as noted in this subsection, buildings that fall into the classes set forth in subsections (a)(3) and (a)(4) of this section, and any unusual and potentially hazardous circumstances as determined by the fire official, shall provide a 20-foot-wide fire department access lane in the rear of such building. This shall be an identified stabilized surface adequate to carry the load of fire apparatus. Exceptions to this requirement are as follows:

(1) Buildings provided with a complete automatic fire sprinkler system.
(2) Where, in opinion of both the fire official and the fire chief due to the size, construction, location, or occupancy of a building, the access width may be reduced or omitted.

(c) ***Fire flows.*** Fire flows for all developments shall be determined according to this division before the issuance of a development order. The engineer, contractor, or installer of water supply systems in new developments shall demonstrate, by actual test, that the capacity of the water supply system will meet fire protection design requirements. A fire flow of the existing public water system shall be made before the issuance of a development order. Fire flow tests shall be witnessed by the fire department and other authorities having jurisdiction who desire to do so.

Sec. 10-385. Design standards.

(a) ***General design standards.*** Fire protection and public water systems shall be designed by an engineer and constructed in accordance with town, county, state, and federal standards, including the requirements established by the Florida Fire Prevention Code, as they may be amended.

(b) ***Fire flows.*** The water distribution system shall be capable of delivering fire flows as follows:

(1) Requirements for one- and two-family developments are as follows:

TABLE 10-3. FIRE FLOWS

Distance Between Buildings	Needed Fire Flow (gpm)
Over 30 feet	500
0 to 30 feet	750

Developments not capable of delivering the required fire flow shall provide automatic sprinkler systems in accordance with NFPA #13D most current adopted edition or shall provide an additional source of water for fire protection in accordance with § 10-386.

(2) All other building shall calculate required fire flows in accordance with the formula shown in subsection (b)(3) of this section. This formula establishes a base flow from which the degree of hazard and credit for sprinkler protection will result in a final needed fire flow. NFPA #13 most current adopted edition shall be used for the purpose of determining hazard classification.

[2] ***Cross reference(s)--****Building codes, ch. 6.*

TABLE 10-4. FIRE FLOWS FOR OTHER BUILDINGS

Classification	Application
Light	Light
Ordinary I and II	Ordinary
Ordinary III and higher	High

(3) Fire flow is based on the following formula: F = 18 multiplied by C multiplied by A.

TABLE 10-5. CO-EFFICIENTS FOR FIRE FLOW FORMULA

F = Gallons per minute flow at 20 pounds per square inch residual.

C = Constant based on type of building construction.

Coefficients based on construction type:

1.5 = Wood (type VI).

1.0 = Ordinary (type V).

0.8 = Noncombustible (type III and IV).

0.6 = Fire resistive (type I and II).

A = The square root of the gross floor area (as defined in the Florida Building Code) of all floors.

Fire resistive construction need only be calculated on the three largest successive floors.

A four-hour fire resistive wall may be used to reduce total square footage of a building providing the wall intersects each successive floor of the building.

BF = Base flow established from the formula F = 18 C multiplied by A.

FF = BF multiplied by 0.75 (light hazard occupancy).

FF = BF multiplied by 1 (ordinary hazard occupancy).

FF = BF multiplied by 1.25 (high hazard occupancy).

If the building is protected by an automatic sprinkler system installed in accordance with all state and local codes, the fire flow requirement will be deemed to have been satisfied.

(4) A minimum flow in all cases will be 500 gallons per minute with a 20 pounds per square inch residual.

(5) In areas that cannot meet a flow of 500 gallons per minute, alternate sources of water may be acceptable, subject to fire official approval.

(c) ***Water main installation.***

(1) Water mains for one and two dwelling unit developments shall be no less than 8 inches in diameter, and constructed in an external loop connected to intersecting water mains at a maximum distance of 1,500 feet.

(2) Water mains for multifamily developments with three to six dwelling units per building and not exceeding two stories in height shall be no less than 8 inches in diameter, and constructed in an external loop connected to intersecting water mains at a maximum distance of 1,500 feet.

(3) Water mains for multifamily developments composed of buildings with more than six units per building or more than two stories in height, and all commercial areas, shall be no less than 10 inches in diameter, and constructed in an external loop system with intersecting water mains installed every 2,000 feet.

(4) Water mains for all hazardous storage areas shall be no less than 12 inches in diameter and constructed in an external loop system with intersecting water mains installed every 2,000 feet. Fire hydrants shall be installed on intersecting water mains.

(5) Fire hydrants shall be installed so that the 4 ½-inch streamer connection is no less than 18 inches and no more than 24 inches above finished grade.

(6) The maximum allowed dead-end water line shall be no longer than one-half the distance required between intersecting water mains.

(7) Fire hydrants shall be located within 10 feet of the curbline of fire lanes, streets, or private streets when installed along such accessways.

(8) The applicant may submit a request for an administrative deviation in accordance with § 10-104 for alternatives to line sizing, dead-end and intersecting water main criteria if they embody sound engineering practices and are demonstrated by the applicant's professional engineer.

(d) ***Hydrant spacing.***

(1) Fire hydrant spacing shall be determined using the last available hydrant on the public water system as the PCP.

(2) Hydrant spacing for all developments shall be measured along the centerline of the street. For the purposes of this subsection, the term "street" shall include all road frontage, including roadways, drives, avenues, or any other road designation. Also included shall be any private drive designated as required fire department access.

(3) Fire hydrants shall be spaced as follows:
   a. Hydrants for one to two dwelling unit developments shall be 800 feet apart as measured along the centerline of the street.
   b. Hydrants for multifamily developments with three to six dwelling units per building and not exceeding two stories in height shall be 600 feet apart measured along the centerline of the street.
   c. Hydrants for multifamily developments with more than six dwelling units per building or more than two stories in height, and commercial areas, shall be 400 feet apart as measured along the centerline of the street.
   d. Hydrants for all hazardous storage areas, as defined in the building code, shall be 300 feet apart as measured along the centerline of the street.

(4) On-site fire hydrants shall be provided so that in no case shall there be a fire hydrant located more than 400 feet from all portions of the ground floor of any building. This shall be in addition to any other hydrant spacing requirement. This shall not apply to one- and two-family developments.

Secs. 10-386--10-410. Reserved.

DIVISION 6. OPEN SPACE, BUFFERING, AND LANDSCAPING [3]

Sec. 10-411. Reserved.

Sec. 10-412. Definitions.

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

Open space. Open space land means:
(1) Areas of preserved indigenous plant communities (see § 10-413).
(2) Beaches.
(3) Archaeological and historical sites, including any area that contains evidence of past human activity ranging from large mound and midden complexes to a group of artifacts, the boundary and extent of which is determined by a survey by a professional archaeologist.
(4) Protected trees.
(5) Landscaping of parking and vehicle use areas.
(6) Perimeter buffers.

Parking areas means all areas, paved or unpaved, designed, used, or intended to be used for the parking or display of vehicles, excluding:
(1) Areas used for parking or vehicle display which are under or within buildings;
(2) Parking areas serving a single structure of two dwelling units or less; and
(3) Areas used for the temporary storage of construction equipment.

Vehicle use area means all ground level impervious surfaces, including impervious parking areas, that may be used by vehicles for parking, circulation, and similar activities within the development. Street rights-of-way, roadway easements, and those areas excluded from the definition of "parking area" are not considered "vehicle use areas."

Cross reference(s)*--Definitions and rules of construction generally, § 1-2; definitions, § 10-1.*

Sec. 10-413. Major indigenous plant communities of the town.

(a) Major indigenous plant communities of the town are as follows:

TABLE 10-6. MAJOR INDIGENOUS PLANT COMMUNITIES

COMMUNITIES	FLUCCS CODE:
Shorelines	652
Coastal scrub (beach/dune)	322
Tropical hardwoods	426
Tidal flats	651
Mangrove swamps	612

Due to the extraordinary number of species of indigenous grasses, herbaceous and woody plants, and trees, each species cannot be listed in this section. The following source describes the types of indigenous plant species recognized as characteristic of each represented plant community: Florida Land Use, Cover and Forms Classification System, 1999. Department of Transportation, Surveying and Mapping, Geographic Mapping Section.

(b) Areas where invasive exotic vegetation has exceeded 75% of the plant species by quantity will not be considered indigenous plant communities.

Sec. 10-414. Landscape and irrigation submittals.

Prior to the approval of a development order, an applicant whose development is covered by the requirements of this division must submit the following landscape and irrigations plans:
(1) A landscaping and buffering plan that meets the requirements of § 10-154(7)(l).
(2) An irrigation plan that meets the requirements of § 10-154(7)(m).

[3] ***Cross reference(s)****--Environment and natural resources, ch. 14; zoning regulations pertaining to environmentally sensitive areas, § 34-1571 et seq.*

Sec. 10-415. Open space.

(a) All development must maintain, at a minimum, the open spaces outlined in the table below:

TABLE 10-7. REQUIRED OPEN SPACE

Type of Open Space	***Amount of This Type to be Maintained***
Indigenous plant communities – wetlands	100% – see subsection (b)(1)
Indigenous plant communities – coastal scrub (beach/dune)	100% plus 50-foot buffer for new lots – see subsection (b)(2)
Indigenous plant communities – other uplands	50% – see subsection (b)(3)
Beaches	see subsection (c)
Archaeological and historical sites	see subsection (d)
Protected trees	see subsection (e)
Landscaping of parking and vehicle use areas	see subsection (f)
Perimeter buffers	see subsection (g)

(b) ***Indigenous plant communities.*** The major indigenous plant communities in the town are listed in § 10-413. Dune vegetation and landward line of dune vegetation are defined in § 14-1. These plant communities must be identified in each application for a development order on the existing conditions drawing (see § 10-154).

(1) *Wetlands:* On each development site, 100% of indigenous plant communities that consist of wetlands must be maintained as open space, except as permitted by article II of ch. 26 to accommodate a shoreline structure or as permitted by article IV of ch. 14.

(2) *Dune vegetation:* On each development site, 100% of coastal scrub (beach/dune) vegetation must be maintained as open space, except as permitted by article III of ch. 6 and article I of ch. 14.

a. Where pedestrians need to cross dune vegetation, perpendicular dune walkovers may be constructed in this open space at intervals of at least 150 feet to protect the vegetation (see § 6-366(d)).

b. Newly created lots and parcels must be of sufficient size and dimension to ensure a 50-foot buffer between any structures (excluding dune walkovers) and the landward line of dune vegetation.

(3) *Other uplands:* On each development site, at least 50% of indigenous plant communities other than coastal scrub (beach/dune) vegetation that consists of uplands must be maintained as open space. However, if these communities contain occupied habitat for listed species, the additional requirements of division 8 of this article also apply.

(c) ***Beaches.*** Most of the town's beaches are located seaward of the 1978 coastal construction control line (CCCL) and thus are designated in the Recreation category on the Future Land Use Map and are zoned EC (Environmentally Critical).

(1) If the 1978 coastal construction control line (CCCL) crosses property in an application for a development order, this line must be shown on the existing conditions drawing (see § 10-154).

(2) Land that is zoned EC shall be maintained as open space, except as specifically permitted in § 34-652 or by other explicit provisions of this code such as § 6-366.

(d) ***Archaeological and historical sites.*** The nature and location of known archaeological and historic sites are listed on the Florida Master Site File, and level 1 and level 2 zones of archaeological sensitivity are identified in ch. 22.

(1) These resources must be identified in each application for a development order on the existing conditions drawing (see § 10-154(6)(j)).

(2) These resources are protected in accordance with the requirements of ch. 22.

(e) ***Protected trees.*** Protected trees are listed in § 14-380. Protected trees must be identified in each application for a development order on the landscape plan (see § 10-154(7)(l)). Protected trees can be removed only as allowed by article V of ch. 14.

(f) ***Landscaping of parking and vehicle use areas.*** Parking and vehicle use areas must be landscaped in accordance with § 10-416(c). These

required landscaped areas must be maintained as open space.

(g) ***Perimeter buffers.*** Perimeter buffers are required for certain proposed developments in accordance with § 10-416(c). These perimeter buffers must be maintained as open space.

Sec. 10-416. Landscaping standards.

(a) ***Tree planting required.*** Except in the DOWNTOWN and SANTINI zoning districts, landscaping for all developments, must include, at a minimum, one tree per 3,000 square feet of development area (not including existing waterbodies) in addition to the landscaping required for parking and vehicle use areas and perimeter buffers. General tree requirements may be reduced through the utilization of larger trees as specified in § 10-420(c)(2) or through use of an alternative landscape betterment plan (see § 10-419).

(b) ***Building edge plantings.*** In addition to the other requirements of this section, building edge plantings are required as follows:

(1) Building edge plantings are required for 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:
   a. SANTOS (§ 34-648);
   b. DOWNTOWN (§ 34-671–680);
   c. SANTINI (§ 34-681–690);
   d. VILLAGE (§ 34-691–700);
   e. CB (§ 34-701–710); and
   f. CPD (commercial planned development) (§ 34-951–960).

(2) Where required, building edge plantings must be installed and maintained along at least 50% of the length of all walls that face on-site parking areas with more than 25 parking spaces.

(3) These planting areas must be at least five feet wide and may consist of landscape areas or adequately drained raised planters or planter boxes.

(4) These planting areas must include shrubs and ground cover plants, with a minimum of 50 percent coverage of the landscape area at the time of planting.

(5) Turfgrass is discouraged and is limited to 10 percent of the landscape area.

(c) ***Landscaping of parking and vehicle use areas.*** The provisions of this section apply to all new off-street parking or other vehicular use areas. Existing landscaping that does not comply with the provisions of this code must be brought into conformity, to the maximum extent possible, when: the vehicular use area is altered or expanded except for restriping of lots/drives, the building square footage is changed, or the structure has been vacant for a period of one year or more and a request for an occupational license to resume business is made. Consistent with the provisions of § 10-104, the director may permit administrative deviations where a conflict exists between the application of this division and the requirements for the number of off-street parking spaces or area of off-street loading facilities.

(1) *Vehicular overhang of landscaped areas.* The front of a vehicle may overhang any landscaped areas a maximum of 2 feet, provided the landscaped area is protected by wheel stops or curbing. Two feet of such landscaped area or walkway may be part of the required depth of each abutting parking space. Walkways must be designed with a minimum of 5 feet width that is clear of any vehicle overhang.

(2) *Internal landscaping.* All parking areas must be internally landscaped to provide visual relief and cooling effects and to channelize and define logical areas for pedestrian and vehicular circulation, as follows:
   a. Trees must be planted or retained in landscaped areas in parking areas, including landscaped areas reserved for future parking spaces, to provide for canopy coverage when the trees mature. At least one tree must be planted or retained for every 250 square feet of required internal planting area, and no parking space may be more than 100 feet from a tree planted in a permeable island, peninsula or median of ten-foot minimum width. Canopy requirements must be met with existing native trees whenever such trees are located within the parking area.
   b. Landscaped areas on the parking area perimeter or internal islands must equal or exceed a minimum of 10 percent of the total paved surface area. Landscaped

areas reserved for future parking spaces pursuant to § 34-2017(d) may not be included in this calculation.

c. The minimum average dimension of any required internal landscaped area must be 10 feet.

d. No more than an average of 10 parking spaces must occur in an uninterrupted row unless optional divider medians, as specified in subsection (c)(2)e of this section, are used. Where existing trees are retained in a landscaped island, the number of parking spaces in that row may be increased to 15.

e. Optional divider medians may be used to meet interior landscape requirements. If divider medians are used, they must form a landscaped strip between abutting rows of parking spaces. The minimum width of a divider median must be 10 feet. One tree must be planted for each 40 linear feet of divider or fraction thereof. Trees in a divider median may be planted singly or in clusters. The maximum spacing of trees must be 60 feet.

f. All interior landscaped areas not dedicated to trees or to preservation of existing vegetation must be landscaped with grass, ground cover, shrubs, or other approved landscaping materials, and this must be so noted on the landscape plans. Sand, gravel, rock, shell, or pavement are not appropriate landscape materials.

g. Optional tree grates may be utilized in parking areas for installation of up to a maximum of 50 percent of the required canopy trees. Tree grates must contain a minimum of 16 square feet of planting area and must provide a minimum of 5 air vents per grated area. These areas must be designed in such a manner that water will adequately drain and not be injurious to the health of the canopy tree. A cross section must be included with the landscape plans that demonstrates how the criteria of this subsection will be met.

(3) *Screening near sea turtle habitat.* Consistent with § 14-78(c), vehicle headlights in parking lots or areas on or adjacent to the beach must be screened utilizing ground-level barriers to eliminate artificial lighting directly or indirectly illuminating sea turtle nesting habitat.

(d) ***Perimeter buffering.*** Perimeter buffering is required for certain proposed developments as described in this section. In addition, existing developments that do not comply with the provisions of this section must be brought into conformity to the maximum extent possible when the vehicular use area is altered or expanded (except for resealing or restriping), or when the building square footage is increased, or when there has been a discontinuance of use for a period of one year or more and a request for an occupational license to resume business is made.

(1) **Use categories.** In interpreting and applying the provisions of this section, development is classified into the following use categories:

i. **SF-R**: single-family and two-family residential, and multiple-family residential when less than 4 DU/acre.

b. **MF-R**: other multiple-family residential buildings, timeshare buildings, assisted living facilities, and bed & breakfast inns (but not including parking and vehicle use areas, which are included in use category "PRKG").

c. **COM**: commercial buildings including hotels/motels, resorts, and marinas, and public facility buildings (but not including parking and vehicle use areas, which are included in use category "PRKG").

d. **PRKG**: parking and vehicle use areas (as defined in § 10-412) for the MF-R and COM use categories, and including freestanding parking areas that are not associated with other development.

e. **ROW**: right-of-way or road easement.

(2) **Buffer requirements.** Table 10-8 describes the required buffer type to be provided by a proposed use that abuts certain existing uses (or, for vacant property, the existing zoning).

TABLE 10-8.
BUFFER REQUIREMENTS

		Existing (or zoned) uses			
		SF-R	**MF-R**	**PRKG**	**ROW**
Proposed uses	**MF-R**	B	–	–	–
	COM	C / F	C / F	–	–
	PRKG	C / F	C / F	–	D

(3) **Buffer types.** Table 10-9 describes six buffer types. Each buffer type, identified by a letter, provides a minimum number of trees and shrubs per 100-linear-foot segment and indicates whether or not a wall or hedge is required within the buffer.

TABLE 10-9.
BUFFER TYPES (per 100 linear feet)

Buffer types:	**A**	**B**	**C**	**D**	**E**	**F**
Minimum width in feet	5	15	15	15	25	30
Minimum # of trees	4	5	5	5[3]	5	10
Minimum # of shrubs	–	Hedge[2]	18	Hedge[2]	30	Hedge[2]
Wall required[1]	No	No	Yes	No	Yes	No

Notes:

[1]A solid wall, berm, or wall and berm combination, not less than 6 feet in height. All trees and shrubs required in the buffer must be placed on the residential side of the wall. The height of the wall must be measured from the average elevation of the street or streets abutting the property as measured along the centerline of the streets, at the points of intersection of the streets with the side lot lines (as extended) and the midpoint of the lot frontage. Walls must be constructed to ensure that historic flow patterns are accommodated and all stormwater from the site is directed to on-site detention/retention areas in accordance with SFWMD requirements.

[2]Hedges must be planted in double staggered rows and be maintained so as to form a 3-foot high continuous visual screen within one year after planting, except that in type F buffers the hedges must be 4 feet at installation and be maintained at 5 feet high.

[3]Trees within the ROW buffer must be appropriately sized in mature form so that conflicts with overhead utilities, lighting, and signs are avoided. The clustering of trees and use of palms within the ROW buffer will add design flexibility and reduce conflicts. Trees and shrubs may not be planted closer than 3 feet to any sidewalk or bike path or to the right-of-way of Estero Boulevard (see § 6-4).

(4) *Public facilities.* Public and quasi-public facilities, including, but not limited to, places of worship, parks, utility facilities, government offices, neighborhood recreational facilities, and private schools must provide a type C or F buffer if, in the absence of such a buffer, the proposed development will have a significantly adverse impact on adjacent existing residential uses.

(5) *Easements.* Buffer areas may not be located on any portion of an existing or dedicated street right-of-way or roadway easement. Variances or deviations from this requirement are prohibited.

(6) *Vehicle visibility.* Walls, berms and buffer plantings must not violate the vehicle visibility requirements of § 34-3131.

(7) *Development abutting natural bodies of water*.

a. There must be a 25-foot wide buffer landward from the mean high water line of all natural bodies of water, as defined in ch. 34, except those portions of a shoreline having a seawall or retaining wall.
b. Existing vegetation within the buffer area must be retained. The removal or control of exotic pest plants must not involve the use of heavy mechanical equipment such as bulldozers, front end loaders, or hydraulic excavators, unless approved at the time of development order.

(8) *Development abutting wetlands*. There must be a 75-foot separation between wetlands and all buildings or other impervious surfaces, as mandated by Policy 4-C-12 of the Fort Myers Beach Comprehensive Plan (see § 34-638(c)).

(9) *Use of buffer areas*. Required buffers may be used for passive recreation such as pedestrian or bike paths, provided that:

a. No required trees or shrubs are eliminated;
b. Not more than 20 percent of the width of the buffer is impervious surface;
c. The total width of the buffer area is maintained; and
d. All other requirements of this chapter are met.

Sec. 10-417. Irrigation standards.

(a) To improve the survivability of required landscaping, cultivated landscaped areas must be provided with an automatic irrigation system, except as provided in subsection (c). All required irrigation systems must be designed to eliminate the application of water to impervious areas, including

roads, drives, and other vehicle areas. Required irrigation must also be designed to avoid impacts on indigenous plant communities.

(b) All new developments that have required landscaping must be irrigated by the use of an automatic irrigation system with controller set to conserve water. Moisture detection devices must be installed in all automatic sprinkler systems to override the sprinkler activation mechanism during periods of increased rainfall. Where existing irrigation systems are modified requiring the acquisition of a permit, automatic activation systems and overriding moisture detection devices must be installed.

(c) The requirement to provide an automatic irrigation system does not apply to trees planted in accordance with § 10-416(a), nor does it apply to cultivated landscaped areas that are planted entirely with native Florida plant species. A temporary irrigation system is strongly encouraged to improve survivability after initial planting; all plants that do not survive must replanted in the same manner as for all other required vegetation (see § 10-421).

Sec. 10-418. Reserved.

Sec. 10-419. Alternate landscape betterment plan.

Applications pursuant to this division are entitled to demonstrate that the intent of this division can be more effectively accomplished through an alternate landscape betterment plan. The following conditions must be met:

(1) The plan must be labeled as an alternate landscape betterment plan, and delineate, identify and locate all changes to the requirements of this division.
(2) No less than 75 percent of the trees installed must be native Florida species.
(3) If larger trees are substituted to reduce the minimum number of general trees required, all substituted tree must be no less than 3 inches in diameter at 12 inches above the ground, or less than 12 feet in height at the time of planting. In no case may general trees be reduced in number by more than 50 percent of the requirement. The actual ratio of the number of general trees reduced from the requirement will be dependent on:
    a. the proposed size and number of substituted trees,
    b. similarity to native vegetation on site or in the immediate vicinity,
    c. appropriate plant grouping for water needs, and
    d. the amount of immediate increase in site canopy.
(4) The plan must designate the botanical name (genus and species) and location of all plant material to be installed.
(5) The proposed alternate landscape betterment plan may be approved if the director determines that the intent of the minimum requirements of these provisions are being exceeded.

Sec. 10-420. Plant material standards.

(a) ***Quality of plant materials.*** Plant materials used to meet the requirements of this division must meet the standards for Florida No. 1 or better, as set out in Grades and Standards for Nursery Plants, Parts I and II, Florida Department of Agriculture and Consumer Services. Root ball sizes on all transplanted plant materials must also meet state standards.

(b) ***Use of native varieties.*** At least 75 percent of the trees and 50 percent of the shrubs used to fulfill these requirements must be native Florida species.

(c) ***Trees and palms.***

(1) For code-required trees, at least 50 percent of the trees at the time of installation must be a minimum of 10 feet in height, 2 inches in diameter at 12 inches above the ground, and have a 4-foot spread. The remaining code-required trees, at the time of installation, must be a minimum of 6 feet in height, 1 inch in diameter at 12 inches above the ground, and have a 3-foot spread.
    a. Palms must have a minimum of 10 feet of clear trunk at planting.
    b. Coconut palms must be varieties that are resistant to lethal yellowing.
    c. Trees having an average mature spread or crown less than 20 feet may be substituted by grouping the same so as to create the equivalent of 20-foot crown spread.

d. Trees adjacent to walkways, bike paths, and rights-of-way must be maintained with 8 feet of clear trunk.

(2) Larger trees substituted to reduce the minimum number of general trees, without the use of an alternative landscape betterment plan, must be no less than 4 inches in diameter at 12 inches above the ground and no less than 16 feet in height at the time of planting. The general trees requirement cannot be reduced in number by more than 50 percent.

(d) ***Shrubs and hedges.*** Shrubs must be a minimum of 24 inches (48 inches for type F buffers) in height above the on-site adjacent pavement surface required to be buffered and/or screened when measured at time of planting. They must be a minimum 3-gallon container size, and be spaced 18 to 36 inches on center. They must be at least 36 inches (60 inches for type F buffers) in height within 12 months of time of planting and be maintained at a height of no less than 36 inches (60 inches for type F buffers) above the adjacent pavement required to be buffered and/or screened in perpetuity, except for visibility at intersections and where pedestrian access is provided. Required hedges must be planted in double staggered rows and maintained so as to form a continuous, unbroken, solid visual screen within one year after time of planting.

(e) ***Mulch.*** A two-inch minimum layer, after watering-in, of wood or bark mulch or other recycled vegetation must be placed and maintained around all newly installed trees, shrubs, and ground cover plantings. Each tree must have a ring of mulch no less than 24 inches beyond its trunk in all directions. The use of cypress mulch is prohibited.

(f) ***Removal of invasive exotic plants.*** The following highly invasive exotic plants must be removed from the development area. Methods to remove and control invasive exotic plants must be included on the development order plans. A statement must also be included on the development order that the development area will be maintained free from invasive exotic plants in perpetuity. For purposes of this subsection, invasive exotic plants to be removed include:

(1) Melaleuca, *Melaleuca quinquenervia*
(2) Brazilian pepper, *Schinus terebinthifolius*
(3) Australian pine, *Casuarina* spp.
(4) Earleaf acacia, *Acacia auriculiformis*
(5) Downy rosemyrtle, *Rhodomyrtus tomentosus*
(6) Tropical soda apple, *Solanum viarum*
(7) Wedelia, *Wedelia trilobata*
(8) Beach naupaka (exotic inkberry), *scaevola frutescens*
(9) Chinaberry, *melia azedarach*

(g) ***Prohibited species.*** The following species of exotic plants are considered invasive and may not be used to fulfill any requirements of this division:

(1) Melaleuca, *Melaleuca quinquenervia*
(2) Brazilian pepper, *Schinus terebinthifolius*
(3) Australian pine, *Casuarina* spp.
(4) Earleaf acacia, *Acacia auriculiformis*
(5) Downy rosemyrtle, *Rhodomyrtus tomentosus*
(6) Tropical soda apple, *Solanum viarum*
(7) Woman's tongue, *Albizia lebbeck*
(8) Bishop wood, *Bischofia javanica*
(9) Carrotwood, *Cupianopsis anacardioides*
(10) Rosewood, *Dalbergia sissoo*
(11) Murray red gum, *Eucalyptus camaldulensis*
(12) Benjamin fig, *Ficus benjamina*
(13) Cuban laurel, *Ficus retusa*
(14) Chinese tallow, *Sapium sebiferum*
(15) Java plum, *Syzygium cumini*
(16) Rose apple, *Syzygium jambos*
(17) Cork tree, *Thespesia populnea*
(18) Wedelia, *Wedelia trilobata*
(19) Beach naupaka (exotic inkberry), *scaevola frutescens*
(20) Chinaberry, *melia azedarach*

(h) ***Credits for tree preservation.*** Except for prohibited species as listed above, every consideration must be given to retaining as much of the existing plant material as possible.

(1) Each existing native tree preserved in place which has a trunk diameter of 4 inches or greater measured at 4½ feet above the ground will receive a credit of 5 trees against the tree planting requirements of § 10-416(a).
(2) Native palms preserved in place which are 8 feet or greater from ground level to base of fronds will receive a credit of 3 trees.
(3) Existing sabal palms, identified on the development order plans and relocated on-site, will be given a 2-tree credit.
(4) Credits for existing trees may not be used to reduce the required parking canopy trees in parking or vehicle use areas.

(5) Existing native trees in buffers may be used for the same credits applied to the perimeter buffer requirements instead of to the tree planting landscape requirements of § 10-416(a), provided they occur within the same segment (100 feet or less) of a required buffer.
(6) Credits will apply only when the trees are labeled as protected-credit trees. If the protected-credit trees die within three years from the development order certificate of compliance, they must be replaced by the number of credit trees taken.
(7) Credits will apply where the preserved tree is in a barricaded area at least two-thirds the radius of the crown spread of the tree measured from the trunk center. In no case may this area radius be less than 2½ feet.
(8) For native pine trees, the barricaded area may be no less than the full crown spread of the tree, unless other measures such as tie-walls or special slope treatment are constructed for additional protection.
    a. Prior to the land clearing stage of development, the owner, developer, or agent must erect protective barriers which as a minimum are made of one-inch by one-inch lumber or approved alternative barricading material.
    b. For all other protected vegetation in required open spaces (see § 10-415), including shrubs and ground cover, barricades must be erected around the perimeter of the vegetation.
    c. The owner, developer, or agent may not cause or permit the movement of equipment or the storage of equipment, material, debris, or fill to be placed within the required protective barrier.
    d. The protected trees and associated understory plant communities must remain alive and healthy at the end of the construction in order for this credit to apply.

Sec. 10-421. Plant installation and maintenance standards.

(a) ***General design criteria for plantings.*** Plant materials must be installed in soil conditions that are conducive to their proper growth.
(1) Limerock located within planting areas must be removed and replaced with native or growing quality soil before planting.
(2) Plants' growth habits must be considered in advance of conflicts that might be created (e.g., views, signage, overhead power lines, lighting, circulation, sidewalks, buildings, etc.).
(3) Trees may not be placed where they interfere with site drainage, subsurface utilities, or overhead utility lines, or where they will require frequent pruning in order to avoid interference with overhead power lines.

(b) ***Installation of plant materials***. All landscape materials must be installed in a recognized horticulturally correct manner. At a minimum, the following installation requirements must be met:
(1) All landscaped areas must be mulched unless vegetative cover is already established.
(2) Trees and shrubs used in buffers must be planted in a minimum width area equal to one-half the required width of the buffer. However, in no case may the planting area be less than 5 feet in width.
(3) All landscaped areas must be provided protection from encroachment by any type of vehicle.
(4) All required plants used in buffers and landscaping must be installed using xeriscape principles. Xeriscape principles include water conservation through drought-tolerant landscaping, the use of appropriate plant material, mulching, and the reduction of turf areas.
(5) Utility or drainage easements may overlap required buffers; however, no buffer trees or shrubs may be located in any utility, drainage, or street easement or right-of-way. To avoid conflicts with overhead utility lines, only trees reaching less than 20 feet in height at maturity may be used directly adjacent to an overhead line. Variances and deviations from the requirements of this subsection are prohibited, except when included in an approved Alternate Landscape Betterment Plan.

(6) *Safe sight distances at intersections.* Minimum safe sight distances must be maintained in accordance with the visibility requirements set forth in § 34-3131.

(c) ***Maintenance of landscaping.*** The owner is responsible for maintaining the required landscaping in a healthy, vigorous condition at all times. Tree and palm staking must be removed within 12 months after installation. All landscaping must be kept free of refuse, debris, disease, pests, and weeds. Ongoing maintenance to prohibit the establishment of prohibited invasive exotic species is required.

(d) ***Pruning.*** Vegetation required by this code may only be pruned to promote healthy, uniform, natural growth of the vegetation (except where necessary to promote public health, safety, or welfare). Pruning must be in accordance with "*Tree Care Operations – Tree, Shrub, and Other Woody Plant Maintenance – Standard Practices (Pruning)* (ANSI A300, Part 1)" by the American National Standards Institute and "*Best Management Practices: Tree Pruning*" by the International Society of Arboriculture (ISA). Trees must not be severely pruned to permanently maintain growth at a reduced height or spread. Pruning must not interfere with the design intent of the original installation. Severely pruned trees must be replaced by the property owner; replacement trees must meet the tree size requirements in § 10-420. A plant's growth habit must be considered in advance of conflicts which might arise (i.e. views, signage, overhead power lines, lighting, circulation, sidewalks, buildings, and similar conflicts).

Sec. 10-422. Landscape certificate of compliance.

The landscape designer must inspect and certify that all landscaping and the irrigation system are in substantial compliance with the landscape and irrigation plans approved as part of the development order. An "as-built" landscape plan highlighting any changes to the approved plans must be included with the certification. Any changes to an "alternative landscape betterment plan" must be approved by minor change to the development order. The general certificate of compliance procedure outlined in § 10-183 is applicable.

Sec. 10-423. Restoration standards for indigenous plant communities removed without approval.

A restoration plan based on the minimum standards set out in this division will be required if indigenous plant communities have been removed without permit or approval. Restoration plantings for vegetation other than trees must be nursery grown, containerized, and planted at no less than 3 feet on center. The number of replacement plantings will be computed by the square footage of the area destroyed. All other restoration criteria as set forth in ch. 14, article V, pertaining to tree protection, will also apply. Restoration plantings for native trees must be in compliance with the standards set forth in ch. 14, article V.

Secs. 10-424--10-440. Reserved.

DIVISION 7. PUBLIC TRANSIT

Sec. 10-441. Applicability of division.

Except as provided in § 10-443, all proposed developments which meet the threshold set forth in this division shall be required to provide public transit facilities as set out in this division.

Sec. 10-442. Required facilities.

Residential developments exceeding 100 living units and commercial establishments exceeding 10,000 square feet of total floor area or 50 hotel/motel rooms shall be subject to the following:

(1) A paved walkway to the nearest bus stop shall be provided if the bus stop is within one-fourth mile of the vehicular entrance to the property.
(2) If there is no bus stop within one-fourth mile of the property and the property abuts the bus route, the developer shall provide signage and a bicycle rack for a new bus stop.

Sec. 10-443. Exceptions.

(a) This division shall not be interpreted to mean that a developer is required to purchase additional private property for the purpose of constructing the walkway required by this division.

(b) The director may waive the requirements of § 10-442 where a developer has provided bikeways or pedestrian ways and those facilities provide equivalent access to the nearest bus stop.

Secs. 10-444--10-470. Reserved.

DIVISION 8. PROTECTION OF HABITAT [4]

Sec. 10-471. Purpose of division.

The purpose of this division is to provide criteria, guidelines, and requirements to protect listed animal and plant species which inhabit the town by safeguarding the habitat in which these species are found from the impacts associated with land development.

Sec. 10-472. Definitions.

The following supplemental definitions are unique to the protected species requirements of this chapter. The general definitions pertaining to this chapter are contained in § 10-1.

Conservation easement means a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; or maintaining existing land uses; and which prohibits or limits the activities described in F.S. § 704.06, as such provisions now exist or may be amended.

Degrade means to be cause of any adverse or negative modification (from the perspective of the subject species) of the hydrological, biological, or climatic characteristics supporting the species or of plants and animals co-occurring with and significantly affecting the ecology of the species.

FLUCCS means the Florida Land Use, Cover and Forms Classification System, published by the state department of transportation.

FWC means the Florida Fish & Wildlife Conservation Commission or its successor.

Habitat means the place or type of site where a species naturally or normally nests, feeds, resides, or migrates, including, for example, characteristic topography, soils, and vegetative covering.

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[4] ***Cross reference(s)–****Sea turtle conservation, § 14-71 et seq.; southern bald eagle protection, § 14-111 et seq.; zoning regulations pertaining to environmentally sensitive areas, § 34-1571 et seq.*

Habitat, critical means habitat which, if lost, would result in elimination of listed species individuals from the area in question. Critical habitat typically provides functions for the listed species during restricted portions of that species' life cycle.

Habitat, occupied means property that provides critical habitat and which is documented to be actively utilized by a listed species.

Habitat, significantly altered means critical or occupied habitat which has been altered due to natural or man-made events.

Listed species means any plant or animal (vertebrate) species found in the town that are endangered, threatened, of special concern, rare, imperiled, or critically imperiled and which are manageable in the context of private land development. A list of such species is contained in Table 10-10. The bald eagle (Haliaeetus leucocephalus) is excluded as long as ch. 14, article III, relating to bald eagle nesting habitat, is in effect. Sea turtles are also excluded as long as ch. 14, article II, relating to sea turtle nesting habitat, is in effect.

Management means a series of techniques applied to maintain the viability of species in a location. These techniques include but are not limited to controlled burning, planting, or removal of vegetation, exotic species control, maintaining hydrologic regimes, and monitoring.

Management plan means a plan prepared to address conservation and management of listed species and their habitat, which is approved by the director, following recommendations from the FWC.

Occupied habitat buffer area means occupied habitat, the dimensions of which coincide with the recommended buffer guidelines established in Table 10-10 and § 10-474(b).

Property means the land which is the subject of the specific development application.

***Cross reference(s)**--Definitions and rules of construction generally, § 1-2; definitions, § 10-1.*

Sec. 10-473. Development application requirements.

(a) A survey must accompany all planned development rezoning applications and all development order applications where the Florida Land Use, Cover and Forms Classification System codes for the property indicate a possible presence of a listed species, except as set forth in subsection (c) of this section. The survey must be prepared by using survey methods which are set forth in Lee County's administrative code, except that an alternative method may be approved by the director. Such survey must include listed species' presence (sightings, signs, tracks, trails, nests, evidence of feeding, etc.), population estimates, and occupied habitat boundaries. A map and narrative must describe the methodology as applied and the findings. The mapped information must be at the same scale as the development order or zoning application plans and an aerial map at a scale of one inch is less than or equal to 400 feet. Approved species surveys are valid for 5 years from the date of approval. If the subject parcel has significantly altered habitat, the director may, in his discretion, determine a partial or complete resurvey is sufficient.

(b) A management plan may be submitted with any planned development rezoning applications. A management plan meeting the requirements of § 10-474 will be required for all development order applications if listed species are found on the property. The management plan is subject to final approval by the director.

(c) Surveys and management plans are not required for developments on less than one acre of land.

(d) For development order applications, submittal items that are common to both the species survey and the management plan can be provided in a single integrated report.

Sec. 10-474. Management plan.

(a) ***Components of plan.*** The management plan required under this division shall include:

(1) A 1 inch equals 200 feet aerial map and a map at the scale of the development order drawings or zoning site plan drawing to include the following:

a. Habitat classification depicted by using the Florida Land Use, Cover and Forms Classification System;
b. Location of individuals, nest sites, dens, burrows, feeding locations, roosting and perching areas, and trails, as appropriate;
c. Areas to be preserved, including habitat and buffers;

(2) Recommended management activities; and
(3) An action plan with specific implementation activities, schedules, and assignment of responsibilities.

(b) ***Occupied habitat buffer areas established.*** Occupied habitat buffer areas must be established for occupied habitat and must extend at a distance appropriate for the listed species as set forth in Table 10-10 except where off-site mitigation is permitted accordance with § 10-475. In the event the FWC has already established the size and dimensions of an occupied habitat buffer area, those boundaries will supersede the distances shown in Table 10-10.

(c) ***Development and occupied habitat buffer areas.*** The occupied habitat buffer area must remain free of development, except for development which will not degrade species existing on the site as determined by the director. Occupied habitat buffer areas may be impacted by development if off-site mitigation is utilized in accordance with § 10-475. These buffer areas must be identified on all associated applications and plats where applicable. Buffer areas may not be divided by lot lines unless the director determines that the division of these buffer areas by lot lines is consistent with the protected species management plan. A conservation easement or similar property interest must be granted to the town for the preserved property as a condition of the development order approval or final plat approval, unless the director determines it would not be logistically or economically feasible for the town to maintain the easement. Encroachments into occupied habitat and habitat buffer are permissible only after the incentives set forth in subsection (e) of this section have been exhausted or off-site mitigation is permitted in accordance with § 10-475.

(d) ***Conservation easements.*** If adjacent parcels include conservation easements or other public interest in the land, effort shall be made to connect the easements.

(e) ***Incentives.*** The town will allow certain incentives in return for the preservation of occupied habitat areas. This incentive system will only apply to those areas to which other incentives have not been utilized and which are not preserved under ch. 14, article IV, pertaining to wetlands protection. Occupied habitat buffer area incentives are as follows:

(1) Developments will be exempt from division 6 of this article, so long as the applicant preserves occupied habitat buffer areas consisting of no less than 10 percent of the development area.
(2) To the extent that occupied habitat buffer areas exceed 10 percent of the development area, the town must either allow encroachment into the occupied habitat or permit a credit against regional park impact fees. The credit against the impact fees may not exceed the appraised value of the preserved land. The appraisal must be based on the value of the property prior to the issuance of the development order that includes the occupied habitat buffer area and on the average of the two appraisals approved by the director. The credit will be approved upon the grant of the conservation easement.

(f) ***Consideration of FWC guidelines for listed species.*** In cases where guidelines have been prepared by the FWC for a listed species, those guidelines must be considered in the preparation of the management plan.

(g) ***When determination made without FWC expertise.*** If the FWC fails to review any plan in conjunction with regular review schedules, determinations will be made without the benefit of FWC expertise.

(h) ***Responsibility for implementation of management plan; monitoring report review.*** The applicant or his successor in interest is responsible for all aspects of the implementation of the management plan. A monitoring report as to the condition of the habitat and management techniques applied to the habitat must be submitted to the director for review on an annual basis from the date that the development order is issued for 5 consecutive years.

(i) ***Management plan finalization.*** The management plan must be finalized prior to issuance of the development order.

Sec. 10-475. Off-site mitigation.

(a) Off-site mitigation is permitted in lieu of the preservation of occupied habitat buffer areas as required in § 10-474 above to the extent consistent with the requirements of the U.S. Fish and Wildlife Service and the FWC.

(b) Before development order approval, the applicant must obtain and submit appropriate permits for off-site mitigation.

(c) A permanent management commitment for the relocation recipient site which is compatible with long-term protected species viability must be ensured by either filing conservation easements for sites under F.S. § 704.06 or other formal commitments enforceable by the town.

Secs. 10-476--10-600. Reserved.

TABLE 10-10. LISTED SPECIES

Scientific Name	*Common Name*	*FLUCCS*	*Month Beginning*	*Month Ending*	*Rec. Buffer Guide-lines (ft)*	*Buffer For*	*Aspects to be Included in Survey*
REPTILES							
Alligator mississipiensis	**American alligator**	500 series, 610, 621, 630, 641, 653			500	Nest	Nests, sunning areas
Caretta caretta	**Loggerhead turtle**	*- for sea turtles, the special regulations in §§ 14-71 through 14-110 supersede the provisions of ch. 10, division 8 -*					
Chelonia mydas	**Green turtle**	*- for sea turtles, the special regulations in §§ 14-71 through 14-110 supersede the provisions of ch. 10, division 8 -*					
Crocodylus acutus	**American crocodile**	642, 651			500	Nests	Nests, sunning areas
Dermochelys coriacea	**Leatherback turtle**	*- for sea turtles, the special regulations in §§ 14-71 through 14-110 supersede the provisions of ch. 10, division 8 -*					
Drymarchon corais couperi	**Eastern indigo snake**	320 series, 411, 412, 414, 421, 425, 426, 427, 428			150	Gopher tortoise burrows	Burrows, feeding
Eretmochelys imbricata	**Hawksbill turtle**	*- for sea turtles, the special regulations in §§ 14-71 through 14-110 supersede the provisions of ch. 10, division 8 -*					
Gopherus polyphemus	**Gopher tortoise**	320 series, 411, *412, 421, 426, 427, 432, 743			150	Burrows	Burrows, feeding
Lepidochelys kempii	**Kemp's ridley turtle**	*- for sea turtles, the special regulations in §§ 14-71 through 14-110 supersede the provisions of ch. 10, division 8 -*					
Malaclemys terrapin	**Diamondback terrapin**	612, 640, 651, 652, 710			150	Nests	Nest, sunning areas
Rana areolata	**Gopher frog**	320 series, 411, 412, 421, 426, 560, 620, 630			150	Gopher tortoise burrows	Burrows, feeding paths to wetlands
BIRDS							
Ajaia ajaja	**Roseate spoonbill**	500 series, 612, 642, 652, 653, 654			250	Feeding	Feeding
Charadrius alexandrinus tenitrostris	**Southeastern snowy plover**	651, 652, 710			250	Nests	Nests, feeding
Charadrius melodus	**Piping plover**	651, 652, 710	Dec.	May	250	Nests	Nest, feeding
Egretta caerulea	**Little blue heron**	500 series, 600 series			250	Nests	Nests, feeding
Egretta rufescens	**Reddish egret**	500 series, 610, 640, 650			250	Nests	Nests, feeding
Egretta thula	**Snowy egret**	500 series, 600 series			250	Nests	Nests, feeding
Egretta tricolor	**Tricolored heron**	500 series, 600 series			250	Nests	Nests, feeding
Eudocimus albus	**White ibis**	650, 651, 652			250	Nests	Nests, feeding

TABLE 10-10. LISTED SPECIES

Scientific Name	*Common Name*	*FLUCCS*	*Month Beginning*	*Month Ending*	*Rec. Buffer Guide-lines (ft)*	*Buffer For*	*Aspects to be Included in Survey*
Falco peregrinus tundrius	**Arctic peregrine falcon**	620, 650	Sept.	April	150	Feeding	Feeding
Falco sparverius paulus	**Southeastern American kestrel**	321, 411, 435	March	July	500	Nests	Nests, feeding
Haematopus palliatus	**American oystercatcher**	651, 652, 654, 710			250	Nests	Nests, feeding
Haliaeetus leucocephalus	**Bald eagle**	*- for bald eagles, the special regulations in §§14-111 through 14-290 supersede the provisions of ch. 10, division 8 -*					
Mycteria americana	**Wood stork**	560, 610, 621, 630, 640, 650			500	Nests	Nests, feeding
Pelecanus occidentalis	**Brown pelican**	612, 650			250	Nests	Nests
Rynchops niger	**Black skimmer**	191, 261, 650, 651, 652			250	Nests	Nests, feeding
Sterna antillarum	**Least tern**	191, 261, 651, 652	April	Sept.	250	Nests	Nests, feeding
Sterna douballii	**Roseate tern**	651, 652, 710	Jan.	April	250	Feeding	Feeding
PLANTS							
Acanthocereus tetragonus	**Barbwire cactus; Dildoe cactus**	322, 426, 743			10	Plant	Sighting
Acrostichum aureum	**Golden leather fern**	612, 641, 642			10	Plant	Sighting
Amaranthus floridanus	**Florida amaranth**	322, 710, 740			10	Plant	Sighting
Celosia nitida	**West Indian cock's comb**	426, 743			10	Plant	Sighting
Celtis iguanaea	**Iguana hackberry**	322, 426			10	Plant	Sighting
Celtis pallida	**Spiny hackberry; Desert hackberry**	322, 426			10	Plant	Sighting
Harrisia aboriginum	**Prickly applecactus; West coast prickly-apple**	322, 426, 612, 743			10	Plant	Sighting
Chrysophyllum olivaeforme	**Satinleaf**	411, 426			10	Plant	Sighting
Encyclia tampensis	**Florida butterfly orchid**	322, 426, 427, 428, 612			10	Plant	Sighting

TABLE 10-10. LISTED SPECIES							
Scientific Name	***Common Name***	***FLUCCS***	***Month Beginning***	***Month Ending***	***Rec. Buffer Guide-lines (ft)***	***Buffer For***	***Aspects to be Included in Survey***
Eragrostis tracyi	**Sanibel love grass**	710			10	Plant	Sighting
Gossypium hirsutum	**Wild cotton**	611			10	Plant	Sighting
Gymnopogon brevifolius	**Shortleaf skeleton grass**	426, 427, 428			10	Plant	Sighting
Helianthus debilis subsp. vestitus	**West coast dune sunflower**	322, 710			10	Plant	Sighting
Jacquina keyensis	**Joewood**	322, 426			10	Plant	Sighting
Maytenus phyllanthoides	**Florida mayten**	322, 612, 743			10	Plant	Sighting
Myrcianthes fragrans	**Twinberry; Simpson's stopper**	426, 427, 428			10	Plant	Sighting
Opuntia stricta	**Erect pricklypear**	322, 426, 612, 710, 743			10	Plant	Sighting
Paspalidium chapmanii	**Coral panicum**	322, 743			10	Plant	Sighting
Rayjacksonia phyllocephala	**Camphor daisy**	612, 642			10	Plant	Sighting
Scaevola plumieri	**Inkberry; Beachberry; Gullfeed**	322, 710			10	Plant	Sighting
Stenaria nigricans; Heydotis nigricans	**Diamond flowers**	322, 740			10	Plant	Sighting
Suriana maritima	**Bay cedar**	322, 741, 743			10	Plant	Sighting
Tillandsia balbisiana	**Reflexed wild-pine; Northern needleleaf**	322, 426, 427, 428, 612			10	Plant	Sighting
Tillandsia fasciculata var. densispica	**Stiff-leaved wild-pine; Cardinal air plant**	322, 426, 427, 428, 612			10	Plant	Sighting
Tillandsia flexuosa	**Banded wild-pine; Twisted air plant**	322, 426, 612			10	Plant	Sighting
Tillandsia utriculata	**Giant wild-pine; Giant airplant**	322, 426, 427, 428, 612			10	Plant	Sighting
Zamia floridana, Zamia integrifolia	**Florida coontie; Florida arrowroot**	320 series, 411, 412, 421, 426			10	Plant	Sighting

**Mesic and xeric 411 only.*

ARTICLE IV. STORMWATER DISCHARGES AND EROSION CONTROL (NPDES REQUIREMENTS)

Sec. 10-601. Purpose and intent.

(a) The purpose of this article is to provide clear guidance and regulations with respect to discharges into Municipal Separate Storm Sewer Systems (MS4). In order to comply with the requirements of the town's National Pollutant Discharge Elimination System (NPDES) permit, the town must establish regulations that will prohibit illicit discharges into the MS4 and provide sufficient means to monitor and enforce local discharge regulations.

(b) It is the intent of this article to prohibit any illicit, inappropriate, or harmful discharges into the MS4 or waters of Lee County or the Town of Fort Myers Beach.

Sec. 10-602. Applicability.

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

Sec. 10-603. Prohibitions.

Illicit stormwater and non-stormwater discharges into the MS4 are prohibited. Unless otherwise permitted, there are no discharges allowed to MS4 except uncontaminated stormwater runoff or one of the exemptions as listed in § 10-604.

Sec. 10-604. Exemptions.

The following discharges into the MS4 are specifically exempt from compliance with this article:

(1) Waterline flushing.
(2) Landscape irrigation.
(3) Rising groundwaters, floodwaters, and other discharges associated with county- or town-declared emergencies.
(4) Uncontaminated groundwater infiltration (as defined in 40 CFR § 35.2005(20)) to separate storm sewers.
(5) Uncontaminated pumped groundwater.
(6) Discharges from potable water sources.
(7) Fountain drains.
(8) Air conditioning condensate.
(9) Irrigation water.
(10) Water from crawl space pumps.
(11) Footing drains.
(12) Lawn watering.
(13) Individual residential car washing.
(14) Flows from riparian habitats and wetlands.
(15) Dechlorinated swimming pool discharge.
(16) Street wash waters.
(17) Discharges or flows from emergency fire fighting activities.

Sec. 10-605. Definitions.

Best management practices (BMPs) means methods and practices used to control and manage stormwater runoff that have been determined most appropriate by state and federal agencies such as Florida Department of Environmental Protection and United States Environmental Protection Agency.

Construction site means physical real property, with or without structures, where the land surface has been or will be disturbed to accommodate development or redevelopment, as defined in this section.

Development means an improvement to land, as that phrase is defined in § 10-1. Redevelopment is a form of development.

Discharge means any material, solid or liquid, that is conveyed, placed, or otherwise enters the municipal separate storm sewer system. It includes, without qualification, the discharge of pollutants.

Illicit discharge or illicit stormwater discharge means any discharge into the Town of Fort Myers Beach or Lee County MS4 that is not composed entirely of uncontaminated stormwater, except discharges made in accordance with a county- or town-issued development order, an independent NPDES permit, as a result of fire fighting activities, or as otherwise specifically exempted under this article.

MS4 means any Town of Fort Myers Beach or Lee County Municipal Separate Storm Sewer System. Such systems collect and/or convey stormwater and may include roads with drainage

systems, storm drains, catch basins, curbs, gutters, ditches, and man-made channels.

NPDES means National Pollutant Discharge Elimination System. The Town of Fort Myers Beach is a co-permittee with Lee county under NPDES permit FLS000035.

Street wash water means any runoff from the washing of streets, culverts, or other MS4 facilities operated and maintained by the Town of Fort Myers Beach or Lee County.

Stormwater discharge means the discharge from any conveyance used for collecting and conveying stormwater.

Stormwater Pollution Prevention Plan (SWP3) means a document as defined in 40 CFR 122.26 prepared by a professional engineer registered in the State of Florida (construction site SWP3s must also be prepared in accordance with DEP Document No. 62-621) outlining the means and methods of managing stormwater onsite using BMPs.

Uncontaminated stormwater runoff means sheet flow from natural land and stormwater discharges from urbanized land, where this stormwater does not contain a harmful quantity of any substance and where it meets water quality criteria.

Water quality criteria mean minimum water quality standards as defined in the Surface Water Quality Standards of Chapter 62-302, F.A.C.

Cross reference(s)*--Definitions and rules of construction generally, § 1-2; definitions, § 10-1.*

Sec. 10-606. Construction sites.

Development approvals, including development orders and building permits, must address stormwater quality issues, including runoff from construction sites. The following regulations apply to any construction activity including clearing, grading, and excavation activities that disturbs *one acre or more* of total land area. These regulations also apply to the same activities that disturb *less than one acre* of total land area if the construction site is part of a larger common plan of development that obtained approval after October 1, 1992, and was required to obtain an NPDES permit.

(1) Submit an SWP3 for construction meeting the criteria set forth in § 10-607, prior to development order approval. If a development order is not required, then the SWP3 must be submitted prior to building (or vegetation removal) permit issuance. At the discretion of the director, an affidavit or certification from a Florida licensed professional engineer may be submitted, prior to start of construction activity, attesting that the SWP3 for construction has been prepared in accordance with § 10-607 and will be on-site and available for review during all phases of construction;
(2) Maintain a copy of the SWP3 on-site at all times for review by the director; and
(3) File a notice of intent (NOI) with FDEP in Tallahassee in accordance with the direction of DEP Document No. 62-621 and with the director at least 48 hours prior to start of construction.

Sec. 10-607. Stormwater pollution prevention plan (SWP3) criteria.

For purposes of this article, all SWP3s must:
(1) Comply with the requirements of 40 CFR 122.26;
(2) Use best management practices for sediment and erosion control as outlined in the Virginia Erosion Sediment Control Manual, the Manual for Erosion Control and Sediment Control in Georgia, the Florida Land Development Manual, or a similar quality guidance manual;
(3) Be prepared by a Florida licensed professional engineer in accordance with DEP Document No. 62-621; and
(4) Remain on-site and be available for review during all phases of construction and, if required, during ongoing operations activity.

Sec. 10-608. Enforcement.

(a) ***Responsibility.*** The director and the town's code enforcement personnel are responsible for coordinating the enforcement of this article with assistance from Lee County's Natural Resources Division, South Florida Water Management District (SFWMD), Environmental Protection Agency (EPA), and Florida Department of Environmental Protection (FDEP). In order to facilitate enforcement, Natural Resources Division staff are granted full authority to act as code inspectors or code enforcement officers for the town, as those

terms are defined in §§ 2-423 and 2-430 of this code.

(b) ***Procedures.*** Any violation of this article may result in prosecution by any of the methods or procedures set forth below, or by any combination of these procedures. The choice of procedure rests within the reasonable discretion of the director, based upon the nature of the violation, the number of previous violations, and the magnitude of the violation and its threat to the public health, safety, and welfare.

(1) ***Routine code enforcement.*** Any violation of this article may be prosecuted in accordance with the provisions found in ch. 2, article V.

(2) ***Administrative shut down.***

a. If Natural Resources Division staff documents competent proof that the discharge from a specific activity does not meet minimum water quality criteria as defined in the Surface Water Quality Standards of Chapter 62-302, F.A.C., or site-specific permit levels, staff will notify the owner/operator in writing and provide no more than 14 days to return the site to minimum discharge standards or be ordered to shut down.

b. If the owner/operator fails to remedy the substandard discharge violation, the director may order the facility to shut down. The director's order must be in writing and set forth the basis for the decision to shut the facility down. A copy of the order will be provided to the owner/operator by hand delivery, certified mail, or any other legal means of delivery.

c. Once the facility is shut down, it cannot reopen without the prior written approval of the director. Approval is appropriate only where the owner/operator can demonstrate by substantial competent proof that the operation will meet minimum water quality standards or site-specific permit levels.

d. Appeal of an administrative shut down decision may be obtained only by filing a Petition for Writ of Certiorari with the circuit court.

(3) ***Emergency shut down.*** The director may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the State of the Florida or the United States. If the violator fails to comply with a suspension order issued in an emergency, the town may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of Florida or the United States, or to minimize danger to persons.

(4) ***Referral to appropriate state or federal agency.*** The county may coordinate enforcement of this article with SFWMD, EPA, and FDEP in accordance with applicable county, state, and federal regulations. Pursuit of a remedy allowed under town regulations does not prevent the state or federal agency from pursuing additional action against a violator.

(5) ***Other remedies.*** The town may exercise its discretion to pursue alternative courses of action, including the provisions of § 1-5 or injunctions or other civil remedies, when deemed appropriate by the director.

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 14
ENVIRONMENT AND NATURAL RESOURCES [1]

ARTICLE I.
BEACH AND DUNE MANAGEMENT

ARTICLE II.
SEA TURTLE CONSERVATION

ARTICLE III. SOUTHERN BALD EAGLE PROTECTION

ARTICLE IV.
WETLANDS PROTECTION

ARTICLE V.
TREE PROTECTION

[1] ***Cross reference(s)–****Open space, buffering and landscaping, § 10-411 et seq.; protection of habitat, § 10-471 et seq.; environmentally sensitive areas, § 34-1571 et seq.*

ARTICLE VI. MANGROVE ENFORCEMENT

ARTICLE I. BEACH AND DUNE MANAGEMENT [2]

Sec. 14-1. Definitions.

For the purposes of this article, the following terms, phrases, words, and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The word "shall" is always mandatory.

Beach means that area of sand along the Gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.

Beach furniture or equipment means any man-made apparatus or paraphernalia designed or manufactured for use or actually used on the beach or in the adjacent tidal waters. Examples include: chairs, tables, cabanas, lounges, umbrellas, sailing vessels up to 16 feet in length, personal watercraft, concession storage units, canoes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, floatables, tents, and bicycles.

Beach width means the perpendicular distance measured from the edge of wet sand to the place where there is a marked change in material or physiographic form from beach sand to dune vegetation, seawall, turf grass, etc.

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

Dune means a mound, bluff, ridge, or emergent zone of loose sediment, usually sand-sized sediment, lying upland of the beach and deposited by any natural or artificial mechanism, which may be bare or covered with vegetation, and is subject to fluctuations in configuration and location (reference 161.54 *F.S.*, 62B-33.002 *F.A.C.*). It encompasses those ecological zones that, when left undisturbed, will support dune vegetation. As to areas restored or renourished pursuant to a permit issued by the town or state, it encompasses the area specified in the permit as a dune or any area specified as suitable for establishment of dune vegetation.

Dune vegetation means pioneer species of native vegetation which, if left undisturbed by manmade forces, will begin to grow on a dune, including species such as bitter panicum, coastal panic grass, crowfoot grass, saltmeadow cordgrass, sandbur, seacoast bluestem, sea oats, seashore dropseed, seashore paspalum, seashore saltgrass, stiffleaf eustachys, beach bean, blanket flower, dune sunflower, fiddle-leaf morning glory, partridge pea, railroad vine, sea purslane, beach creeper, nicker bean, coin vine, inkberry, lantana, saw palmetto, seashore elder, baycedar, green buttonwood, cabbage palm, cocoplum, seagrape, and southern wax myrtle.

Edge of wet sand means the point where the visible darkening or staining of the beach sand from wave action is no longer detectable.

Hand raking means the use of a standard garden rake, pitchfork, potato fork, or any other handheld tool used for the purpose of removing or altering the "wrack line."

Mechanical beach raking means a method of maintaining the beach by pulling a pronged rake or a piece of chain link fence that meets the requirements of § 14-6(c). The rake or chain link fence may be pulled behind a tractor, golf cart, ATV, or other vehicle, as approved by the town, that meets the maximum ground-to-tire pressure found in § 14-6(c).

[2] ***Cross reference(s)***–*Sea turtle conservation, article II of ch. 14; personal watercraft and parasailing, ch. 27; water-oriented rentals, div. 41 of article IV of ch. 34.*

Seaward line of vegetation means the location closest to the mean high water line containing, or suitable for, dune vegetation. If there is no such vegetation upon a parcel or portion of a parcel, it shall encompass a line alongshore projected from the closest areas on each side where such vegetation does exist.

Wet sand means the area on the beach where the sand is saturated by sea water from wave action. This area is identified by a visible darkening or staining of the beach sand from the water driven onshore by wave action.

Wrack line means a well-defined zone of the natural organic marine material cast on the shore by the last high tide, including seaweed and other vegetative and animal debris, but excluding manmade material. Any areas of organic marine material left on the upper beach due to abnormally high spring tides, storm tides, or other extreme conditions or events, as determined by the town, are not included in the definition of "wrack line."

Sec. 14-2. Purpose and intent.

(a) The purpose of this article is:
(1) To encourage a steward-like attitude toward the town's most valuable asset, the beach.
(2) To preserve and improve the condition of that asset as a place for recreation, solitude, and preservation of beach vegetation and marine wildlife.

(b) This article provides minimum standards to safeguard the beach.

Sec. 14-3. Destruction or diminishment of dune or beach system.

(a) It is unlawful and prohibited for any person to do, conduct, or permit any of the following on a beach, upon a dune, or in the water adjacent to a beach:
(1) harass, molest, or disturb wildlife;
(2) plant vegetation other than dune vegetation;
(3) destroy or harm a dune or remove dune vegetation;
(4) maintain a dump of, or discard or leave litter, garbage, trash or refuse, vegetative clippings, or debris (see § 14-4);
(5) deposit and leave human or animal waste (see § 14-4);
(6) destroy or grossly interfere with the natural wrack line as by grooming or non-selective raking except as authorized in § 14-6;
(7) operate any air-powered or any engine-powered non-watercraft vehicle, machine, or implement, including any battery or electrical powered vehicle, machine, or implement, except for a wheelchair or approved conveyance for a person with a disability which is actually being used by the person with a disability or as authorized in § 14-7;
(8) excavate, mine, and remove, or haul sand or soil from the beach or dune except in emergency situations as declared by the Town Council;
(9) detonate any explosive devices, including fireworks;
(10) discharge any firearms;
(11) light or maintain any open fire on Mulholland Point (Little Estero Island);
(12) temporarily reside, camp, or sleep overnight;
(13) deposit/install rocks, concrete, or other shoreline stabilization materials without a permit from DEP and the town;
(14) deposit/add sand to the beach and dune system without a permit from DEP. All fill material shall be sand that is similar to the existing beach sand in both coloration and grain size and be free of debris, rocks, clay, or other foreign matter; or
(15) conduct any commercial activities not explicitly authorized by this code or by other town ordinances.

(b) Permits may be issued by the town manager for activities otherwise prohibited by this section, which are found to be necessary for reasonable accommodation of persons with disabilities; adjunct to a lawfully existing activity; for the conduct of a civic or educational activity; for the conduct of scientific research; or for any purpose otherwise necessary to protect or to promote the public welfare, for such periods of time as appropriate for the circumstances. To the extent that a permit is allowed under this code for any of the above activities, the standards and procedures for issuance shall be governed by this code.

Sec. 14-4. Trash and litter on the beach.

(a) Pursuant to Ordinance 99-5, dogs on a leash are allowed on the beaches within the town, but owners must properly dispose of any type of dog waste off the beach. However, no pets shall be

allowed within the confines of the Critical Wildlife Area (CWA)/Mulholland Point (Little Estero Island) whose territory is defined as follows: This area includes the island itself and the wetlands and lagoons that have formed behind the island; the northern boundary is the Holiday Inn's southern riparian line, and the easterly line is the mean high water line of the old developed shoreline.

(b) Pursuant to Ordinance 99-7, trash and litter must be deposited within trash receptacles and not left on the beach.

(c) Any person wishing to light an open fire on the beach, except on Mulholland Point (Little Estero Island) as prohibited by § 14-3 (a)(11) and during sea turtle nesting season as prohibited by § 14-78(a), is limited to a 12 inch by 12 inch cooking fire that must be applied for as a permit through Town Hall. The permit will require a $30.00 deposit for cleanup.

Sec. 14-5. Beach furniture and equipment.

(a) From May 1 through October 31, all beach furniture and equipment must be removed from the beach as follows:

(1) All beach furniture and equipment must be removed from the beach between the hours of 9:00 P.M. until 7:00 A.M.
(2) The beach furniture and equipment must be moved daily either behind the permanent dune line; or where no dune line is present and the beach is wide, then 200 feet from the mean high water line; or where the beach is narrow to the adjacent permanent structure and landward of any seawall. Where compliance with the foregoing provisions would cause an undue hardship, the town manager may, after determining the minimum variance from the requirements of this ordinance, designate the storage location.
(3) Beach furniture and equipment that is removed from the beach as specified in § 14-5(a)(2) shall then be safely stacked in areas no larger than 10 feet by 10 feet and each stack must be at least 50 feet removed or apart from the next stack. All stacked items will be secured either by cable or chain to prevent the removal and scattering of items by unauthorized individuals at night. The cable and/or chain must be kept off the ground as these items pose a serious entanglement hazard.

(b) Trash containers are not included in the definition of beach furniture and equipment and may be left in place on the beach between the hours of 9:00 P.M. and 7:00 A.M.

(c) No later than the first day of June, beach properties that have more than 5 cabanas or offer beach equipment for use shall file a hurricane action plan with the town each year prior to the beginning of hurricane season and provide a contact person with current phone number.

(d) All beach furniture and equipment (such as chairs, umbrellas, cabanas, and rental podium, but excluding water-dependent equipment) shall be set landward of the mean high water line and at least 10 feet from a sea turtle nest or dune vegetation.

(e) Vendors wishing to use a vehicle to transport furniture and equipment to and from the beach must obtain a permit from the town through the permit process described in § 14-6(c) and must abide by the same restrictions. If a beach raking permit is also applied for, the permits will be incorporated into one permit. The following additional restrictions apply to all transport permits:

(1) Equipment shall not be set out in the morning before 8:00 A.M. or before completion of daily monitoring for turtle nesting activity by anu FWC-authorized marine turtle permit holder to examine the beach in the area of the authorized activity to ensure any new sea turtle nests are identified and marked, whichever occurs first.
(2) Transporting vehicles shall not travel within 10 feet of a sea turtle nest or dune vegetation.
(3) The vehicle and equipment cannot exceed a maximum ground-to-tire pressure of 10 PSI (pounds per square inch) using the formula in § 14-6(c)(4)d.1.

Sec. 14-6. Beach raking and wrack line policy.

(a) The use of boxblades on the beach or dune is prohibited. In an emergency and/or storm event resulting in a build-up of sand against seawalls, the use of a boxblade may be allowed with the approval of DEP, where required, and upon filing that approval with the town manager and meeting any other requirements set by the town.

(b) Under normal circumstances, the raking of the wrack line is prohibited. No mechanical or hand raking may take place seaward of the wrack line or

within ten feet (10') landward of the wrack line, provided, however that hand raking of the wrack line may be performed anytime to ameliorate hazardous conditions such as removal of sand castles or filling in of manmade holes on the beach. The town manager may approve the raking of the wrack line conditioned upon prior approval by the DEP if it is determined that excessive accumulation of natural or other debris caused by extreme events, including, but not limited to, red tide, red algae bloom, or storm carried debris, are present. Should such excessive accumulation be determined, the town manager may approve raking consistent with the authorization given by DEP. Any such raking which will result in the unreimbursed expenditure of town funds in excess of currently budgeted funds shall first be approved by the town council. If this occurs during sea turtle season (May 1 through October 31), the raking must be in compliance with the specific conditions in § 14-6(c)(4).

(c) Any mechanical beach raking other than town-initiated raking pursuant to subsection (b) above requires a permit from the town:

(1) Application for a permit to mechanically rake an unvegetated portion of the beach shall be submitted to the director or their designee, in writing, on a form provided by the director. As part of this application, a site plan will be submitted depicting the property corners as represented by aerial photography available at the Lee County Property Appraiser's website (www.leepa.org), the dimensions of the area to be raked, and the location of existing vegetation and structures.

(2) The application shall be made by the owner of the business that conducts the raking, or by the property owner or authorized agent of the property owner. Any application by a raking business must attach a current copy of the Lee County business tax receipt for such business and a letter of authorization from the property owner.

(3) Any business that conducts mechanical beach raking shall be required to carry $1,000,000 in liability insurance and name the Town of Fort Myers Beach as additionally insured. Mechanical beach raking conducted by a property owner or a condominium on their own property only is exempt from their requirement to carry liability insurance.

(4) Any business that conducts mechanical raking shall require all operators to attend an educational and training session developed by the town at least once every year. The education and training session shall address topics such as dune vegetation, sea turtles, and beach-nesting birds. All operators of the beach business and the business owner shall sign a form acknowledging that they understand and will abide by the town's raking regulations.

(5) Prior to the granting or denying of the application, the director or their designee will conduct an on-site inspection to determine if the proposed raking conforms to the requirements of this article and if any native vegetation exists to be protected.

(6) Based upon the information contained in the application and the site inspection, the director shall approve or deny the application.

(7) A single permit may be issued to a business that conducts raking on multiple properties. A site permit for any newly-contracted properties must be added to the permit of any business that rakes multiple properties.

(8) A restricted beach vehicle permit will also be issued with the mechanical beach raking permit provided that the vehicle meets the maximum ground-to-tire pressure found in § 14-6(c).

(9) The director shall attach site specific conditions to the permit relating to identifying, designating, and protecting that existing vegetation and other natural features which are not to be removed in accordance with this ordinance. These conditions are in addition to the following standard permit conditions for all mechanical beach raking permits:

a. During the sea turtle nesting season (May 1 through October 31), mechanical beach raking activities shall be confined to daylight hours and shall not begin before 9:00 A.M. or before completion of daily monitoring for turtle nesting activity by the Florida Fish and Wildlife Conservation Commission (FWC) authorized marine turtle permit holder, whichever occurs first (see requirements in § 14-78(b)). During the rest of the year (November 1 through April 30), mechanical beach raking may be conducted at night (sunset to sunrise) only with sufficient lighting on vehicles. The lighting levels must be approved by town staff by an inspection of the field at night. All fixtures should be shielded to focus light only onto the direct work area. Red

lights or red filters shall be used to reduce disturbance to wildlife such as shorebirds.

b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted beach raking area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any mechanical beach raking. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid *F.A.C.* Rule 68-E Permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.

c. All turtle nests will be marked with wooden stakes, flagging tape, and an FWC sea turtle nest sign. No mechanical raking equipment is allowed inside of the staked area. All equipment operators shall be briefed on the types of marking utilized and should be able to easily contact the individual responsible for the nest survey to verify any questionable areas.

d. Mechanical beach raking equipment shall meet the following standards:
   1. The vehicle and equipment cannot exceed a maximum ground-to-tire pressure of 10 PSI (pounds per square inch) using the following formula:
      -a- PSI = vehicle weight in pounds (includes person and equipment) divided by the footprint in square inches
      -b- EXAMPLE: 404 lbs. (ATV weight) + 200 (person + equipment) divided by 198 square inches (ATV with 6" x 8.25" footprint x 4 tires) = 3.1 PSI
   2. Raking shall be accomplished with a pronged rake that limits penetration into the surface of the beach to a maximum of two inches. Box blades, front- or rear-mounted blades, or other sand sifting/filtering vehicles are not allowed. A piece of chain link fence or pressure treated lumber not to exceed two pieces 4" by 4" by 10' in size may be pulled behind the rake.
   3. The beach raking vehicle and equipment must be removed from the beach when not in use.
   4. Beach raking equipment shall be inspected periodically by the town to insure compliance with these standards.
   5. Operators of mechanical beach raking equipment shall avoid all native salt-tolerant dune vegetation and staked sea turtle nests by a minimum of 10 feet.
   6. Mechanical beach raking equipment must travel seaward of the mean high water line with the rake disengaged when driving on the beach from one raking area to another, and shall not disturb any dune or dune vegetation.

e. Burial or storage of any debris (biotic or abiotic) collected is prohibited seaward of any frontal dune, vegetation line, or armoring structure. Removal of all accumulated material from the beach must occur immediately after raking has been performed in an area. Prior to removing the debris and to the greatest extent possible, beach compatible sand should be separated from the debris and kept on site.

f. All permit fees collected for mechanical beach raking permits shall be used only for environmental education and restoration.

g. Any violation of any special or standard permit conditions by a business owner, operator, or property owner may result in revocation of the permit for a particular property and/or for the entire permitted area. Revocation of a permit shall not prevent the town from pursuing any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of chapter 2) for any violation of the article. Permit revocations may be appealed to the town manager. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this ordinance.

Sec. 14-7. Vehicular traffic on the beach.

It is unlawful and prohibited to operate any engine-powered vehicle, machine, or implement, including any electrical powered vehicle, machine, or implement, on the beach, dune, or on sea turtle nesting habitat as defined in § 14-72, except for the following:

(1) ***Research or patrol vehicles,*** only for authorized permittees of the FWC, DEP officials, law or code enforcement officers, EMS and firefighters, scientific monitoring, and town-approved service vehicles.
(2) ***Mechanical beach raking.*** Vehicles operating under permits issued pursuant to § 14-6(c).
(3) ***Beach furniture and equipment transport.*** Vehicles operating under permits issued pursuant to § 14-5(e).
(4) ***Jet-ski transport and storage.*** Jet-ski transport and storage, when in accordance with § 27-49(1) and (9) even for jet-skis that are not available for rental in accordance with ch. 27.
(5) ***Wheelchairs.*** A wheelchair, or other conveyance with prior approval from the town, for a person with a disability, which is actually being used by the person with a disability). Handicap access to the beach is encouraged through use of wheelchairs equipped with special beach friendly tires that are available for rent or purchase.
(6) ***Maximum tire pressure.*** Any vehicle authorized to drive on the beach cannot exceed a ground-to-tire pressure of 10 PSI as computed in accordance with § 14-4(c)(4)d.1, except for wheelchairs permitted in accordance with subsection (5) above.
(7) ***Sea turtle nesting season.*** See § 14-78(b) for additional restrictions during the sea turtle nesting season.

Sec. 14-8. Dune systems.

Consistent with the town comprehensive plan objective 5-D for beaches and dunes, "Conserve and enhance the shoreline of Estero Island by increasing the amount of dunes, renourishing beaches to counter natural erosion, and reducing negative man-made impacts on beaches and dunes," the town adopts the following:

(1) In areas where the beach has experienced erosion, on public land or with the consent of the owner, the town will establish a dune system consisting of sea oat plantings, a minimum of 10 feet wide, to be planted adjacent to the existing upland vegetation line, and to be planted at existing elevations.
(2) In areas that have not experienced erosion, the town will encourage the establishment of a dune system but will not require same.

Sec. 14-9. Enforcement.

(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 article.

(b) When imposing a sentence or penalty, the court, special magistrate, or any other appropriate body may, in mitigation, consider the successful replacement of dune vegetation illegally removed, and the restoration of the subject area when deemed by the court, the special magistrate or any other appropriate body that the action taken by the violator has eliminated or significantly decreased the ability of the dune system to recover or perform those functions for which it is being protected.

Sec. 14-10. Restoration standards for dune vegetation alteration violations.

(a) Upon agreement of the director and the violator, or if they cannot agree, then, upon action by the court or special magistrate, a restoration plan shall be ordered using the standards in this section. Such a restoration plan shall set forth replacement of the same species or any species approved by consent of the before-mentioned parties, or, if appropriate, in accordance with the direction of the court or special magistrate.

(b) The restoration plan shall include the following minimum standards:

(1) Restoration plantings for vegetation other than trees must be nursery grown, containerized, and planted at a minimum density of no less than one and one half feet on center. The number of replacement plantings will be computed by the square footage of the area destroyed. The replacement stock shall be one and two inch size container. Higher density plantings may be required at the discretion of the director based upon density and size of the vegetation on the site prior to the violation. If the density or species of the vegetation cannot be determined where the violation occurred, then an assumption shall be made that the density and the species were the same as on similar properties. It shall be within the discretion of the director to allow a deviation from the above specified ratio. When such deviation is sought, the total size shall equal or exceed that specified in the above standards.

(2) Dune vegetation alteration violations due to raking, excavation, and/or clearing shall be restored to natural ground elevation and soil conditions prior to commencement of replanting.

(3) Replacement plantings shall have a guaranteed minimum of 80 percent survivability for a period of no less than five years; however, success will be evaluated on an annual basis.

(4) Only temporary above ground irrigation may be installed and must be removed no later than one year from the date of planting.

(5) The plan shall specify that within 90 days of completion of the restoration, a written report shall be submitted to the town. This report shall include the date of completion, copies of the nursery receipts, a drawing showing the locations of the plantings, and color photographs of the planting areas from fixed reference points.

(6) The restoration plan shall include a maintenance provision of no less than five years for the control of invasive exotic vegetation, with annual monitoring and maintenance of the restored area to include the following:

a. Removal of all exotic and nuisance vegetation in the area without disturbing the existing dune vegetation.

b. Replacement of dead vegetation that was planted in order to assure at least 90 percent coverage at the end of the five-year period. Replacement vegetation shall be nursery grown and of the same species and at least the same size as those originally planted.

c. Submittal of an annual monitoring report to the director for five years following the completion of the restoration describing the conditions of the restored site. The monitoring report shall include mortality estimates, causes for mortality (if known), growth, invasive exotic vegetation control measures taken, and any other factors which would indicate the functional health of the restored area.

d. The monitoring report shall be submitted on or before each anniversary date of the effective date of the restoration plan. Failure to submit the report in a timely manner shall constitute a violation of this ordinance.

e. To verify the success of the mitigation efforts and the accuracy of the monitoring reports, the director shall periodically inspect the restoration.

Sec. 14-11. Special events on the beach.

(a) Special events on the beach are any social, commercial, or fraternal gathering for the purpose of being entertained, instructed, viewing a competition, or any other reason that would bring them together in one location that normally would not include such a concentration of people on or near the beach.

(b) Special events on the beach are temporary, short-term activities, which may include the construction of temporary structures; temporary excavation, operation, transportation, or storage of equipment or materials; and/or nighttime lighting that is visible seaward of the coastal construction control line (CCCL). Generally, activities within this category include but are not limited to: sporting

events (e.g. volleyball, personal watercraft races, offshore powerboat races), festivals, competitions, organized parties (e.g. weddings), promotional activities, concerts, film events, balloon releases, and gatherings under tents.

(c) Due to the potential for adverse impacts, certain special event activities may not be compatible with sea turtle nesting areas. In some cases this is due to the type of activity where permit conditions alone cannot provide adequate protection. In other cases the density of sea turtle nesting prevents certain activities from being conducted safely.

(d) Special events which occur on or near the beach or dune, or where lighting from the special events directly or indirectly illuminates sea turtle nesting habitat, may contain special conditions for the protection of the beach, dune, and sea turtles. These conditions are in addition to the basic requirements of Ordinance No. 98-1, as amended, which must still be met in full.

(1) Along with the regular application for an event permit as required by Ordinance No. 98-1 as amended, a site plan must be submitted depicting the property corners and the dimensions of the area where the event is proposed to occur, the location of existing vegetation, structures, and any existing sea turtle nests, and a summary of the activities proposed. A lighting plan that includes the location, number, type, wattage, orientation, and shielding for all proposed artificial light sources that will be used must also be submitted. All lighting must be in compliance with § 14-75.

(2) Prior to the granting or denying of the application, an on-site inspection will be conducted to determine if the proposed event conforms to the requirements of this section and if any native vegetation or sea turtle nests exist to be protected.

(3) Based upon the information contained in the application and the site inspection, the application shall be approved or denied. approve or deny the application.

(4) Site-specific conditions may be attached to the permit relating to identifying, designating, and protecting any existing vegetation and sea turtle nests in accordance with this code. These conditions are in addition to the following standard permit conditions for all special events on the beach:

a. During the sea turtle season (May 1 through October 31), special event activities including construction shall be confined to daylight hours and shall not begin before 8:00 A.M. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first. However, no activity shall take place until after a daily sea turtle nest survey is conducted as indicated below.

b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted special events area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any activity. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid *F.A.C.* Rule 68-E permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, please contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.

c. All turtle nests will be marked with wooden stakes, flagging tape, and an FWC sea turtle nest sign. No activities (including the placement of equipment or the storage of materials) are allowed within 30 feet of the marked nest. The permittee shall ensure that all personnel are briefed on the types of marking utilized and be able to easily contact the individual responsible for the nest survey to verify any questionable areas.

(5) A violation of the special or standard conditions shall automatically invalidate the permit. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this ordinance.

(6) The release of balloons is prohibited in accordance with 372.995, *F.S.*, except as permitted by that statute.

Secs. 14-12--14-70. Reserved.

ARTICLE II.
SEA TURTLE CONSERVATION

Sec. 14-71. Purpose and applicability.

The purpose of this article is to protect endangered and threatened sea turtles along the Gulf of Mexico beaches in the Town of Fort Myers Beach. This article protects nesting sea turtles and sea turtle hatchlings from the adverse effects of artificial lighting, provides overall improvement in nesting habitat degraded by light, and increases successful nesting activity and production of hatchlings on the beaches, as defined in this article.

Sec. 14-72. Definitions.

When used in this article, the following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Artificial lighting means light emanating from a manmade point source (see *Point source of light*, below).

Beach means that area of sand along the Gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.

Bug light means any yellow colored incandescent light bulb that is specifically treated in such a way so as to reduce the attraction of bugs to the light, but does not include bug killing devices.

Construction means the carrying out of any building, clearing, filling, excavating or substantial improvement in the size or use of any structure or the appearance of any land. When appropriate to the context, the term "construction" refers to the act of constructing or the result of construction, and includes reconstruction or remodeling of existing buildings or structures.

Decorative lighting means lighting used for aesthetic reasons, primarily landscaping.

DEP means Florida Department of Environmental Protection or successor agency.

Directly illuminated means illuminated by one or more point sources of light directly visible to an observer on the beach, dune, or other sea turtle nesting habitat.

Development has the same meaning stated in §34-2.

Dune means a mound or ridge of loose sediments, usually sand-sized, lying landward of the beach and deposited by any natural or artificial mechanism.

Existing development means completed development having received official approval in the form of a certificate of compliance, final building permit inspection, or other final governmental approval as of January 31, 1998, or development that was completed prior to the adoption of those requirements.

FWC means the Florida Fish & Wildlife Conservation Commission or its successor.

Ground-level barrier means any vegetation, natural feature or artificial structure rising from the ground intended to prevent beachfront lighting from shining directly or indirectly onto the beach, dune, or other sea turtle nesting habitat.

Hatchling means any individual of a species of sea turtle, within or outside of a nest, that has recently hatched from an egg.

Indirectly illuminated means illuminated by one or more point sources of light not directly visible to an observer on the beach, dune, or other sea turtle nesting habitat.

Low-profile lighting means a light fixture which places the low wattage source of light no higher than 48 inches above grade and is designed so that a point source of light does not directly or indirectly illuminate sea turtle nesting habitat.

Mechanical beach raking means the cleaning of the sandy beach seaward of the dune and vegetation line of trash and other debris on or near the surface by use of a rake or other similar porous device which penetrates no more than 2 inches below existing

ambient grade and results in no removal of in situ sand.

Nest means an area where sea turtle eggs have been naturally deposited or subsequently relocated by an FWC-authorized marine turtle permit holder.

Nesting season means from 9:00 P.M. until 7:00 A.M. during the period May 1 through October 31 of each year.

New development means construction of new buildings or structures as well as renovation or remodeling of existing development, and includes the alteration of exterior lighting occurring after January 31, 1998.

Point source of light means a manmade source emanating light, including but not limited to: incandescent, tungsten-iodine (quartz), mercury vapor, fluorescent, metal halide, neon, halogen, high-pressure sodium and low-pressure sodium light sources, as well as torches, camp and bonfires.

Sea turtle means any marine-dwelling reptile of the families Cheloniidae or Dermochelyidae found in Florida waters or using the beach as nesting habitat, including *Caretta caretta* (loggerhead), *Chelonia mydas* (green), *Dermochelys coriacea* (leatherback), *Eretmochelys imbricata* (hawksbill), *and Lepidochelys kempi* (Kemp's ridley). For purposes of this article, sea turtle is synonymous with marine turtle.

Sea turtle nesting habitat means the beach and any adjacent dunes or areas landward of the beach used by sea turtles to deposit sea turtle eggs.

Tinted glass means any glass treated to achieve an industry-approved, inside-to-outside light transmittance value of 45% or less.

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

Sec. 14-73. Enforcement.

(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 article.

(b) A rebuttable presumption that there is a violation of this article exists when:

(1) a shadow is created or cast by artificial lighting directly or indirectly illuminating an opaque object in sea turtle nesting habitat during the nesting season; or
(2) the disorientation or mortality of a nesting sea turtle or sea turtle hatchling is caused by artificial lighting directly or indirectly illuminating sea turtle nesting habitat during the nesting season.

Sec. 14-74. Exemptions.

The town manager may authorize, in writing, any activity or use of lighting otherwise prohibited by this article for a specified location and period of time. The authorization must be for the minimum duration and amount of lighting from a point source(s) of light.

Sec. 14-75. Existing development.

Existing development must ensure that sea turtle nesting habitat is not directly or indirectly illuminated by lighting originating from the existing development during the nesting season. Artificial lighting from existing development must not directly or indirectly illuminate sea turtle nesting habitat during the nesting season.

Sec. 14-76. New development.

New development must comply with the following requirements:

(a) Artificial lighting must conform to the requirement of § 14-75.

(b) A lighting plan must be submitted for review prior to the earlier of building permit or development order issuance for all new development, as follows:

(1) for new development seaward of the coastal construction control line, as defined in § 6-333 (CCCL), a copy of a DEP-approved lighting plan is required;
(2) for new development landward of the CCCL, a lighting plan is required for all commercial and industrial development, and for all multi-story developments in multi-family zoning districts.

The location, number, wattage, elevation, orientation, and all types of proposed exterior artificial light sources must be included on the lighting plan. An approved lighting plan is required

before final inspections for a certificate of occupancy or certificate of compliance will be performed by the town.

(c) Prior to the issuance of a certificate of occupancy (CO), the exterior lighting of new development must be inspected after dark by the town, with all exterior lighting turned on, to determine compliance with an approved lighting plan and this article.

Sec. 14-77. Publicly owned lighting.

Streetlights and lighting at parks and other publicly owned beach access areas are subject to the following requirements:

(1) The beach must not be directly or indirectly illuminated by newly installed or replaced point sources of light.
(2) Artificial lighting at parks or other public beach access points must conform to the provisions of § 14-75.

Sec. 14-78. Additional regulations affecting sea turtle nesting habitat.

(a) ***Fires.*** Fires that directly or indirectly illuminate sea turtle nesting habitat are prohibited during the nesting season.

(b) ***Driving on the beach.*** Driving on sea turtle nesting habitat, specifically including the beach, is prohibited during the nesting season, except as follows:

(1) ***Research or patrol vehicles.*** Only authorized permittees of the FWC, DEP officials, and law or code enforcement officers conducting bona fide research or investigative patrols, may operate a motor vehicle on the beach or in sea turtle nesting habitat during the nesting season. No lights may be used on these vehicle during the nesting season unless they are covered by appropriate red-colored filters.
(2) ***Mechanical beach raking.*** All mechanical beach raking requires a town permit in accordance with § 14-6(c). During the nesting season, mechanical beach raking:
    a. must not occur before 9:00 A.M. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first, and
    b. must not disturb any sea turtle or sea turtle nest and must avoid all staked sea turtle nests by a minimum of 10 feet.
(3) ***Beach furniture and equipment transport.*** The transport of beach furniture and equipment requires a town permit in accordance with § 14-5(e). During the nesting season:
    a. Equipment shall not be set out in the morning until after sea turtle monitoring has inspected the beach in the area of the authorized activity to ensure any new sea turtle nests are identified and marked.
    b. Transporting vehicles shall not travel within 10 feet of a sea turtle nest or dune vegetation.
(4) ***Jet-ski transport.*** During the nesting season, jet-ski transport and storage:
    a. must be in compliance with § 27-49(1) and (9) of this code even for jet-skis that are not available for rental in accordance with ch. 27, and
    b. may require a DEP permit authorizing jet-ski transport within the riparian line of the licensed property to the water, and
    c. must not occur before 8:00 A.M. or before completion of daily monitoring for turtle nesting activity by a FWC-authorized marine turtle permit holder, whichever occurs first, and
    d. must not disturb any sea turtle or sea turtle nest and must avoid all staked sea turtle next by a minimum of 10 feet.
(5) See §§ 14-5–7 and 27-49 for other restrictions on vehicular traffic on the beach that apply before and after the nesting season.

(c) ***Parking.*** Vehicle headlights in parking lots or areas on or adjacent to the beach must be screened utilizing ground-level barriers to eliminate artificial lighting directly or indirectly illuminating sea turtle nesting habitat.

Sec. 14-79. Guidelines for mitigation and abatement of prohibited artificial lighting.

(a) Appropriate techniques to achieve lighting compliance include, but are not limited to:

(1) fitting lights with hoods or shields,
(2) utilizing recessed fixtures with low-wattage bulbs,
(3) screening light with vegetation or other ground-level barriers,

(4) directing light away from sea turtle nesting habitat,
(5) utilizing low-profile lighting,
(6) turning off artificial light during the nesting season,
(7) motion detectors set on the minimum duration, and
(8) lowering the light intensity of the lamps, preferably to 25 watts, but no more than 40-watt yellow bug lights.

Although plastic sleeves for fluorescent bulbs may help to reduce the amount of artificial light to an acceptable level if the bulbs are of sufficiently low wattage, in most instances additional shielding is needed as sea turtles are more sensitive to the wavelengths of fluorescent light.

(b) Opaque shields for lights covering an arc of at least 180 degrees and extending an appropriate distance below the bottom edge of the fixture on its seaward side may be installed so that the light source or any reflective surface of the light fixture is not visible from sea turtle nesting habitat.

(c) Floodlights, uplights, spotlights, and decorative lighting directly or indirectly visible from sea turtle nesting habitat should not be used during the nesting season. The ideal alternatives within direct line-of-sight of the beach are completely shielded downlight-only fixtures or recessed fixtures, with any visible interior surfaces or baffles covered with a matt black non-reflective finish.

(d) Appropriate techniques to eliminate interior lighting directly or indirectly illuminating the beach, include but are not limited to: applying window tint film to windows, using tinted glass, moving light fixtures away from windows, closing blinds or curtains, and turning off unnecessary lights.

Secs. 14-80--14-110. Reserved.

ARTICLE III. SOUTHERN BALD EAGLE [3]

Sec. 14-111. Purpose.

In order to protect and preserve the southern bald eagle, it is necessary and appropriate to protect, enhance, and preserve the nest of the eagle and its immediate environs. With reasonable land compensation incentives and proper habitat management, the southern bald eagle population can be maintained and increased. This article is intended to protect the critical nesting habitat of the southern bald eagle and promote national, state, and county pride and esteem by providing special compensation incentives to private property owners for loss of property committed to critical southern bald eagle nesting habitat. This article also provides information and assistance to property owners to enable them to avoid violations of state and federal law.

Sec. 14-112. Definitions.

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:

Abandoned nest means a nest which has not been occupied by the southern bald eagle for the hatching and nurturing of eagle young for a period of four consecutive years or has been determined to be abandoned by the eagle technical advisory committee.

Buffer area means that area designated in accordance with § 14-119 that must remain predominantly in its natural state to protect eagles, nest trees, or other critical eagle nesting habitat. Buffer areas may range in any distance up to 750 feet or more from a nest and may be irregularly shaped areas.

Conservation easement means a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, or wooded condition; retaining such areas as

[3] ***Cross reference(s)--****Protection of habitat, § 10-471 et seq.*

suitable habitat for fish, plants, or wildlife; or maintaining existing land uses and which prohibits or limits any or all of the activities described in F.S. § 704.06, as such provisions now exist or may from time to time be amended.

Critical eagle nesting habitat means habitat which, if lost, would result in the elimination of nesting eagles from the area in question. Critical eagle nesting habitat typically provides functions for the southern bald eagle during the nesting portion of that species' life cycle. This area includes eagle nest trees and their immediate environs and may include other areas or features such as perch trees, flyways, and secondary nests.

Developer means any person undertaking development.

Development means any improvement or change of the land induced by human activities.

FWC means the Florida Fish & Wildlife Conservation Commission or its successor.

Land means the earth, water and air above, below or on the surface.

Nest means a structural mass of sticks, twigs, leaves, mosses or other materials which is being occupied or has been occupied by the southern bald eagle for the hatching and nurturing of eagle young.

Parcel, for purposes of this article only, means one or more contiguous lots under unified control.

Property owner means any person having recorded legal title to real property.

Southern bald eagle *(Haliaeetus leucocephalus)* means a mature eagle with white plumage on its head and tail feathers, or an immature eagle with dark plumage, which resides throughout the state around estuarine areas and along the lakes and river drainage basins within the interior of the state and county.

Unified control means the unrestricted right of any owner or agent to enforce whatever conditions are placed on the use and development of a parcel of land through the provisions of this article, by binding his heirs, assigns, or other successors in title with covenants or restrictions on the development and subsequent use of property.

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

Sec. 14-113. Violation; penalty.

(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 article.

(b) Any violator of this article may be required to restore the critical eagle nesting habitat to its original undisturbed condition. If restoration is not undertaken within a reasonable time after notice, the town may take necessary corrective action, the cost of which will be placed as a lien upon the property.

Sec. 14-114. Provisions supplemental.

(a) This article does not replace the Federal Endangered Species Act, the Federal Migratory Bird Act, the Federal Bald Eagle Act or the Florida Endangered Species Act, but is intended to supplement those laws to ensure protection of critical eagle nesting habitat.

(b) The town urges all landowners conducting development activities to adhere to the "Habitat Management Guidelines for the Bald Eagle in the Southern Region," prepared by the U.S. Fish and Wildlife Service, which recommends a primary protection zone with a radius of 750 to 1500 feet around active nests within which no development should occur.

Sec. 14-115. Applicability.

This article applies to all real property within 750 feet of a nest until such time as the nest has been determined to be abandoned. Abandonment will be determined by the eagle technical advisory committee based on competent evidence but in no event will be more than four years.

Sec. 14-116. Eagle technical advisory committee.

(a) Lee County has established an eagle technical advisory committee (ETAC) for the purpose of advising the board of county commissioners on matters relating to the protection of the southern bald eagle. The Town of Fort Myers Beach shall consult this committee for advice and recommendations in the event a southern bald eagle begins to nest within its incorporated area.

Sec. 14-117. Public acquisition of rights and interest in critical eagle nesting habitat lands.

(a) The town may acquire rights and interests in real property designated as a critical eagle nesting habitat. When a developer or property owner cannot accommodate critical eagle nesting habitat through reasonable site planning or proper access, the town may acquire an interest through:

(1) Receiving donations of critical eagle nesting habitat lands;
(2) Purchase or conveyance by dedication of a perpetual conservation easement;
(3) Outright purchase or lease of critical eagle nesting habitat;
(4) Acquisition through eminent domain proceedings pursuant to article II, § 9, and article X, § 6, of the state constitution and applicable provisions of the Florida Statutes; or
(5) Implementation by the town council or the board of county commissioners of any combination of these or other actions to acquire rights and interests that balance the public and private interests.

(b) Monies needed for the purchase of critical eagle nesting habitat, or the purchase of conservation easements to protect these habitats, may be funded by public and private donations. Funding may also be solicited in a general community appeal on license tag renewals and ad valorem tax envelopes issued by the county tax collector, and by monies appropriated from the general fund by the town council or the board of county commissioners from time to time.

Sec. 14-118. Notification procedure.

The town will notify the FWC and the U.S. Fish and Wildlife Service upon receipt of any application for a planned development rezoning, a development order, a notice of clearing, or a building permit for any property located within 750 feet of a bald eagle nest. The notice must include any available information gathered by the eagle technical advisory committee regarding the behavior of the eagles who are occupying the nest.

Sec. 14-119. Mechanisms for the protection of critical eagle nesting habitat.

(a) ***Single- or two-family dwelling unit (including accessory structures.)*** Appropriate conditions limiting or prohibiting development during the nesting season may be attached to building permit approvals for property to which this article is applicable where such conditions are deemed necessary by the director to prevent a "take" of the eagle, as that term is defined in FAC rule 39-1.004(77).

(b) ***All other development.***

(1) All persons contemplating the development of property to which this article is applicable are encouraged to consult with the county's eagle technical advisory committee and its supporting staff as early in the planning and design process as possible.
(2) With assistance from the eagle technical advisory committee, all such persons are encouraged to prepare a management plan that protects critical eagle nesting habitat. All such management plans will be reviewed by the eagle technical advisory committee prior to approval by resolution of the town council.
(3) All development within critical eagle nesting habitat and buffer areas must be consistent with the approved management plan.
(4) Management plans must address, at a minimum, the following items:
    a. Description of the land around the critical eagle nesting habitat, including locations of nest tree(s) and perch tree(s), vegetation types, and a description of the type and density of understory and canopy vegetation;
    b. History and behavior patterns of the eagle pair;
    c. A one inch equals 200 feet aerial map and a map at the scale of the development which shows the location of the eagle's nest and other critical eagle nesting habitat features as well as the proposed development;
    d. The size and shape of the buffer area;
    e. Measures to reduce potential adverse impacts of the development on the nesting bald eagles;
    f. A critical eagle nesting habitat management plan which shall include techniques to maintain viable nesting habitat. These techniques may include controlled burning, planting, or removal of vegetation, invasive exotic species control, maintaining hydrologic regimes, and monitoring;

g. Deed restrictions, protective covenants, easements, or other legal mechanisms running with the land that provide reasonable assurances that the approved management plan will be implemented and followed by all subsequent owners of the property in question;
h. A commitment to educate future owners, tenants, or other users of the development about the specific requirements of the approved eagle management plan and the state and federal eagle protection laws.

(5) The legal effect of management plans will be limited geographically to property owned or controlled by the proponent of the plan.
(6) An approved management plan will remain effective notwithstanding the abandonment of a nest unless the abandonment occurs prior to the use of any incentives (see § 14-120 below) and the property owner relinquishes the incentives by amending the development order or taking other appropriate action.

Sec. 14-120. Compensation incentives for protection of critical eagle nesting habitat.

(a) Incentives for the preservation of critical eagle nesting habitat pursuant to approved management plans will be granted in accordance with the standards in § 10-474(e)

(b) In addition to the incentives already provided herein, if the town council elects not to acquire a critical eagle nesting habitat, then the town council may permit all or some of the following special compensation benefits as incentives to the developer or property owner for the purpose of protecting critical eagle nesting habitat:

(1) For a buffer area of 350 feet in radius or an approximate equivalent acreage, minimum, the following benefits shall be granted:
a. The property owner shall be allowed to transfer density from within the buffer area to designated upland areas within the subject property at the same density permitted for that portion of the subject property as determined through the residential planned development process; and
b. The property owner shall be allowed priority review and processing of zoning and development applications for the subject property, and, if applicable, one other parcel under unified control.

(2) For a buffer area of 550 feet in radius or an approximate equivalent acreage, the following benefits, in addition to those set forth in subsection (1) of this section, may be granted:
a. The town may waive the zoning application fee on the subject property, and, if applicable, one other parcel under unified control;
b. The town may waive building permit application fees on the subject property, and, if applicable, one other parcel under unified control; and
c. The town may waive development review related fees on the subject property, and, if applicable, one other parcel under unified control.

(3) For a buffer area of 750 feet in radius, or an approximate equivalent acreage, the following benefits, in addition to those set forth in subsections (1) and (2) of this section, may be granted: The town may provide a credit against regional park impact fees on the subject property, and, if applicable, one other parcel under unified control located within the town. In no event shall the credit towards the regional park impact fee exceed the appraised value of the dedicated land.
(4) In order to receive the benefits mentioned in this section, the buffer areas shall be designated as critical eagle nesting habitat and shall be conveyed to the town by either warranty deed or by dedication of a perpetual conservation easement.
(5) The increase in buffer area beyond the minimum radius is directly proportional to additional incentive benefits which may be requested and may be received by the developer or property owner pursuant to the terms of this article.
(6) In no event shall the amount of fees waived or credited set forth in subsections (2) and (3) of this section exceed the appraised value of the buffer area conveyed to the town. The appraised value shall be based on two current documented appraisals of the fair market value or sales price of the land. Appraisals must be prepared by qualified appraisers and are subject to approval by the town manager.

Secs. 14-121--14-290. Reserved.

ARTICLE IV. WETLANDS PROTECTION

Sec. 14-291. Applicability.

(a) The provisions of this article apply to all wetlands within the incorporated area of the town. A close approximation of wetland boundaries is shown on the future land use map (Figure 16 of the Fort Myers Beach comprehensive plan). However, even where not shown on that map, this article applies to all wetlands as defined in F.S. § 373.019 as interpreted through the use of the unified delineation methodology ratified by F.S.§ 373.4211.

(b) If the delineation of wetlands on the future land use map is incorrect due to a clear factual error, a process is contained in ch. 15 of the comprehensive plan to establish the precise boundary of any wetland within the town.

Sec. 14-292. Purpose.

(a) Wetlands provide valuable habitat, buffering from storms, shoreline stabilization, and production of food for estuarine and coastal waters. The town's objectives are to preserve all remaining wetlands, protect them from further degradation, and improve their condition and natural functions.

Sec. 14-293. Definitions.

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

ERP means an Environmental Resource Permit.

SFWMD means the South Florida Water Management District.

Wetlands means those areas inundated or saturated by surface water or groundwater at a frequency and a duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soils. Examples of wetlands at Fort Myers Beach include mangroves forests, tidal marshes, and salt flats. See full definition in F.S. § 373.019.

Sec. 14-294. Prohibited activities.

Activities that destroy wetlands or impair the functioning of wetlands such as the following are prohibited:

(1) Construction fill that encroaches along the edges of, or into, wetlands, canals, or other tidal waters;
(2) Dredging of new or expanded boat basins or channels;
(3) Placement of seawalls or riprap revetments except as specifically authorized by ch. 26;
(4) Ditching or filling of wetlands for mosquito control purposes; and
(5) Any filling or removal of mangrove systems.

Sec. 14-295. Permitted activities.

The following types of activities may be desirable in wetlands and may be permitted by the director when compatible with wetland functions and approved in accordance with other provisions of this code:

(1) Activities necessary to prevent or eliminate a public hazard, such as elimination of a dangerous curve in a road, dredging in order to clean up a spill of hazardous waste, or removal of underwater obstructions to boat traffic.
(2) Activities that provide a direct benefit to the public at large that would exceed any public loss as a result of the activity, such as removal of exotic species, restoration of natural hydroperiods, impacts associated with the maintenance of existing drainage works, or providing water access to the general public.
(3) Resource-oriented activities such as passive recreation, outdoor education, or other uses where protection of wetland functions and values is the primary attraction.
(4) Structures or facilities that will improve the functional value of wetlands or provide "no-impact" use for observation, education, research, or passage (walking or non-motorized boats); these could include such structures as public boardwalks, observation decks, or launching areas for non-motorized watercraft.

Sec. 14-296. Permits required.

(a) Prior to any activity that will affect wetlands, an ERP or exemption shall be required from either DEP or SFWMD in accordance with F.S. ch. 373 and F.A.C. ch. 62. The town will not undertake an independent review of the impacts to wetlands resulting from activity in wetlands that is specifically authorized by an ERP or exemption, provided that the proposed activity is consistent with the Fort Myers Beach comprehensive plan and this code.

(b) No development approval shall be issued by the town for any project that affects wetlands until all requisite permits from other agencies have been obtained and provided to the town. Relevant conditions placed on ERPs shall be incorporated into subsequent approvals issued by the town.

Sec. 14-297. Compliance enforcement.

(a) The town will enforce the provisions of any state authorization relating to wetlands, including ERPs, that are incorporated into a development order under ch. 10 or a building permit under ch. 6.

(b) 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.

Cross reference–*See also article VI of this chapter concerning mangrove enforcement.*

Secs. 14-298--14-370. Reserved.

ARTICLE V. TREE PROTECTION [4]

Sec. 14-371. Reserved.

Sec. 14-372. Findings of fact.

The town council hereby finds and determines that trees promote the health and general welfare of the citizens of the town, specifically:

(1) Trees transpire considerable amounts of water each day and assist in purifying the air;
(2) Trees precipitate dust and other particulate airborne pollutants from the air;
(3) Trees, through their root systems, stabilize soil and play an important and effective part in soil conservation, erosion control, and flood control;
(4) Trees are an invaluable amenity, providing shade and cooling the air and land, and reducing noise levels and glare;
(5) The protection of trees is not only desirable, but essential to the health, safety, and welfare of all the citizens, present and future, of the town;
(6) Some trees are more beneficial than others as necessary contributions to the town's environment, and it is not necessary to protect each and every tree in order to attain the publicly beneficial results of tree protection; and
(7) Invasive exotic trees crowd out native trees and other vegetation and do not warrant protection under this article.

Sec. 14-373. Intent and purpose.

(a) The intent of this article is to protect trees through the preservation and planting of protected trees in order to:

(1) aid in the stabilization of soil by the prevention of erosion and sedimentation;
(2) reduce stormwater runoff and costs associated therewith and maintain permeable land areas for surface water filtration;
(3) aid in the removal of carbon dioxide and generation of oxygen in the atmosphere;

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[4] ***Cross reference(s)****--Open space, buffering and landscaping, § 10-411 et seq.*

(4) provide a buffer and screen against noise pollution;
(5) promote energy conservation through the creation of shade, reducing heat gain in or on buildings or paved areas, and reducing the temperature of the microclimate through evapotranspiration;
(6) provide protection against severe weather;
(7) aid in the control of drainage and restoration of denuded soil subsequent to construction or grading;
(8) provide a haven for birds which in turn assist in the control of insects;
(9) protect and increase property values;
(10) conserve and enhance the town's physical and aesthetic environment; and
(11) generally protect and enhance the quality of life and the general welfare of the town.

(b) The purpose of this article is to protect trees from abuse and/or mutilation, and to regulate the removal and planting of protected trees in order to enhance and protect the environmental quality of the town.

Sec. 14-374. Definitions.

(a) The following words, terms and phrases, and their derivations, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. When not inconsistent with the context, words in the present tense include the future and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

Diameter at breast height (dbh) means the diameter, in inches, of a tree measured 54 inches above natural grade.

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

Dripline means an imaginary vertical line running from the outermost branches or portion of the tree crown to the ground.

Indigenous vegetation means those plants which are characteristic of the major plant communities, as listed in § 10-413.

Invasive exotic tree means any of the following tree species: Melaleuca *(Melaleuca quinquenervia)*, Brazilian pepper *(Schinus terebinthifolius)*, and Australian pine *(Casuarina spp.)*.

Person means any public or private individual, group, company, partnership, association, society or other combination of human beings whether legal or natural.

Protected tree means any tree listed in the protected tree list in § 14-380(c).

Protective barrier means a physical structure not less than three feet in height composed of lumber no less than one inch by one inch in size for shielding protected trees from the movement of equipment or the storage of equipment, material, debris or fill. Equivalent materials may be used to provide a protective barrier if first approved by the director.

Removal means the deliberate removal of a tree or causing the effective removal of a tree through damaging, poisoning or other direct or indirect actions resulting in the death of the tree.

Tree means a living, woody, self-supporting plant, ten feet or more in height, having one or more well-defined main stems or trunks, and any one stem or trunk four inches in diameter at breast height. Trees protected by this article are listed in § 14-380(c). For the purpose of this article, those palms listed in § 14-380(c) are declared to be a tree and are protected by the provisions of this article.

Tree location map means a drawing or aerial photograph which provides the following information: location of all trees protected under the provisions of this article, plotted by ground truthing or any other accurate scientific techniques; common or scientific name of all trees; and diameter at breast height. Groups of trees in close proximity (five feet spacing or closer) may be designated as a clump of trees, with the predominant species, estimated number and average size listed.

Upland means land other than wetlands.

(b) Unless specifically defined in this article, the words or phrases used in this article and not defined in subsection (a) of this section shall be interpreted so as to give them the meaning they have in common

usage and to give this article its most reasonable application.

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

Sec. 14-375. Penalty for violation.

(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 article. See also the restoration standards in § 14-384.

(b) In any prosecution under this article for the removal of a protected tree without a permit, each tree so removed will constitute a separate offense.

Sec. 14-376. Exemptions.

(a) This article shall not apply to the following:

(1) ***Trees in rights-of-way.*** The removal of trees on public rights-of-way conducted by or on behalf of a governmental agency in pursuance of its lawful activities or functions in the construction or improvement of public rights-of-way or in the performance of its official duties.

(2) ***Damaged trees.*** The removal of a protected tree that is dead or which has been destroyed or damaged by natural causes beyond saving or which is a hazard as the result of an act of God and constitutes an immediate peril to life and property.

(3) ***Utility lines.*** The removal of trees by duly constituted communication, water, sewer or electrical utility companies in or adjacent to a public easement or right-of-way, provided such removal is limited to those areas necessary for maintenance of existing lines or facilities or for construction of new lines or facilities in furtherance of providing utility service to its customers, and provided further that such removal is conducted so as to avoid any unnecessary damage or removal of trees.

(4) ***Surveying activities.*** The removal of trees protected by this article by a state-licensed land surveyor in the performance of his duties. The removal of trees protected by this article in a manner which requires clearing a swath of greater than three feet in width shall require approval of the director prior to such a removal and clearance.

(5) ***Subdivided lots.*** The removal of up to three protected trees during any one-year period on a lot that is being used lawfully as a single-family residence or mobile home. However, all other lots that are vacant or have a building that is being replaced are subject to the provisions of § 14-382(c).

(b) However, exemptions (1), (3), (4), and (5) in the previous subsection shall not apply to any tree cited in the Florida champion tree register (*Big Trees: The Florida Register*, published by the Florida Native Plant Society, or successor publication),

Sec. 14-377. Indigenous vegetation.

(a) Indigenous vegetation shall not be cleared in areas that serve as listed species occupied habitat as defined in ch. 10, article III, division 8. The following shall apply:

(1) The director shall determine the location of protected species to be preserved based on the criteria set forth in ch. 10, article III, division 8. This review shall not be substituted for surveys required under ch. 10, article III, division 8.

(2) The director, or the property owner with the director's approval, shall develop a management plan based on the criteria set forth in § 10-474. Preparation and review criteria for the plan may be subject to the provisions of an appropriate administrative code. Up to ten percent of the upland acreage shall be preserved in areas where listed species are present. No more than two separate areas shall be set aside on any given parcel. Any state-mandated upland listed species preserves shall be included within the referenced ten percent preservation area. Bald eagles (Haliaeetus leucocephalus) shall be protected pursuant to article III of this chapter.

(b) Indigenous vegetation shall not be cleared within 25 feet of the mean high-water line of any natural waterway. Indigenous vegetation may be cleared selectively to allow the placement of docks, pipes, pumps and other similar structures pursuant to this code.

Sec. 14-378. Suspension of article during emergency conditions.

Upon the declaration of a state of emergency pursuant to F.S. ch. 252, the director may suspend the enforcement of the requirements of this article for a period of 30 days in order to expedite the removal of damaged and destroyed trees in the interest of public safety, health, and general welfare.

Sec. 14-379. Nonliability of town.

Nothing in this article shall be deemed to impose any liability upon the town or upon any of its officers or employees, nor to relieve the owner and/or occupant of any duty to keep trees and shrubs upon private property or under his control in a safe condition.

Sec. 14-380. List of protected trees.

(a) Any tree delineated in § 14-380(c) shall henceforth be a protected tree and shall thereby come under the provisions of this article, except where those trees are exempted from protection pursuant to § 14-376.

(b) All other species of trees not named in § 14-380(c) may be removed without a permit, but only in such a manner so as not to disturb or destroy surrounding protected trees or to disturb indigenous vegetation protected by § 14-377.

(c) ***Protected tree list.***

FAMILY NAME	
Scientific Name	*Common Name*
ACERACEAE (MAPLE FAMILY)	
Acer rubrum	Red Maple
ANACARDIACEAE (CASHEW FAMILY)	
Rhus copallina	Southern Sumac
ANNONACEAE (CUSTARD-APPLE FAMILY)	
Annona glabra	Pond Apple
AQUIFOLOIACEAE (HOLLY FAMILY)	
Ilex cassine	Dahoon Holly
AREACACEAE (PALM FAMILY)	
Coccothrinax argentata	Silver Palm
Cocos nucifera	Coconut Palm
Roystonea elata	Florida Royal Palm
Sabal palmetto	Cabbage Palm
AVICENNIACEAE (BLACK MANGROVE FAMILY)	
Avicennia germinans	Black Mangrove
BETULACEAE (BIRCH FAMILY)	
Carpinus caroliniana	Iron Wood
BORAGINACEAE (BORAGE FAMILY)	
Cordia sebestena	Geiger Tree
BURSERACEAE (TORCHWOOD FAMILY)	
Bursera simaruba	Gumbo Limbo
CAPPARACEAE (CAPER FAMILY)	
Capparis cynophallophora	Jamaica Caper
COMBRETACEAE (WHITE MANGROVE FAMILY)	
Bucida buceras	Black Olive
Conocarpus erecta	Buttonwood
Laguncularia racemosa	White Mangrove
CORNACEAE (DOGWOOD FAMILY)	
Cornus foemina	Swamp Dogwood
CUPRESSACEAE (CYPRESS FAMILY)	
Juniperus silicicola	Southern Red Cedar
EBENACEAE (EBONY FAMILY)	
Diospyros virginiana	Persimmon
FABACEAE (PEA FAMILY)	
Acacia farnesiana	Sweet Acacia
Lysiloma bahamensis	Wild Tamarind
Piscidia piscipula	Jamaica Dogwood
Pithecellobium unguis-cati	Cat Claw
FAGACEAE (OAK FAMILY)	
Quercus chapmani	Chapman Oak
Quercus incana	Bluejack Oak
Quercus laevis	Turkey Oak
Quercus laurifolia	Laurel Oak
Quercus myrtifolia	Myrtle Oak
Quercus nigra	Water Oak
Quercus virginiana	Live Oak
Quercus virginiana geminata	Sand Live Oak

HAMAMELIDACEAE (WITCH-HAZEL FAMILY)	
Liquidambar styraciflua	Sweet Gum
JUGLANDACEAE (WALNUT AND HICKORY FAMILY)	
Carya aquatica	Water Hickory
Carya glabra	Pignut Hickory
LAURACEAE (LAUREL FAMILY)	
Persea borbonia	Red Bay
Persea palustris	Swamp Bay
MAGNOLIACEAE (MAGNOLIA FAMILY)	
Magnolia grandiflora	Southern Magnolia
Magnolia virginiana	Sweetbay
MELIACEAE FAMILY (MAHOGANY FAMILY)	
Swietenia mahogoni	West Indian Mahogany
MORACEAE (MULBERRY FAMILY)	
Ficus aurea	Strangler Fig
Ficus citrifolia	Short-leaf Fig
Morus rubra	Red Mulberry
MYRTACEAE (MYRTLE FAMILY)	
Eugenia axillaris	White Snapper
Eugenia confusa	Ironwood
Eugenia rhombea	Red Stopper
Eugenia myrtoides	Spanish Stopper
Myrcianthes fragans	Simpson Stopper
NYSSACEAE (SOUR GUM FAMILY)	
Nyssa sylvatica	Black Gum/ Black Tupelo
OLACACEAE (XIMENIA FAMILY)	
Ximenia americana	Tallowood
OLEACEAE (OLIVE FAMILY)	
Forestiera segregata	Florida Privet
Fraxinus caroliniana	Pop Ash
PINACEAE (PINE FAMILY)	
Pinus elliottii var. densa	South Florida Slash Pine
Pinus palustris	Long-leaf Pine
PLATANACEAE (SYCAMORE FAMILY)	
Platanus occidentalis	Sycamore
POLYGONACEAE (BUCKWHEAT FAMILY)	
Coccoloba diversifolia	Pigeon Plum
Coccoloba uvifera	Sea Grape
RHIZOPHORACEAE (RED MANGROVE FAMILY)	
Rhizophora mangle	Red Mangrove
ROSACEAE (ROSE FAMILY)	
Prunus caroliniana	Cherry Laurel
RUTACEAE (RUE FAMILY)	
Zanthoxylum clavaherculis	Hercules Club
SALICACEAE (WILLOW FAMILY)	
Salix caroliniana	Coastal-Plain Willow
SAPOTACEAE (SAPODILLA FAMILY)	
Bumelia celastrina	Buckthorn/ Saffon Plum
Bumelia tenax	Buckthorn/ Tough Bumelia
Chrysophyllum oliviforme	Satinleaf
Mastichodendron foetidissimum	Mastic
SIMAROUBACEAE (QUASSIA FAMILY)	
Simarouba glauca	Paradise Tree
TAXODIACEAE (BALD CYPRESS FAMILY)	
Taxodium ascendens	Pond Cypress
Taxodium distichum	Bald Cypress
THEACEAE (CAMELIA FAMILY)	
Gordonia lasianthus	Loblolly Bay
THEOPHRASTACEAE (JOEWOOD FAMILY)	
Jacquinia keyensis	Joewood
ULMACEAE (ELM FAMILY)	
Celtis laevigata	Hackberry
Ulmus americana	American Elm

Sec. 14-381. Unlawful injury of trees.

It shall be a violation of this article for any person to remove, injure, disfigure, or destroy a protected tree in preparation for, in connection with, or in anticipation of development of land, except in accordance with the provisions of this article.

Sec. 14-382. Removal of protected trees.

(a) ***Permit required.*** Any protected tree, as defined and protected by this article, may be lawfully removed only after a permit therefor has been secured from the director. Failure to comply with the requirements of a tree removal permit shall be a violation of this article.

(b) ***Relocation to public property.*** Where a protected tree is to be removed under the provisions of this article, the town may, with the owner's permission, relocate the tree (not being relocated within the property) at the town's expense to publicly owned property for replanting, either for permanent utilization at a new location or for future use at another location. If the town does not elect to relocate any such tree, it may give the county or any city within the county the ability to acquire such tree at its expense for relocation. The relocation shall be accomplished within 15 working days of the issuance of a permit, unless it is necessary to root prune the tree to ensure its survival, in which case the relocation shall be accomplished within 30 working days of the issuance of a permit or on another suitable schedule as agreed to by all parties.

(c) ***Subdivided lots.*** For individual lots that are vacant or have a building that is being replaced, tree permits will be incorporated into the building permit for the site. For clearing prior to building permit issuance, a separate tree removal permit application must be submitted. Review of the proposed removal will follow the criteria listed in § 14-412(d), and will also assess the existing understory or subcanopy plants and protected species for retention or relocation within the site. However, no permit is required for the removal of up to three protected trees during any one-year period on a lot that is being used lawfully as a single-family residence or mobile home.

Sec. 14-383. Tree protection during development of land.

(a) Prior to the land clearing stage of development, the owner or developer shall clearly mark all protected trees for which a tree removal permit has not been issued and shall erect protective barriers for the protection of the trees according to the following:

(1) Around an area at or greater than a six-foot radius of all species of mangroves and protected cabbage palms;

(2) Around an area at or greater than the full dripline of all protected native pines; and

(3) Around an area at or greater than two-thirds of the dripline of all other protected species.

(b) No person shall attach any sign, notice or other object to any protected tree or fasten any wires, cables, nails, or screws to any protected tree in any manner that could prove harmful to the protected tree, except as necessary in conjunction with activities in the public interest.

(c) During the construction stage of development, the owner or developer shall not cause or permit the cleaning of equipment or material within the outside perimeter of the crown (dripline) or on the nearby ground of any protected tree or group of trees which is to be preserved. Within the outside perimeter of the crown (dripline) of any protected tree or on nearby ground, the owner or developer shall not cause or permit storage of building material and/or equipment, or disposal of waste material such as paints, oil, solvents, asphalt, concrete, mortar, or any other material harmful to the life of the tree.

(d) No person shall permit any unnecessary fire or burning within 30 feet of the dripline of a protected tree.

(e) Any landscaping activities within the protective barrier area shall be accomplished with hand labor.

(f) Prior to the director issuing a certificate of occupancy or compliance for any development, building, or structure, all protected trees designated to be preserved that were destroyed during construction shall be replaced by trees of equivalent diameter at breast height tree caliper and of the same species as specified by the director, before occupancy or use, unless approval for their removal has been granted under permit.

(g) The director may conduct periodic inspections of the site during land clearance and construction.

(h) If, in the opinion of the director, development activities will so severely stress slash pines or any other protected tree such that they are made susceptible to insect attack, preventative spraying of these trees may be required.

Sec. 14-384. Restoration standards.

(a) If a violation of this article has occurred and upon agreement of the director and the violator, or, if they cannot agree, then upon conviction by the court or order of the hearing examiner, a restoration plan shall be ordered in accordance with the following standards:

(1) The restoration plan shall include the following minimum planting standards:
   a. The plan shall include a planting plan for all protected trees. Replacement stock shall be computed on a three for one basis according to the total number of unlawfully removed trees. The phrase "three for one" in this section refers to the requirement of replacing an illegally removed tree with three live trees according to the provisions of this article. Replacement trees shall be nursery grown, containerized, and no less than six feet in height. It shall be within the discretion of the director to allow a deviation from the ratio specified in this subsection. When such deviation is sought, the total of heights and calipers shall equal or exceed that specified in the standards set out in this subsection. An example of this might be one in which trees four feet in height might be planted in a ratio of five replacement trees to one illegally removed tree. Justification for such a deviation shall be provided to the director.
   b. The plan shall include a planting plan for understory vegetation. Understory vegetation shall be restored to the area from which protected trees were unlawfully removed or mutilated. The plant selection shall be based on that characteristic of the Florida Land Use, Cover and Classification System (FLUCCS) Code. Shrubs, ground cover and grasses shall be restored as delineated in the Florida Land Use, Cover and Classification System Code. Up to seven species shall be utilized with relative proportions characteristic of those in the Florida Land Use, Cover and Classification System Code. The exact number and type of species required shall also be based upon the existing indigenous vegetation on adjacent property. Replacement stock shall be no less than one-gallon-sized nursery-grown containerized stock planted at no less than three feet on center in the area from which protected trees were unlawfully removed or mutilated. This area shall be defined by the dripline of the trees. The number of shrubs shall not exceed, but may be less than, 25 shrubs per tree unlawfully removed or mutilated. The understory of the restored site shall be protected for a period of no less than ten years, unless its removal is a provision of a development order which has been approved after the restoration of the site.
   c. If the unlawful removal or mutilation of trees has caused any change in hydrology or surface water flows, then the hydrology or surface water flows shall be restored to pre-violation condition.

(2) Massing of replacement stock shall be subject to agreement of the parties or, if appropriate, then by approval of the court or the hearing examiner, as long as the minimum number of trees and/or seedlings are provided. Replacement stock, with the exception of palms, shall be Florida No. 1 or better grade. Replacement stock shall have a guaranteed 80 percent survivability for a period of no less than five years. A maintenance provision of no less than five years must be provided in the restoration plan to control invasion of exotic vegetation. Replacement stock shall not be located on any property line, or in any utility easement that prohibits such plantings. The director may at his/her discretion allow the replacement stock to be planted off-site where approved development displaces areas to be restored. In these situations, off-site plantings shall be on lands under the control of a public agency. The off-site location is subject to the approval of the director.

(3) In the event of impending development on property wherein protected trees were unlawfully removed, the restoration plan shall indicate the location of the replacement stock consistent with any approved plans for subsequent development. For the purposes of this article, impending development shall mean that a developer has made application

for a development order or applied for a building permit.

(4) If identification of the species of trees is impossible for any reason on property wherein protected trees were unlawfully removed, then a presumption is raised that the trees illegally removed were of a similar species and mix as those found on adjacent properties.

(5) A monitoring report shall be submitted to the director on an annual basis for five years describing the conditions of the restored site. The monitoring report shall be submitted on or before each anniversary date of the effective date of the restoration plan. Mortality estimates per species planted, estimated causes for mortality, growth of the vegetation, and other factors which would indicate the functional health of the restored systems shall be included in the monitoring report. Failure to submit the report in a timely manner shall constitute a violation of this article. When mitigation is required pursuant to this article, monitoring reports are necessary to ensure that the mitigation efforts have been successful. In order to verify the success of the mitigation efforts and the accuracy of the monitoring reports, periodic inspections are necessary. In order that the town be compensated by the violator for the costs of these periodic inspections of the restored site, a schedule of inspection fees may be established by the town; if no such schedule exists, inspection fees shall be those charged for similar services by Lee County.

(b) If a violation of § 14-384 occurs, then the restoration provisions contained within § 14-384 shall govern and supersede any other restoration provisions contained within this article.

Secs. 14-385--14-410. Reserved.

Sec. 14-411. Permit required.

No person, organization, society, association, corporation, or any agent or representative thereof, shall deliberately cut down, destroy, remove, relocate, defoliate through the use of chemicals or other methods, or otherwise damage any tree that is protected under this article without first obtaining a permit as provided in this article.

Sec. 14-412. Issuance of permit.

(a) ***Submission of application.*** Application for a permit to remove any protected tree defined in this article shall be submitted to the director , in writing, on a form provided by the director, accompanied by a written statement indicating the reasons for removal.

(b) ***Authority of director.*** The director shall have the authority to issue the permit and to inspect all work performed under any permit issued under this article.

(c) ***Required information.*** All applications to remove any protected tree defined in this article shall be on forms provided by the director. Where an application has been submitted to the director for the removal of more than five protected trees, no tree removal permit shall be issued by the director until a site plan for the lot or parcel has been reviewed and approved by the director, which shall include the following minimum information:

(1) The shape and dimensions of the lot or parcel, together with the existing and proposed locations of the structures and improvements, if any.
(2) A tree location map for the lot or parcel, in a form acceptable to the director. For the removal of three protected trees or less, an on-site examination by the director’s designee shall be made in lieu of the tree location map requirement.
(3) Any proposed grade changes that might adversely affect or endanger any protected trees on the lot or parcel, together with specifications reflecting how the trees can be safely maintained.
(4) Any proposed tree replacement plan.

(d) ***Criteria for granting.*** The director shall approve a permit for issuance for the removal of any protected tree if the director finds one or more of the following conditions is present:

(1) Trees which pose a safety hazard to pedestrian or vehicular traffic or threaten to cause disruption to public utility services.
(2) Trees which pose a safety hazard to existing buildings or structures.
(3) Trees which, if not removed, would preclude vehicular access to a lot or parcel.

(4) Diseased trees which are a hazard to people, buildings or other improvements on a lot or parcel or to other trees.
(5) Trees so weakened by age, storm, fire, or other injury as to, in the opinion of the director, jeopardize the life and limb of persons or cause a hazard to property.
(6) Trees which, if not removed, would allow a landowner no beneficial use of a lot or parcel or would place an inordinate burden on the landowner.

The director may require that a tree protected by this article be relocated on the same lot or parcel in lieu of removal. Permitting decisions of the director may be appealed through the procedure set forth in § 34-86.

(e) ***Submission of site plan when building permit not required.*** Where a building permit issuance is not required because no structures are ready to be constructed and no other development of the lot is about to occur, any person seeking to remove a tree protected under this article shall first file a site plan with the director meeting the requirements of subsection (c) of this section prior to receiving a tree removal permit from the director.

(f) ***Inspection of site.*** The director may conduct an on-site inspection to determine if any proposed tree removal conforms to the requirements of this article and what effect, if any, removal of the protected trees will have upon the natural resources of the affected area prior to the granting or denying of the application. A permit fee will be required for the removal or relocation of any tree protected under the provisions of this article and shall be paid at the time of issuance of the permit. The fees established must be paid to the director. Such fees are hereby declared to be necessary for the purpose of processing the application and making the necessary inspection for the administration and enforcement of this article.

(g) ***Approval or denial.*** Based upon the information contained in the application and after investigation of the application, the director shall approve or deny the application, and, if approved, the director is the party so designated by the town to issue the permit for a period not to exceed one year and to collect the permit fee.

(h) ***Conditions.*** The director may attach conditions to the permit relating to the method of identifying, designating, and protecting those trees which are not to be removed in accordance with subsection (g) of this section. A violation of these conditions shall automatically invalidate the permit. Special conditions which may be attached to the permit may include a requirement for successful replacement of trees permitted to be removed with trees of the same size, compatible species and same number.

Secs. 14-413--14-450. Reserved.

ARTICLE VI. MANGROVE ENFORCEMENT [5]

Sec. 14-451. Purpose and intent.

The purpose of this article is to establish enforcement procedures and restoration standards for violations of the state department of environmental protection mangrove protection rules, to supplement and enhance department of environmental protection enforcement mechanisms. The intent of this article is to discourage the illegal alteration of mangrove trees by improving enforcement of department of environmental protection mangrove protection regulations and to ensure that adequate restoration is provided. It is not the intent of this article to diminish any mangrove protection requirements set forth in ch. 26, article II and articles IV and V of this chapter.

Sec. 14-452. Definitions.

(a) 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:

Development means any improvement to land including but not limited to building construction; road and driveway construction or widening; utility installation; dock and shoreline activities; and the installation of swimming pools, irrigation systems, fences, or other accessory structures.

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[5] ***Cross reference(s)***--*Marine facilities and structures, ch. 26.*

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

Invasive exotic vegetation means Australian pine (Casuarina spp.), Brazilian pepper (Schinus terebinthifolius), and paper or punk tree (Melaleuca quinquenervia).

Mangrove shall have the same meaning as provided by the *Florida Administrative Code*.

Mangrove alteration shall have the same meaning as provided by the *Florida Administrative Code*.

(b) Unless specifically defined in this article, the words or phrases used in this article and not defined in this section shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

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

Sec. 14-453. Enforcement.

(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 article.

(b) When imposing a sentence or penalty, the court, hearing examiner, or any other appropriate body may, in mitigation, consider the successful replacement of mangroves illegally removed, and the restoration of the subject area when deemed by the court, the hearing examiner, or any other appropriate body that the action taken by the violator has eliminated or significantly decreased the ability of the mangrove system to recover or perform those functions for which it is being protected.

(c) In any enforcement action under this article, each mangrove, so altered, will constitute a separate violation.

Sec. 14-454. Restoration standards.

(a) Upon agreement of the director and the violator, or if they cannot agree, then, upon conviction by the court or order of the hearing examiner, a restoration plan shall be ordered pursuant to the standards contained in subsection (b) of this section. Such a restoration plan shall set forth replacement of the same species or any species approved by consent of the before-mentioned parties, or, if appropriate, in accordance with the direction of the court or hearing examiner.

(b) The restoration plan shall include the following minimum planting standards:

(1) For each mangrove altered in violation of this article, three replacement mangroves shall be planted. If the number of altered mangroves cannot be determined, then the required number of replacement stock shall be computed according to the total area wherein all mangroves were unlawfully altered. The replacement stock shall be container grown mangroves no less than one year old and 24 inches in height. Replacement mangroves shall be planted at a minimum density of three feet on center. Higher density plantings may be required at the discretion of the director based upon density and diameter of the mangroves on the site prior to the violation. If the density of mangroves cannot be determined where the violation occurred, then an assumption shall be made that the density was the same as on adjacent properties. It shall be within the discretion of the director to allow a deviation from the above specified ratio. When such deviation is sought, the total of heights and diameter shall equal or exceed that specified in the above standards.
(2) Mangrove alteration violations due to filling, excavation, drainage, and/or clearing shall be restored to natural ground elevation and soil conditions prior to commencement of replanting.
(3) Replacement stock shall not be located on any property line, or in any utility easement that prohibits such plantings.
(4) In the event that the species of mangrove cannot be identified on property wherein mangroves were altered in violation of this article, then a presumption shall be made that the mangroves illegally altered were of a similar species and distribution as those found on adjacent properties.
(5) Replacement plantings shall have a minimum of 80 percent survival at the end of five years, however, success will be evaluated on an annual basis.
(6) The restoration plan shall include a maintenance provision of no less than five

years for the control of invasive exotic vegetation.

(7) Within 90 days of completion of the restoration, a written report shall be submitted to the county. This report shall include the date of completion, copies of the nursery receipts, a drawing showing the locations of the plantings, and color photographs of the planting areas from fixed reference points.

(c) Annual monitoring and maintenance of the restored area shall include the following:

(1) Removal of all exotic and nuisance vegetation in the area without disturbing the existing wetland vegetation.

(2) Replacement of dead mangroves that were planted in order to assure at least 90 percent coverage at the end of the five-year period. Replacement mangroves shall be nursery grown and of the same species and at least the same height as those originally planted.

(3) Submittal of a monitoring report to the director on an annual basis for five years following the completion of the restoration describing the conditions of the mitigated site. The monitoring report shall include mortality estimates, causes for mortality (if known), growth, invasive, exotic vegetation control measures taken, and any other factors which would indicate the functional health of the planted mangroves. Failure to submit the report in a timely manner shall constitute a violation of this article.

Sec. 14-455. Permit required.

No person, or any agent or representative thereof, directly or indirectly, shall alter any mangrove tree located in the incorporated area, without first obtaining a permit, where applicable, from the state department of environmental protection in accordance with the requirements of ch. 17-321, Florida Administrative Code.

Sec. 14-456. Conflicting provisions.

Whenever the requirements or provisions of this article are in conflict with the requirements or provisions of any other lawfully adopted ordinance, the most restrictive requirements shall apply.

CHAPTERS 15–21
RESERVED

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 22
HISTORIC PRESERVATION[1]

ARTICLE I. IN GENERAL

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

ARTICLE III. DESIGNATION OF HISTORIC RESOURCES AND DISTRICTS

ARTICLE IV. MAINTENANCE AND REPAIR

[1] ***Cross reference(s)--****Buildings codes and floodplain regulations, ch. 6; zoning, ch. 34.*

ARTICLE I.
IN GENERAL

Sec. 22-1. Purpose.

The purpose of this chapter is to identify, evaluate, preserve, and protect historical and archaeological sites and districts, and to promote the cultural, health, moral, economic, educational, aesthetic, and general welfare of the public by:

(1) Establishing a historic preservation board with the power and duty to review historic sites, areas, structures, and buildings for possible designation as historic resources.
(2) Empowering the historic preservation board to determine the historical significance of a designated historic resource.
(3) Protecting designated historic resources by requiring the issuance of certificates of appropriateness and certificates to dig before allowing alterations to those resources.
(4) Encouraging historic preservation by creating programs of technical assistance and financial incentives for preservation practices.
(5) Stabilizing and improving property values through the revitalization of older residential and commercial neighborhoods.
(6) Enhancing the town's attraction to visitors and the ensuing positive impact on the economy as a result of historic preservation activities.
(7) Creating and promoting cultural and educational programs aimed at fostering a better understanding of the community's heritage.
(8) Promoting the sensitive use of historic and archaeological sites, resources, and districts for the education, pleasure, and welfare of the people of the town and county.
(9) Implementing the historic preservation element of the Fort Myers Beach Comprehensive Plan.

Sec. 22-2. Applicability.

(a) This chapter shall govern and be applicable to all property located in the incorporated area of the town.

(b) Nothing contained in this chapter shall be deemed to supersede or conflict with applicable building and zoning codes except as specifically provided in this chapter.

Sec. 22-3. Definitions.

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

Archaeological site means an individual historic resource recognized for its prehistoric or historic artifacts and features.

Archaeologist means a person who is qualified under the professional standards of the Florida Archaeological Council or the Society of Professional Archaeologists to conduct archaeological surveys, assessments, or excavations, or is recognized as qualified to perform those tasks by the county.

Area of archaeological sensitivity means an area identified in the survey entitled "An Archaeological Site Inventory and Zone Management Plan For Lee County, Florida" (Piper Archaeological Research, Inc., 1987), as known or being likely to yield information on the history and prehistory of the town based on prehistoric settlement patterns and existing topographical features. Areas of archaeological sensitivity are divided into the following categories:

(1) *Sensitivity Level 1:* Those areas containing known archaeological sites that are considered to be significant or potentially significant historic resources. These areas include sites listed on the National Register of Historic Places and those considered eligible or potentially eligible for listing on the National Register of Historic Places or local historic resource designation.
(2) *Sensitivity Level 2:* Those areas containing known archaeological sites that have not been assessed for significance but are likely to conform to the criteria for local designation, or areas where there is a high likelihood that unrecorded sites of potential significance are present.

Building means any structure, either temporary or permanent, having a roof intended to be impervious to weather, and used or built for the

shelter or enclosure of persons, animals, or property of any kind.

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

Certificate of appropriateness means a written authorization by the director or the historic preservation board to the owners of a designated historic resource or any building, structure, or site within a designated historic district, allowing a proposed alteration, relocation, or the demolition of a building, structure, or site. Certificates of appropriateness are divided into the following two classes:

(1) *Regular certificate of appropriateness* means a certificate of appropriateness issued by the director allowing minor activities which require the issuance of a building permit but which will result in little or no change in appearance.
(2) *Special certificate of appropriateness* means a certificate of appropriateness issued directly by the historic preservation board and required for any proposed work that will result in alteration, demolition, relocation, reconstruction, new construction, or excavation, but which does not qualify for a regular certificate of appropriateness.

Certificate to dig means a certificate issued by the director or the historic preservation board authorizing certain clearing, digging, archaeological investigation, or archaeological development projects that may involve the exploration of established or suspected archaeological sites in areas of archaeological sensitivity level 1 or 2.

Contributing property means any building, structure, or site which contributes to the overall historic significance of a designated historic district and was present during the period of historic significance and possesses historic integrity reflecting the character of that time or is capable of yielding important information about the historically significant period, or which independently meets the criteria for designation as a historic resource.

Demolition means the complete removal of a building or structure, or portions thereof, from a site.

Demolition by neglect means the willful abandonment of a building or structure by the owner resulting in such a state of deterioration that its self-destruction is inevitable or where demolition of the building or structure to remove a health and safety hazard is a likely result.

Designated means that the town has established the historical, cultural, architectural, aesthetic, or archaeological significance of a specific historic resource or district in accordance with §§ 22-201–22-204 of this chapter.

Designation report means a written document indicating the basis for the findings of the historic preservation board concerning the proposed designation of a historic resource or district pursuant to this chapter.

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

Exterior means all outside surfaces of a building or structure visible from a public right-of-way or the street easement of the building or structure.

Guidelines mean specific criteria set out in a designation report for a historic district that, if adopted by the historic preservation board, will be used to evaluate alterations, demolitions, relocations, excavations, and new construction within a historic district.

Historic district means a geographically definable area designated pursuant to this chapter possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A historic district may also be comprised of individual elements separated geographically but linked by association or history. A historic district may contain both contributing and noncontributing properties.

Historic preservation board or ***board*** means the local planning agency, a board of citizens appointed by the town council in accordance with ch. 34, article II, division 3 of this code, that will administer the provisions of this chapter in addition to its other duties.

Historic resource means any prehistoric or historic district, site, building, structure, object, or other real or personal property of historical, architectural or archaeological value. Historic resources may also include but are not limited to monuments, memorials, Indian habitations, ceremonial sites, abandoned settlements, sunken or abandoned ships, engineering works, or other objects with intrinsic historical or archaeological value, or any part thereof, relating to the history, government, or culture of the town, the county, the state or the United States. Significant historic resources may be "designated" by the town in accordance with §§ 22-201–22-204 of this chapter.

Historic resource database means the compilation of data gathered on historical and archaeological sites in the town, based on the findings of the surveys entitled "Historical and Architectural Survey, Lee County" (Florida Preservation Services 1986), "Historical Report and Survey Supplement for Lee County, Florida" (Janus Research 1992, and "An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida" (Piper Archaeological Research 1987), and any subsequent historic or archaeological survey.

National Register of Historic Places means a federal listing maintained by the U.S. Department of the Interior of buildings, sites, structures, and districts that have attained a quality of significance as determined by the Historic Preservation Act of 1966 as amended, 16 USC 470, as such act may be amended, renumbered, or replaced, and its implementing regulation, 36 CFR 60, "National Register of Historic Places," as such regulations may be amended, renumbered, or replaced.

Noncontributing property means any building, structure or site which does not contribute to the overall historic significance of a designated historic district due to alterations, disturbances, or other changes and therefore no longer possesses historic integrity, or was not present during the period of historic significance or is incapable of yielding important information about that period.

Ordinary maintenance and repairs means work done to prevent deterioration, decay, or damage to a building or structure, or any part thereof, by restoring the building or structure as nearly as practicable to its condition prior to such deterioration, decay, or damage.

Owner means those individuals, partnerships, corporations, or public agencies holding fee simple title to real property. The term "owner" does not include individuals, partnerships, corporations, or public agencies holding easements or less than a fee simple interest (including leaseholds) in real property.

Structure means that which is built or constructed. The term "structure" shall be construed as if followed by the words "or part thereof."

Undue economic hardship means an onerous and excessive financial burden that would be placed upon a property owner by the failure to issue a special certificate of appropriateness for demolition, thereby amounting to the taking of the owner's property without just compensation.

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

Sec. 22-4. Penalty.

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 chapter.

Secs. 22-5--22-40. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

DIVISION 1. GENERALLY

Sec. 22-41. Appeals.

(a) Any owner of a building, structure, or site affected by the operation of this chapter may appeal a decision of the historic preservation board by filing a written notice of appeal within 15 days of the date the written decision of the historic preservation board was rendered. The notice of appeal shall state the decision being appealed, the

grounds for the appeal, and a summary of the relief sought.

(b) Appeals shall be pursued using the procedure set forth in § 34-86 pertaining to appeals from administrative matters, except that the local planning agency shall not be required to hold a second public hearing to render a separate opinion from the decision it made while sitting as the historic preservation board.

Secs. 22-42--22-70. Reserved.

DIVISION 2. HISTORIC PRESERVATION BOARD

Sec. 22-71. General authority.

The local planning agency, as established through ch. 34, article II, division 3 of this code, shall serve as the historic preservation board for the Town of Fort Myers Beach. The historic preservation board is hereby vested with the power, authority, and jurisdiction to designate, regulate, and administer historical, cultural, archaeological, and architectural resources in the town, as prescribed by this chapter.

Sec. 22-72. Reserved.

Sec. 22-73. Reserved.

Sec. 22-74. Powers and duties.

The historic preservation board shall have the following powers and duties:

(1) To propose rules and procedures to implement the provisions of this chapter to the town council.
(2) To maintain and update the findings of the historical and archaeological surveys and validate those findings.
(3) To evaluate the significance and eligibility of historic resources for designation pursuant to this chapter.
(4) To designate eligible historic resources pursuant to this chapter.
(5) To nominate historic resources to the National Register of Historic Places.
(6) To approve, deny, or approve with conditions applications for special certificates of appropriateness and certificates to dig applicable to historic resources designated pursuant to this chapter.
(7) To issue certificates, place historical markers, and administer other programs aimed at the proper recognition of designated historic resources.
(8) To advise the town council on all matters related to historic preservation policy, including use, administration, and maintenance of town-owned designated sites and districts.
(9) To recommend zoning and building code amendments to the town council to assist in the preservation of designated historic resources or districts.
(10) To review and make recommendations to the town council on proposed amendments to the comprehensive plan or this code that may affect designated historic resources and districts or buildings, structures, districts, or sites eligible for designation.
(11) To propose and recommend to the town council financial and technical incentive programs to further the objectives of historic preservation.
(12) To increase the awareness of historic preservation and its community benefits by promoting public education programs.
(13) To record and maintain records of the actions and decisions of the historic preservation board.
(14) To apply for, in the name of the town only, grant assistance from state, federal or private sources for the purpose of furthering the objectives of historic preservation.
(15) To perform any other function or duty assigned to it by the town council.

Secs. 22-75--22-100. Reserved.

DIVISION 3. CERTIFICATE OF APPROPRIATENESS

Sec. 22-101. Required.

(a) No building, moving or demolition permit shall be issued for a designated historic resource, or a building, structure, or site which is part of a designated historic or archaeological district, until a certificate of appropriateness has been issued.

(b) The criteria for issuance of a certificate of appropriateness (regular or special) shall be:

(1) *For designated historic resources and contributing properties in a historic district:*
   a. The U.S. Secretary of the Interior's *Standards for Rehabilitation*, 36 CFR 67.7 (1990), as such standards may be amended, renumbered, or replaced, which are hereby adopted by reference as though set forth fully in this article. Guidance in interpreting the *Standards for Rehabilitation* may be found in the rehabilitation chapter of *The Secretary of the Interior's Standards for the Treatment of Historic Properties, With Guidelines for Preserving, Rehabilitating, Restoring & Reconstructing Historic Buildings*, published by the Department of the Interior's National Park Service in 1995; and
   b. The specific guidelines, if any, set out in the resolution designating the historic district where the property is located.

(2) *For noncontributing properties in a historic district:* The specific guidelines, if any, set out for noncontributing properties in the resolution designating the historic district where the property is located.

Sec. 22-102. Regular certificate of appropriateness.

(a) A regular certificate of appropriateness shall be required for work requiring a building permit and classified as ordinary maintenance and repair by this chapter, or for any work that will result, to the satisfaction of the director, in the close resemblance in appearance of the building, architectural feature, or landscape feature to its appearance when it was built or was likely to have been built, or to its appearance as it presently exists so long as the present appearance is appropriate to the style and materials.

(b) The director shall, within five working days from the date a complete application has been filed, approve, deny, or approve with conditions an application for a regular certificate of appropriateness presented by the owner of a designated historic resource or a property within a designated historic district. The findings of the director shall be mailed by certified mail, return receipt requested, to the applicant within two working days of the decision, accompanied by a statement explaining the decision. The applicant shall have an opportunity to appeal the director's decision by applying for a special certificate of appropriateness within 30 calendar days of the date the decision is issued.

Sec. 22-103. Special certificate of appropriateness.

(a) ***Required.***

(1) A special certificate of appropriateness shall be issued by the historic preservation board prior to initiation of any work involving alteration, demolition, relocation, reconstruction, excavation, or new construction which will result in a change to the original appearance of a designated historic resource or a contributing property within a designated historic district.
(2) A special certificate of appropriateness is also required prior to any new construction, reconstruction, or alteration of a noncontributing property within a designated historic district, except where the director has issued a regular certificate of appropriateness for minor activities that will result in little or no change in appearance.
(3) A special certificate of appropriateness may also be issued to reverse or modify the director's decision regarding an application for a regular certificate of appropriateness or a conditional certificate to dig.

(b) ***Application.*** An applicant for a special certificate of appropriateness shall submit an application to the director accompanied by full plans and specifications, a site plan, and, in the case of sites involving buildings or structures, samples of materials as deemed appropriate by the historic preservation board to fully describe the proposed appearance, color, texture, materials, or design of the building or structure and any outbuilding, wall, courtyard, fence, landscape feature, paving, signage, or exterior lighting. The applicant shall provide adequate information to enable the historic preservation board to visualize the effect of the proposed action on the historic resource and on adjacent buildings and streetscapes within a historic district.

(c) ***Public hearing.*** The historic preservation board shall hold a public hearing upon an application for a special certificate of appropriateness affecting designated historic resources or districts. Notice of the public hearing shall be given to the property owners by certified mail, return receipt requested, and to other interested parties by an advertisement in a newspaper of general circulation at least five calendar days but no sooner than 20 calendar days prior to the date of hearing.

(d) ***Action of historic preservation board.*** The historic preservation board shall meet and act upon an application for a special certificate of appropriateness on or within 70 calendar days from the date the application and materials adequately describing the proposed action are received. The historic preservation board shall approve, deny, or approve the special certificate of appropriateness with conditions, or suspend action on the application for a period not to exceed 35 calendar days in order to seek technical advice from outside sources or to meet further with the applicant to revise or modify the application. Failure of the historic preservation board to act upon an application on or within 70 calendar days (if no additional information is required) or 105 calendar days (if additional information is required by the historic preservation board) from the date the application was received shall result in the immediate issuance of the special certificate of appropriateness applied for, without further action by the historic preservation board.

(e) ***Notice of decision.*** All decisions of the historic preservation board shall be in writing and shall include findings of fact. Evidence of approval of the application shall be by the special certificate of appropriateness issued by the historic preservation board or the director on the boards's behalf. Notice of a decision shall be given to the applicant and to the building official, the director and any other appropriate public agency, as determined by the historic preservation board. When an application is denied, the notice of the historic preservation board shall provide an adequate written explanation of its decision to deny the application. The director shall keep a record of the historic preservation board's actions under this chapter.

Sec. 22-104. Demolition.

(a) Demolition of a designated historic resource or a contributing property within a designated historic district may only occur pursuant to an order of a governmental body or board or an order of a court of competent jurisdiction and pursuant to approval of an application by the owner for a special certificate of appropriateness for demolition.

(b) Governmental agencies having the authority to demolish unsafe structures shall receive notice of the designation of historic resources and districts pursuant to article III of this chapter. The historic preservation board shall be deemed an interested party and shall be entitled to receive notice of any public hearings conducted by such agencies regarding demolition of any designated historic resource or contributing property to a designated historic district. The historic preservation board may make recommendations and suggestions to the governmental agency and the owner relative to the feasibility of and the public interest in preserving the designated resource.

(c) No permit for voluntary demolition of a designated historic resource or contributing site within a historic district shall be issued to the owner thereof until an application for a special certificate of appropriateness has been submitted to the historic preservation board and approved pursuant to the procedures in this article. The historic preservation board shall approve, deny, or approve with conditions the application for a special certificate of appropriateness for demolition. Refusal by the historic preservation board to grant a special certificate of appropriateness for demolition shall be evidenced by a written order detailing the public interest which is sought to be preserved. The historic preservation board may grant a special certificate of appropriateness for demolition which may provide for a delayed effective date of six months to allow the historic preservation board to seek possible alternatives to demolition. During the demolition delay period the historic preservation board may take such steps as it deems necessary to preserve the structure concerned, in accordance with the purpose of this chapter. Such steps may include but shall not be limited to consultation with civic groups, public agencies, and interested citizens, recommendations for acquisition of property by public or private bodies or agencies,

and exploration of the possibility of moving the building or other feature.

(d) The historic preservation board shall consider the following criteria in evaluating applications for certificates of appropriateness for demolition of designated historic resources or contributing properties within a designated historic district:

(1) Is the building or structure of such interest or quality that it would reasonably meet national, state, or local criteria for additional designation as a historic or architectural landmark?
(2) Is the building or structure of such design, craftsmanship, or material that it could be reproduced only with great difficulty or expense?
(3) Is the building or structure one of the last remaining examples of its kind in the neighborhood, the town, the county, or the region?
(4) Does the building or structure contribute significantly to the historic character of a designated historic district?
(5) Would retention of the building or structure promote the general welfare of the town by providing an opportunity for the study of local history or prehistory, architecture, and design, or by developing an understanding of the importance and value of a particular culture and heritage?
(6) Are there definite plans for reuse of the property if the proposed demolition is carried out, and what will be the effect of those plans on the character of the surrounding area?
(7) Has demolition of the designated building or structure been ordered by the appropriate public agency due to unsafe conditions?

(e) Unless demolition has been ordered by a court of competent jurisdiction or another governmental body, a special certificate of appropriateness for demolition of a designated building or structure shall not be issued until there are definite plans for reuse of the property and a building permit or development order for the new construction has been applied for.

(f) If an undue economic hardship is claimed by the property owner as a result of the denial of a special certificate of appropriateness for demolition, the historic preservation board shall have the power to vary or modify adherence to its original decision no later than 35 calendar days from the date the original decision is issued. Any variance or modification of a prior order shall be based upon sufficient evidence submitted by the owner and a subsequent finding by the historic preservation board that retention of the building or structure would deny the owner of all economically viable use of the property, thus creating an undue economic hardship. The owner may present the following evidence as grounds for such a finding:

(1) For all property, the owner may present:
    a. The amount paid for the property, the date of purchase, and the party from whom purchased;
    b. The assessed value of the land and improvements thereon according to the two most recent property tax assessments;
    c. The amount of real estate taxes for the previous two years;
    d. The annual debt service, if any, for the previous two years;
    e. All appraisals obtained within the previous two years by the owner or applicant in connection with the purchase, financing, or ownership of the property;
    f. Any listings of the property for sale or lease, the price asked, and offers received, if any; and
    g. Any profitable adaptive uses for the property which have been considered by the owner.
(2) In addition to the items set forth in subsection (f)(1) of this section, the owner may present, for income-producing property:
    a. The annual gross income from the property for the previous two years;
    b. Itemized operating and maintenance expenses for the previous two years; and
    c. The annual cash flow, if any, for the previous two years.

Sec. 22-105. Moving permits.

The historic preservation board shall consider the following criteria for applications for special certificates of appropriateness for the moving of all historic resources and contributing properties located within a designated historic district:

(1) The historic character and aesthetic interest the building or structure contributes to its present setting.

(2) The reasons for the proposed move.
(3) The proposed new setting and the general environment of the proposed new setting.
(4) Whether the building or structure can be moved without significant damage to its physical integrity.
(5) Whether the proposed relocation site is compatible with the historical and architectural character of the building or structure.
(6) When applicable, the effect of the move on the distinctive historical and visual character of a designated historic district.

DIVISION 4. ARCHAEOLOGICAL SITES

Sec. 22-106. Archaeological sites.

(a) ***Identification.*** The survey entitled "An Archaeological Site Inventory and Zone Management Plan for Lee County, Florida" (Piper Archaeological Research, Inc., 1987) was the basis for Figure 22-1, which shall be used:

(1) to identify areas of archaeological sensitivity levels 1 and 2, for which certificates to dig must be obtained (see § 22-106(c)); and
(2) as the initial database when considering the formal designation of areas of archaeological sensitivity level 1 as historic resources pursuant to §§ 22-201–22-204.

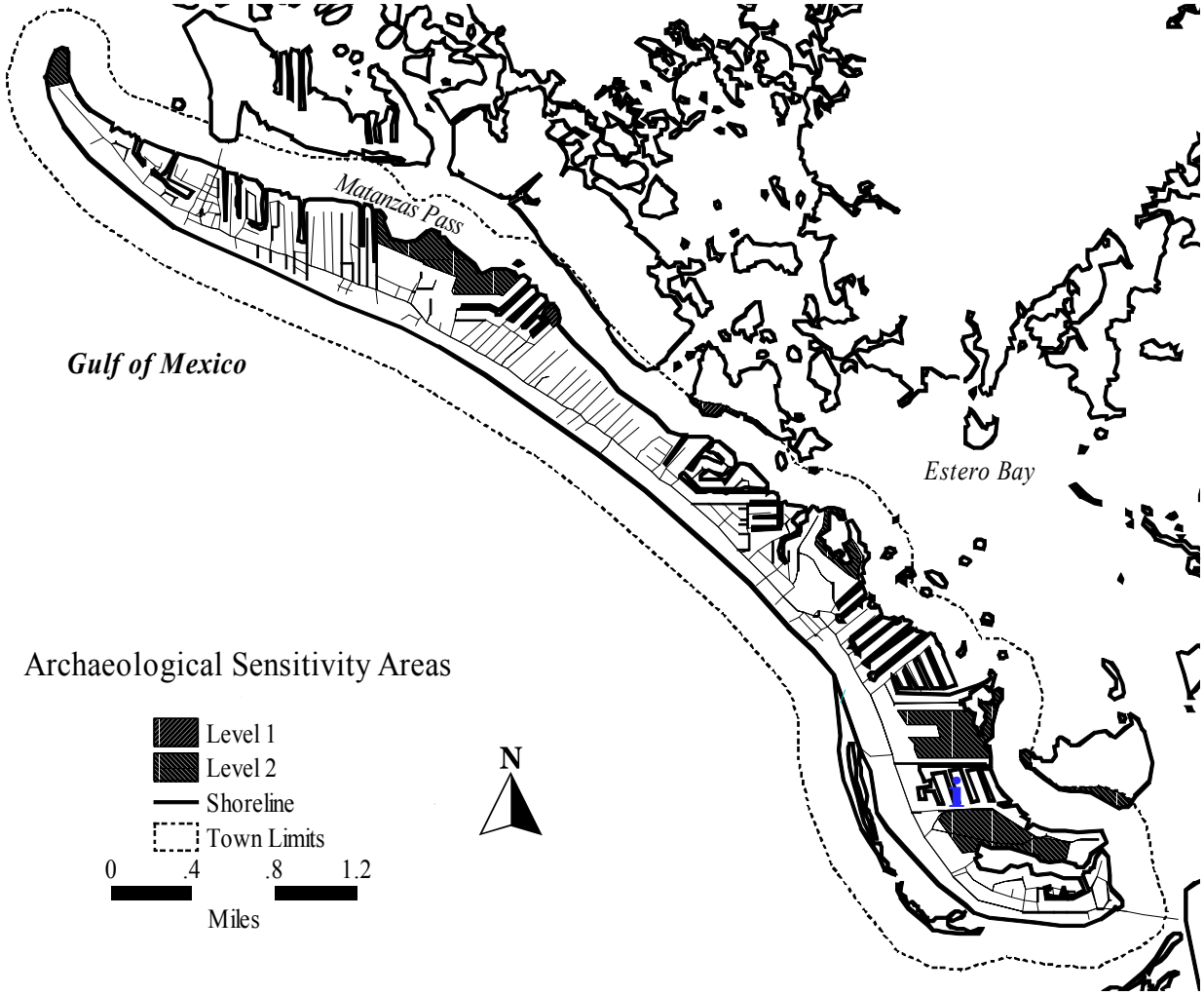


Figure 22-1 – Archaeological Sensitivity Areas, Levels 1 and 2

(b) ***Certificate of appropriateness.*** A certificate of appropriateness shall be required prior to the issuance of a development order or building permit for activity within an archaeological site that has been designated as a historic resource pursuant to §§ 22-201–22-204.

(1) An application for a certificate of appropriateness in accordance with §§ 22-101–22-105 shall be accompanied by full plans and specifications indicating areas of work that might affect the surface and subsurface of the archaeological site or sites.
(2) In reviewing the application for a special certificate of appropriateness for a designated archaeological site, the historic preservation board may also require any or all of the following:
    a. Scientific excavation and evaluation of the site by an archaeologist at the owner's expense.
    b. An archaeological survey, conducted by an archaeologist, containing an analysis of the impact of the proposed activity on the archaeological site.
    c. Proposal for mitigation measures.
    d. Protection or preservation of all or part of the designated archaeological site for green space, in exchange for incentives as provided in article III, division 2, of this chapter.

(c) ***Certificate to dig.*** A certificate to dig shall be required prior to or in conjunction with the issuance of a development order or building permit for activity within any area of archaeological sensitivity levels 1 and 2 that may involve new construction, filling, digging, removal of trees, or any other activity that may alter or reveal an interred archaeological site.

(1) If submerged or wetland areas, such as ponds, sloughs, or swamps, are also to be damaged by development or by dredge and fill activities, these shall also be assessed for their potential to contain significant archaeological sites.
(2) The purpose of a certificate to dig shall be to allow sufficient time to conduct any necessary investigations, including the location, evaluation, and protection of significant archaeological sites in areas suspected of having such archaeological sites.
(3) The director shall, within 15 calendar days of receipt of a complete application for a certificate to dig, approve the application for a certificate to dig, or approve the certificate to dig subject to specified conditions, including but not limited to a delay not to exceed 60 days to allow any necessary site excavation or additional archaeological assessment prior to commencement of the proposed construction activity. The director's decision shall be based on the application and any other guidelines which the historic preservation board may establish. If the approved certificate to dig requires archaeological excavation, the certificate shall specify a period of time during which excavation shall occur, not to exceed 60 days unless the owner agrees to an extension. The owner shall have an archaeologist conduct excavations as necessary during this period. The certificate to dig and any findings shall be mailed to the applicant by certified mail, return receipt requested, within seven calendar days of its review and approval.
(4) The applicant shall have the opportunity to appeal any conditions attached to a certificate to dig by applying for a special certificate of appropriateness within 30 calendar days of the date the conditional certificate to dig is issued. The historic preservation board shall convene no later than 50 calendar days after the date a completed application for a special certificate of appropriateness is filed. Approved certificates to dig shall contain an effective date not to exceed 60 calendar days, at which time the proposed activity may begin, unless the archaeological excavation should uncover evidence of such significance that it warrants designation of the archaeological site as a historic resource pursuant to §§ 22-201–22-204.
(5) All work performed pursuant to the issuance of a certificate to dig shall conform to the requirements of such certificate. It shall be the duty of the director to inspect work for compliance with such certificate. In the event of noncompliance, the director or the building official shall have the power to issue a stop work order and all work shall cease.

(d) ***Human burials.*** To knowingly disturb human burial remains is a third degree felony in the state, pursuant to F.S. ch. 872, pertaining to offenses concerning dead bodies and graves. The law includes prehistoric as well as historic period

interments, and aboriginal burial mounds or cemeteries as well as historic period cemeteries. Procedures for dealing with the accidental discovery of unmarked human burials are outlined in F.S. ch. 872.

(1) If unmarked human burials are suspected or known in an area under consideration for any certificate of appropriateness or certificate to dig, the area shall be surveyed by a professional archaeologist to locate such remains.
(2) Procedures for dealing with human remains shall be carried out according to F.S. ch. 872. Any located human interments should be preserved in place if at all possible. If it is necessary to excavate or otherwise move the remains, every effort shall be made to identify and contact persons who may have a direct kinship, tribal, community, or ethnic relationship with the deceased in order to arrange for their appropriate reinterment or disposition.

Secs. 22-107--22-140. Reserved.

ARTICLE III. DESIGNATION OF HISTORIC RESOURCES AND DISTRICTS

DIVISION 1. GENERALLY

Secs. 22-141--22-170. Reserved.

DIVISION 2. INCENTIVES

Sec. 22-171. Financial assistance.

All properties designated as historic resources or as a contributing property to a designated historic district shall be eligible for any financial assistance set aside for historic preservation projects by the town, the county, the state, or the federal government, provided they meet any additional requirements of those financial assistance programs.

Sec. 22-172. Nomination to National Register of Historic Places.

The historic preservation board shall encourage and assist in the nomination of eligible properties to the National Register of Historic Places in order to make available to those property owners the investment tax credits for certified rehabilitations pursuant to the Tax Reform Act of 1986 and any other programs offered through the National Register of Historic Places.

Sec. 22-173. Relief from building regulations.

Designated historic resources and any property in a designated historic district may be eligible for administrative variances or other forms of relief from applicable building codes as follows: Repairs, alterations, and additions necessary for the preservation, restoration, rehabilitation, or continued use of a building or structure may be made without conformance to the technical requirements of the Standard Building Code when the proposed work has been approved by a regular or special certificate of appropriateness and also by the building official, pursuant to the authority granted to the building official by other ordinances or statutes, provided that:

(1) The restored building will be no more hazardous based on considerations of life, fire, sanitation, and safety than it was in its original condition.
(2) Plans and specifications are sealed by a Florida registered architect or engineer, if required by the building official.
(3) The building official has required the minimum necessary corrections to be made before use and occupancy which will be in the public interest of health, safety, and welfare.

***Cross reference**–Building codes, ch. 6, article II, divisions 3 and 4; floodplain regulations, ch. 6, article IV.*

Sec. 22-174. Relief from zoning and development regulations.

The director may, by written administrative decision, approve any relief request for designated historic resources or any property in a designated historic district for matters involving setbacks, lot width, depth, area requirements, height limitations, open space requirements, parking requirements, and other similar relief from this code not related to a

change in use of the property in question.

(1) Before granting relief, the director must find that:
   a. The relief will be in harmony with the general appearance and character of the community.
   b. The relief will not be injurious to the area involved or otherwise detrimental to the public health, safety, or welfare.
   c. The proposed work is designed and arranged on the site in a manner that minimizes aural and visual impact on the adjacent properties while affording the owner a reasonable use of his land.

(2) In granting any relief, the director may prescribe any appropriate conditions necessary to protect and further the interest of the area and abutting properties, including but not limited to:
   a. Landscape materials, walls and fences as required buffering.
   b. Modifications of the orientation of any openings.
   c. Modifications of site arrangements.

   The owner of a building, structure or site affected by the operation of this chapter and the decision of the director may appeal that decision according to the provisions of ch. 34.

Cross reference(s)--*Zoning, ch. 34.*

Sec. 22-175. Variances from floodplain regulations.

Variances from the floodplain regulations may be requested pursuant to the terms of ch. 6, article IV.

Secs. 22-176--22-200. Reserved.

DIVISION 3. DESIGNATION PROCEDURE

Sec. 22-201. Initiation of designation process.

The designation process under this chapter may be initiated by a written petition from the property owner, by a majority vote of the historic preservation board, or at the request of the town council. The historic resource database shall be used initially to identify buildings, structures, and sites potentially eligible for historic designation.

(1) ***Designation proposed by owner.*** When designation is requested by the owner, a written petition for designation shall be filed, accompanied by sufficient information to warrant further investigation of the properly and to aid in the preparation of a designation report. The historic preservation board shall, based on the request and information presented, either ask the director to begin or assist in preparation of a designation report, accept and direct the filing of a designation report prepared by the owner, reject a report submitted for filing, or deny the designation petition. Upon the filing of a designation report, the historic preservation board may request the director to commence the designation and notice process.

(2) ***Designation proposed by historic preservation board or town council.*** Upon the recommendation of the director, a request by a member of the historic preservation board, or a request by the town council, the historic preservation board may ask the director to prepare or assist in preparation of a designation report. Upon completion of the designation report, the historic preservation board may, by majority vote, initiate the designation process by a motion asking the director to file the designation report and begin the notification process.

Sec. 22-202. Designation report.

Prior to the designation of any historic resource or historic district pursuant to this chapter, a designation report shall be filed with the historic preservation board. The designation report shall contain the following information:

(1) ***Individual buildings or sites.*** For individual historic or archaeological buildings, structures or sites:
   a. A physical description of the building, structure or site and its character-defining features, accompanied by photographs.
   b. A statement of the historical, cultural, architectural, archaeological, or other significance of the building, structure, or site as defined by the criteria for designation established by this chapter.
   c. A description of the existing condition of the building, structure, or site, including any potential threats or other

circumstances that may affect the integrity of the building, structure, or site.

d. A statement of rehabilitative or adaptive use proposals.
e. A location map, showing relevant zoning and land use information.
f. The director's recommendations concerning the eligibility of the building, structure, or site for designation pursuant to this chapter, and a listing of those features of the building's structure or site which require specific historic preservation treatments.

(2) ***Historic districts.*** For historic or archaeological districts:

a. A physical description of the district, accompanied by photographs of buildings, structures, or sites within the district indicating examples of contributing and noncontributing properties within the district; also, a list of all contributing properties outside the proposed boundaries of the district.
b. A description of typical architectural styles, character-defining features, and types of buildings, structures, or sites within the district.
c. An identification of all buildings, structures, and sites within the district and the proposed classification of each as contributing, contributing with modifications, or noncontributing, with an explanation of the criteria utilized for the proposed classification.
d. A statement of the historical, cultural, architectural, archaeological, or other significance of the district as defined by the criteria for designation established by this chapter.
e. A statement of recommended boundaries for the district and a justification for those boundaries, along with a map showing the recommended boundaries.
f. A statement of incentives requested, if any, and the specific guidelines which should be used in authorizing any alteration, demolition, relocation, excavation, or new construction within the boundaries of the district.

Sec. 22-203. Required notices; action by historic preservation board.

The historic preservation board shall hold timely public hearings upon every petition for designation made pursuant to this chapter. References in this chapter to calendar days shall include Saturdays, Sundays, and legal holidays. References in this chapter to working days exclude Saturdays, Sundays, and legal holidays.

(1) ***Notice to owner.*** The historic preservation board shall notify the property owners of its intent to consider a proposed designation at least 20 calendar days prior to the date of the public hearing. Notice shall be sent by certified mail, return receipt requested, to the record owners of the property as reflected by the current ad valorem tax roll. Prior to the hearing, the director shall furnish the owners with copies of the designation report and this chapter. The director shall make a reasonable effort to contact the owners after mailing the notice of intent to designate, answer the owner's questions, and address areas of concern prior to the public hearing.

(2) ***Notification of public hearing.*** For each proposed designation pursuant to this chapter, the historic preservation board shall hold a public hearing no sooner than 20 calendar days and no later than 70 calendar days from the date a designation report has been filed with the historic preservation board and notice of the intent to designate sent to the owners. Notice of the public hearing shall be published in a newspaper of general circulation at least five calendar days but no sooner than 20 calendar days prior to the date of the public hearing.

(3) ***Decision deadlines.*** Within 14 calendar days after the date of the public hearing, the historic preservation board shall render, by written resolution, its decision approving, denying, or approving with conditions a proposed designation pursuant to this chapter. The rendering of a decision by the historic preservation board shall constitute final administrative action. The historic preservation board shall notify the following parties of its actions and shall attach a copy of the resolution:

a. The owner of the affected property.
b. The building official.
c. The county clerk.

d. The county property appraiser.
e. Any other county, municipal, state, or federal agency, including agencies with demolition powers, that may be affected by the decision of the historic preservation board.

(4) ***Recording of designation.*** All resolutions designating historic resources shall be recorded in the public records of the county within 25 calendar days of the date the historic preservation board renders its decision, unless an appeal of that decision has been filed within the time limits established by this chapter.

(5) ***Suspension of activities.*** Upon the filing of a designation report, no permits may be issued authorizing building, demolition, relocation, or excavation on the subject property until final administrative action occurs or the expiration of 75 calendar days from the date the designation report is filed with the historic preservation board, whichever occurs first, unless an appeal of the decision of the historic preservation board is filed. If an appeal is filed as provided in this chapter, the suspension of activities shall continue in effect for an additional 35 calendar days from the date the historic preservation board renders its decision or until the rendering of a decision on the appeal, whichever occurs first. The property owner may waive the suspension of activities deadlines set out in this section. Waivers shall be in the form of a notarized statement to the historic preservation board for inclusion in the board's files. The historic preservation board shall notify all affected government agencies of the suspension of activities upon the filing of a designation report. The suspension of activities expires after 60 days if no public hearing is held.

Sec. 22-204. Criteria for designation.

(a) ***Significance generally.*** The historic preservation board shall have the authority to designate historic resources based upon their significance in the town's or county's history, architecture, archaeology or culture, or for their integrity of location, design, setting, materials, workmanship, or associations, and because they:

(1) Are associated with distinctive elements of the cultural, social, political, economic, scientific, religious, prehistoric, or architectural history that have contributed to the pattern of history in the community, the county, southwestern Florida, the state, or the nation;
(2) Are associated with the lives of persons significant in our past;
(3) Embody the distinctive characteristics of a type, period, style, or method of construction or are the work of a master; or possess high artistic value or represent a distinguishable entity whose components may lack individual distinction;
(4) Have yielded or are likely to yield information on history or prehistory; or
(5) Are listed or have been determined eligible for listing in the National Register of Historic Places.

(b) ***Historical or cultural significance.*** A historic resource shall be deemed to have historical or cultural significance if it is:

(1) Associated with the life or activities of a person of importance in local, state, or national history;
(2) The site of a historic event with a significant effect upon the town, county, state, or nation;
(3) Associated in a significant way with a major historic event;
(4) Exemplary of the historical, political, cultural, economic, or social trends of the community in history; or
(5) Associated in a significant way with a past or continuing institution which has contributed substantially to the life of the community.

(c) ***Architectural or aesthetic significance.*** A historic resource shall be deemed to have architectural or aesthetic significance if it fulfills one or more of the following criteria:

(1) Portrays the environment in an era of history characterized by one or more distinctive architectural styles;
(2) Embodies the characteristics of an architectural style, period, or method of construction;
(3) Is a historic or outstanding work of a prominent architect, designer, or landscape architect; or
(4) Contains elements of design, detail, material, or craftsmanship which are of outstanding quality or which represented, in its time, a significant innovation, adaptation or response

to the south Florida environment.

(d) ***Archaeological significance.*** A historic resource shall be deemed to have archaeological significance if it meets one or more of the following criteria:

(1) There is an important historical event or person associated with the site;
(2) The quality of the site or the data recoverable from the site is significant enough that it would provide unique or representative information on prehistoric or historical events;
(3) The site was the locus of discrete types of activities such as habitation, religious, burial, fortification, etc.;
(4) The site was the location of historic or prehistoric activities during a particular period of time; or
(5) The site maintains a sufficient degree of environmental integrity to provide useful archaeological data. Such integrity shall be defined as follows:
    a. The site is intact and has had little or no subsurface disturbance; or
    b. The site is slightly to moderately disturbed, but the remains have considerable potential for providing useful information.

(e) ***Not generally eligible.*** Properties not generally considered eligible for designation include cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, buildings or sites primarily commemorative in nature, reconstructed historic buildings, and properties that have achieved significance less than 50 years prior to the date the property is proposed for designation. However, such properties will qualify if they are integral parts of districts that do meet the criteria described in this section or if they fall within one or more of the following categories:

(1) A religious property deriving primary significance from architectural or artistic distinction of historical importance.
(2) A building or structure removed from its location but which is primarily significant for architectural value, or is the surviving structure most importantly associated with a historic event or person.
(3) A birthplace or grave of a historical figure of outstanding importance if there is no other appropriate site or building directly associated with his productive life.
(4) A cemetery which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events.
(5) A property primarily commemorative in nature if design, age, tradition, or symbolic value have invested it with its own historical significance.
(6) A building, structure, site, or district achieving significance less than 50 years from the date it is proposed for designation if it is of exceptional historical importance.

Sec. 22-205. Amendment or withdrawal of designation.

(a) A request to amend or withdraw the designation of a historic resource shall be made and processed in accordance with the designation procedures and criteria in effect at the time the withdrawal is requested.

(b) A withdrawal request shall also be evaluated as to the following factors:

(1) Whether any reduction or loss of historic or archaeological value was caused by the owner of the designated historic resource (as opposed to unavoidable actions of others or acts of god).
(2) Whether the owner of the designated historic resource has taken advantage of relief pursuant to this chapter that would not have been available without the historic designation.
(3) Whether the requested withdrawal would adversely affect other designated historic resources or nearby historic districts.

Secs. 22-206--22-240. Reserved.

ARTICLE IV. MAINTENANCE AND REPAIR

Sec. 22-241. Ordinary maintenance and repair.

Nothing in this chapter shall be construed to prevent or discourage the ordinary maintenance and repair of the exterior elements of any historic resource or any property within a designated historic district when such maintenance and repair do not involve a change of design, appearance (other than color), or material, and do not require a building permit.

***Cross reference**–Ordinary minor repairs allowed without permits, see building codes, §§ 6-111, 6-131, 6-151, and 6-171.*

Sec. 22-242. Correction of deficiencies generally.

When the historic preservation board determines that the exterior of a designated historic resource, or a contributing property within a designated historic district, is endangered by lack of ordinary maintenance and repair, or that other improvements in visual proximity of a designated historic resource or historic district are endangered by lack of ordinary maintenance, or are in danger of deterioration to such an extent that it detracts from the desirable character of the designated historic resource or historic district, the historic preservation board may request appropriate officials or agencies of government to require correction of such deficiencies under the authority and procedures of applicable ordinances, laws, and regulations.

Sec. 22-243. Unsafe structures.

If the building official determines that any designated historic resource or contributing property is unsafe pursuant to the provisions of this code, the building official will immediately notify the historic preservation board by submitting copies of such findings. Where appropriate and not in conflict with this code, the historic preservation board shall encourage repair of the building or structure rather than demolition. The building official will, in these instances, take into consideration any comments and recommendations made by the historic preservation board. The historic preservation board may also endeavor to negotiate with the owner and interested parties, provided such actions do not interfere with procedures established in this code.

Sec. 22-244. Emergency work.

For the purpose of remedying an emergency condition determined to be imminently dangerous to life, health, or property, nothing contained in this chapter will prevent the temporary construction, reconstruction, demolition, or other repairs to a historic structure, building, or site or a contributing or noncontributing property, structural improvement, landscape feature, or archaeological site within a designated historic district.

(1) Such temporary construction, reconstruction, or demolition must take place pursuant to permission granted by the building official, and only such work as is reasonably necessary to correct the emergency conditions may be carried out.
(2) The owner of a building or structure damaged by fire or natural calamity will be permitted to immediately stabilize the building or structure and to later rehabilitate it under the procedures required by this chapter.
(3) The owner may request a special meeting of the historic preservation board to consider an application for a certificate of appropriateness to provide for permanent repairs.

Sec. 22-245. Demolition by neglect.

If the director or the building official informs the historic preservation board that a designated historic resource or contributing property within a historic district is being demolished by neglect, as defined pursuant to this chapter, the historic preservation board shall notify the owners of record by certified mail of its preliminary findings and intent to hold a public hearing no later than 35 calendar days from the date the notice was sent to determine evidence of neglect. The owner shall have until the time of the public hearing to make necessary repairs to rectify the evidence of neglect as identified in the certified notice. Upon failure by the owner to abate the structural, health, or safety hazards identified in the initial notice within 35 calendar days, the historic preservation board shall hold a public hearing to consider recommending to the building official that the owner be issued a citation for code violation. The owner shall have the right to rebut the preliminary findings of the historic preservation board at the public hearing. If the historic preservation board finds that the building or structure is being demolished by neglect pursuant to this chapter, the historic preservation board may

recommend to the building official that the owner be issued a citation for code violations and that penalties be instituted pursuant to this chapter.

CHAPTERS 23–25
RESERVED

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 26
MARINE FACILITIES[1]

ARTICLE I. IN GENERAL

ARTICLE II. SEAWALLS, DOCKS, AND OTHER SHORELINE STRUCTURES

ARTICLE III. MARINE SANITATION

[1]***Cross reference(s)--****Coastal construction code, § 6-331 et seq.; wetlands protection, § 14-291 et seq; mangrove enforcement, § 14-451 et seq.; zoning regulations pertaining to marine facilities, § 34-1861 et seq.*

ARTICLE I.
IN GENERAL

Sec. 26-1. Enforcement and penalties.

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 chapter.

Secs. 26-2--26-40. Reserved.

ARTICLE II. SEAWALLS, DOCKS, AND OTHER SHORELINE STRUCTURES

DIVISION 1. GENERALLY

Sec. 26-41. Definitions.

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:

Access walkway means the portion of a structure that allows access to a dock or terminal platform.

Boathouse means a roofed structure constructed over or adjacent to water to provide a covered mooring or storage place for watercraft.

Boat ramp means an inclined and stabilized surface that extends into the water from the shore and upon which trailerable watercraft can be launched and retrieved.

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

Dock means a structure designed primarily for the launching, retrieval, storage, or mooring of watercraft.

Exterior property line means the side lot line or riparian property line separating two or more lots or parcels under common ownership from the adjoining lots or parcels under separate ownership.

Finger pier means a dock landing that branches from an access walkway or terminal platform to form a slip and provides direct access to watercraft moored in the slip.

Hazard to navigation means a structure erected or under construction, or a moored watercraft, which obstructs the navigation of watercraft proceeding along a navigable channel or canal, or which obstructs reasonable riparian access to adjacent properties.

Invasive exotic vegetation means Australian pine (*Casuarina spp.*), Brazilian pepper (*Schinus terebinthifolius*), paper or punk tree (*Melaleuca quinquenervia*), and earleaf acacia (*Acacia auriculiformis*).

Mangrove means any specimen of the species black mangrove (*Avicennia germinans)*, white mangrove *(Laguncularia racemosa)*, or red mangrove *(Rhizophora mangle)*.

Marginal dock means a dock that runs parallel and adjacent to the shoreline. This term includes docks with a maximum access walkway length of 25 feet to a dock running parallel to the shoreline and adjacent to wetland vegetation.

Marina has the meaning provided in § 34-2.

Mean high water means the average height of the high waters over a nineteen-year period. For shorter periods of observation, "mean high water" means the average height of the high waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean nineteen-year value.

Mean high-water line means the intersection of the tidal plane of mean high water with the shore.

Mean low water means the average height of the low waters over a nineteen year period. For shorter periods of observation, "mean low water" means the average height of the low waters after corrections are applied to eliminate known variations and to reduce the result to the equivalent of a mean nineteen-year value.

Multi-slip dock means two or more docks which will provide vessel mooring slips to unrelated individuals, either for rent or for sale. A multi-slip dock is distinguished from a marina in that no commercial activity is associated with a multi-slip dock.

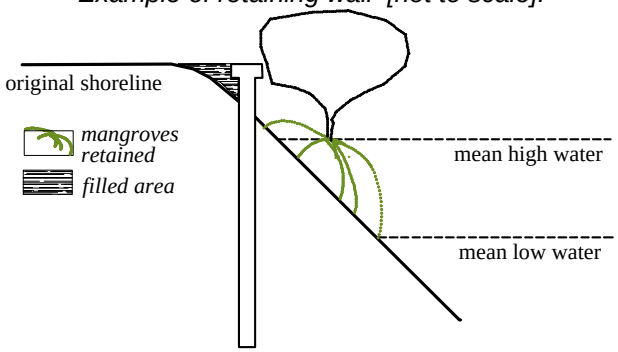
Navigable channel means the area within a natural or artificial water body that will allow passage of a watercraft drawing three feet of water at mean low water.

Nonconforming marine structure means any type of structure permitted by this chapter which was lawful prior to the adoption of any ordinance from which this chapter is derived, or the adoption of any revision or amendment to this chapter, but which fails, by reason of such adoption, revision, or amendment, to conform to specific requirements of this chapter.

Private single-family dock means a dock designed and intended to serve as an accessory use to an existing or proposed single-family dwelling unit.

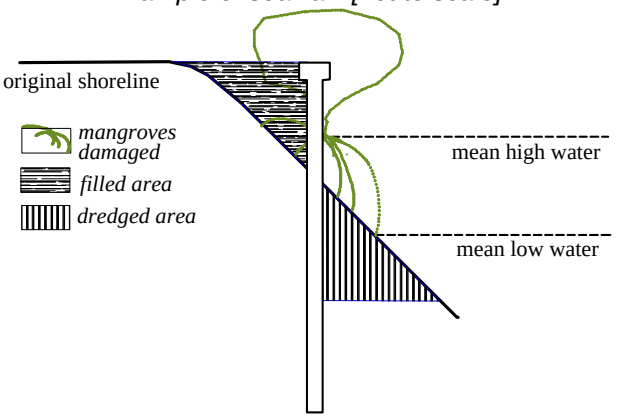
Retaining wall means a vertical bulkhead constructed landward of the mean high-water line and landward of wetland vegetation to protect the shoreline from erosion.

Example of retaining wall [not to scale]:



Seawall means a vertical bulkhead constructed seaward of the mean high-water line or seaward of the upper reaches of wetland vegetation.

Example of seawall [not to scale]:



Slip means that part of a structure and adjoining tie-up area designed to moor a single watercraft.

Structure refers to a water-oriented facility and includes any dock, boardwalk, floating dock, fishing pier, pier, wharf, observation deck, deck, platform, boathouse, mooring piling, riprap, revetment, seawall, bulkhead, retaining wall, jetty, platform, boat lift, davit, or boatramp, or any other obstacle, obstruction, or protrusion used primarily for the landing, launching, or mooring of watercraft, erosion control and shoreline stabilization, or for water-oriented activities.

Terminal platform means the part of a dock connected to and generally wider than the access walkway that is used both for securing and loading a vessel.

Tie-up area means the water adjacent to a dock, boat ramp, boat lift, davit, or boathouse designed to be occupied by moored watercraft.

Water body means any artificial or natural depression in the surface of the earth that is inundated with daily tidal flows, and all adjacent wetlands as defined in § 14-293.

(1) *Artificial water bodies* are man-made canals and similar water bodies that extend natural water bodies into uplands.
(2) *Natural water bodies* include the Gulf of Mexico, Matanzas Pass, Estero Bay, Ostego Bay, Buccaneer Lagoon, and similar water bodies that were created by natural geophysical forces.

Watercraft means any vehicle designed for transporting persons or property on, in or through water.

Work includes, but is not limited to, all dredging or disposal of dredge material, excavation, filling, construction, erection, or installation, or any addition to or modification of a structure on a water body.

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

Sec. 26-42. Reserved.

Sec. 26-43. Applicability.

(a) This article describes the only non-governmental marine structures that may be constructed within the "Tidal Waters" designation on the comprehensive plan's future land use map.

(1) The marine structures described in this article may be permitted only within riparian extensions of property lines or on owned or leased submerged lands.
(2) These marine structures must be related to accessory uses that are allowed in conjunction with a permitted principal use on the adjoining land. See § 34-1171 through 34-1174 for general regulations on accessory uses.

(b) The terms and provisions of this article shall apply to the incorporated area of the Town of Fort Myers Beach.

Sec. 26-44. Compliance with other applicable regulations.

Permits issued in accordance with this chapter, or development orders for work in the town, do not eliminate the need to obtain all applicable state and federal agency permits.

Sec. 26-45. Permits required.

(a) A permit is required prior to starting any work addressed by this article, except where explicitly stated otherwise.

(b) Permit applications must be submitted to the director on an appropriate form containing the following:

(1) The names, addresses, and telephone numbers of the property owner(s);
(2) The name, address, and telephone number of the property owner's agent, if applicable;
(3) Written authorization from the property owner to the agent, if applicable;
(4) The property street address;
(5) The property STRAP number;
(6) A site plan, showing the following:
    a. the proposed location of the work relative to riparian property lines; and
    b. dimensions and side setbacks of all proposed structures or work.
(7) Copies of all necessary state and federal agency approvals; and
(8) The appropriate fee.

(c) Work relating to commercial or multi-slip docks may require a development order in accordance with ch. 10 and construction drawings sealed by a professional engineer or registered architect. All development order applications will be reviewed for compliance with this article.

(d) The director has the discretion to require construction drawings sealed by a professional engineer or registered architect and a sealed boundary or record survey identifying the property boundary or riparian extensions into the water body in relation to construction or work. The director also has the discretion to require submission of a sealed post-construction as-built survey certified to the town prior to issuance of a certificate of completion for any permit under this section.

(e) The director may conduct on-site inspections to determine if the proposed work or structure meets the required minimum standards.

(f) A permit is required to replace an existing structure; however, ordinary minor repairs may be made without a permit to the extent allowed by § 6-111 of this code.

(g) The director can authorize minor design alterations necessary to comply with the Americans with Disabilities Act.

(h) Permit approvals granted under this section will be based upon the information submitted by the applicant. An approval under this section does not constitute a legal opinion regarding the riparian rights boundaries of the subject property or adjacent property and may not be used to substantiate a claim of right to encroach into another property owner's riparian rights area.

Sec. 26-46. Variances.

Requests for variances from the terms of this article shall be administered and decided in conformance with the requirements for variances which are set forth in ch. 34.

Sec. 26-47. Exemption from setback requirement.

Any structure permitted under this article shall not be subject to the water body setback requirements from a bay, canal or other water body set out in ch. 34.

Sec. 26-48. Nonconforming marine structures.

Except where prohibited for boathouses by § 26-74(d) and for seawalls by § 26-77, a nonconforming marine structure may be repaired, replaced, or altered if:

(1) the size, dimensions, design, and location of the structure is and will remain otherwise in compliance with all existing regulations; or
(2) the proposed work will not cause an increase in the nonconformity, in the opinion of the director.

Secs. 26-49--26-70. Reserved.

DIVISION 2. LOCATION AND DESIGN

Sec. 26-71. Docks and boat ramps.

Docks and boat ramps will be permitted only in accordance with the following regulations:

(a) ***Number of docks and slips.***

(1) No more than one two-slip private single-family dock is permitted to extend from each lot into a natural water body, except that a shared property line dock can be approved for up to four slips.

(2) Handrails may be required to prohibit the mooring of watercraft in any area not designated as a slip. Handrails must be permanently maintained.

(b) ***Length of docks.*** No private single-family dock, including its tie-up area, may be permitted or constructed in a natural or artificial water body exceeding the following lengths:

(1) 25% of the navigable channel width, up to a maximum of 200 feet in length; or up to a maximum of 300 feet in length if the director, in his sole discretion, finds that:
   a. The proposed dock has been approved by all applicable state and federal agencies;
   b. The increased length will not result in a hazard to navigation;
   c. The proposed dock is compatible with docks or other structures and uses on adjoining lots; and
   d. The increase in length will lessen the dock's impacts on seagrass beds or other marine resources.

(2) All measurements are from the mean high-water line seaward. Tie-up areas that are waterward of the dock will be deemed 10 feet in width.

(c) ***Maximum dimensions of docks.***

(1) Private single-family docks in natural water bodies must comply with the following maximum dimensional requirements:
   a. Access walkway – 4 feet wide
   b. Terminal platform – 160 square feet
   c. Finger piers – 3 feet wide

   The application of these regulations is illustrated in Figure 26-1.

(2) Single-family residential boat ramps can not exceed 15 feet in width.

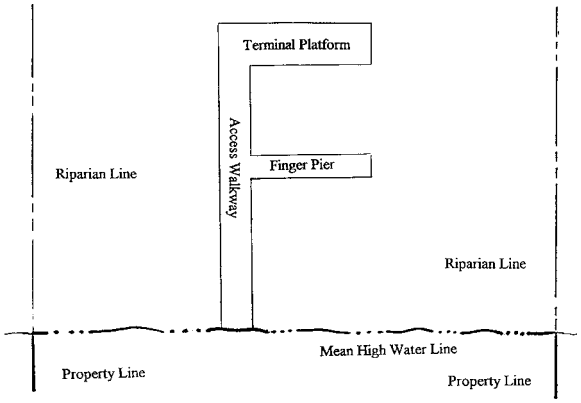


Figure 26-1
Private Single-Family Structure Plan View

(d) ***Setbacks.***

(1) Multi-slip and marina docks, except boat davits, in or adjacent to natural water bodies must be set back a minimum of 25 feet from all adjoining side lot lines.

(2) Private single-family docks in natural water bodies must be set back from all adjoining side lot and side riparian lines as follows:
   a. Marginal docks – at least 10 feet.
   b. All other docks – at least 25 feet.

(3) Private single-family docks in artificial water bodies must be set back at least 5 feet from all adjoining side lot and side riparian lines.

(4) Side setback requirements for docks can be reduced if:
   a. Adjoining property owners propose a single dock for their joint use, or if they execute a written agreement in recordable form agreeing to a setback less than that required; and
   b. Placement of such dock(s) will not result in greater environmental impacts than compliance with the regulations set forth in this subsection.

(5) The director, in his discretion, may permit administrative deviations from the dock setbacks required by this subsection if the structure is located as close to the required setback as possible and:
   a. The width of the subject parcel is not wide enough to permit construction of a single-family dock perpendicular to the shoreline at the midpoint of the shoreline property line without a deviation; or
   b. If moving the structure closer to a property line than normally allowed

would minimize damage to wetland vegetation or other environmental resources.

The director's decision under this subsection can be appealed through the procedure set forth in § 34-86 or the applicant may seek a variance in accordance with § 34-87.

(6) All boat ramps must set back at least 10 feet from all adjoining side lot and side riparian lines.

(e) ***Location.***

(1) Docks, tie-up areas, and moored watercraft cannot be located in a manner that will create a hazard to navigation in natural or artificial water bodies.
(2) Boat ramps cannot be located in a manner that will result in a horizontal change in the mean high-water line.
(3) The director has the discretion to require reconfiguration of a proposed dock or boat ramp to reduce impacts to the riparian rights of adjacent properties.

(f) ***Minimum water depths.***

(1) There must be a minimum depth of three feet below mean low water for all slips on private single-family docks in natural water bodies.
(2) Water depths adjacent to and within a multi-slip dock or a marina must ensure that a minimum one foot clearance is provided between the deepest draft of a vessel and the bottom at mean low water or the top of marine resources (e.g. seagrasses).

(g) ***Dock boxes***. Dock boxes on private single-family docks may not exceed three feet in height and 100 cubic feet in volume. Such dock boxes do not require building or marine facility permits.

Sec. 26-72. Boat lifts and davits.

Boat lifts and davits will be permitted only in accordance with the following regulations:

(1) All equipment and adjoining tie-up areas must meet the relevant locational and dimensional criteria for docks or boathouses.
(2) All equipment must structurally adequate to support expected loads.
(3) Electrical connections and equipment are subject to permitting and inspections in accordance with ch. 6 of this code.
(4) Fixed or flexible boat coverings must be built within or meet all requirements for boathouses (see § 26-74), or they must fit tightly around the boat they protect.

Sec. 26-73. Fishing piers or observation decks.

Fishing piers or observation decks may be permitted in areas where water depth is insufficient for mooring. Fishing piers and observation decks must:

(a) be designed to prohibit watercraft mooring;
(b) be constructed to provide access walkways and terminal platforms at 5 feet above mean high water;
(c) have fixed handrails, including intermediate rails, installed around the perimeter of the structure; and
(d) have a "no boat mooring" sign placed facing the water on the terminal platform of the structure.

Sec. 26-74. Boathouses.

The following regulations apply to boathouses associated with a private single-family residence. Only a single boathouse may be associated with each single-family residence.

(a) ***Location.***

(1) Boathouses must be constructed adjacent to or over a water body. Any boathouse constructed over land must be located, in its entirety, within 25 feet of the mean high-water line.
(2) Boathouses may not be built over submerged bottoms containing areas of dense seagrasses or shellfish beds.
(3) Boathouses, boat lifts, and davits designed with mooring inside the structure may not extend beyond 25% of the width of a navigable channel.

(b) ***Setbacks.*** The minimum setbacks between boathouse pilings and side lot lines and riparian lot lines are as follows:

(1) Natural water bodies -- 25 feet.
(2) Artificial water bodies -- 10 feet.

When a boathouse is constructed on or adjacent to two or more adjoining lots under common ownership and control, the setbacks will be measured from the exterior property lines.

(c) ***Design criteria.***

(1) ***Maximum area.*** A boathouse may not encompass more than 500 square feet of roofed area.

(2) ***Height.*** The maximum height of a boathouse is 20 feet above mean high water, as measured from mean high water to the highest point of the boathouse.

(3) ***Permitted uses.***

a. Use of a boathouse for living or fueling facilities is prohibited.

b. Up to 25% of the total roofed area of a boathouse can be used for storage of items that relate directly to the use and maintenance of watercraft. Items that do not relate directly to the use and maintenance of watercraft may not be stored in a boathouse.

(4) ***Decking.*** Access walkways not exceeding four feet in width are permitted in the area under the roof of a boathouse located over water. Additional decking in the area under the roof of a boathouse is prohibited.

(5) ***Enclosure.***

a. Boathouses located over a water body or adjacent to a natural water body must be open-sided. Safety rails 42 inches high or less are permitted.

b. Boathouses located adjacent to an artificial water body must meet the following requirements:

1. The boathouse must be open-sided if the proposed side setback is between ten and 25 feet.
2. The boathouse may be open-sided or enclosed with wood lattice or similar fencing materials if the side setback is 25 feet or more.

(6) ***Roof.*** Boathouses shall have pitched roofs with a minimum slope of 2 vertical to 12 horizontal. Sundecks shall not be permitted on the roof of any boathouse.

(7) ***Wind load standards.*** All boathouses must comply with the building code wind load standards as adopted in ch. 6.

(d) ***Amortization of certain nonconforming boathouses.*** The size and location of boathouses have been regulated since the adoption of Lee County Ordinance No. 88-56. Some boathouses built prior to 1988 or expanded in violation of Ordinance No. 88-56 remain in existence. Such boathouses cannot be modified or rebuilt except when brought into compliance with current regulations, and all such boathouses must be modified into compliance with this section by January 1, 2004.

The application of these regulations is illustrated in Figure 26-2 below:

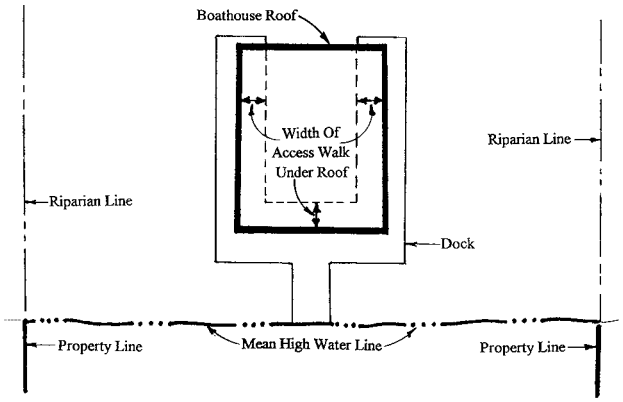


Figure 26-2 – Boathouse Plan Review

Sec. 26-75. Seawalls and retaining walls generally.

(a) See the definitions in § 26-41 to understand the important distinctions between seawalls and retaining walls, and between natural and artificial water bodies.

(b) The town encourages owners of existing seawalls to replace them with riprap revetment and/or the planting of mangroves.

(c) Except as provided in this division, and where the director determines there is no reasonable alternative, seawalls and retaining walls must be placed landward of the mean high-water line and landward of all wetland vegetation, including mangrove prop roots and pneumatophores.

(d) Ordinary minor repairs to seawalls and retaining walls may be made in accordance with § 26-45(f). Replacement of seawall caps or repairs to seawall seams shall require the installation of a shallow swale or linear drain in accordance with § 26-76(a), but shall not require the installation of shallow-water habitats in accordance with § 26-76(b). Replacement of more than 25% of vertical seawall slabs shall require the installation of shallow-water habitats in accordance with § 26-76(b) for the entire length of the seawall or retaining wall.

Sec. 26-76. Seawalls and retaining walls along artificial water bodies.

(a) When a landowner wishes to build a new or replacement seawall or retaining wall along an artificial water body, it shall be constructed with a shallow swale or linear drain immediately landward of the wall's cap.

(1) The purpose of this swale or drain is to direct surface water runoff underground rather than directly into the water body.

(2) Figures 26-3, 26-4, and 26-5 show acceptable configurations for this swale or drain, and each also shows how it could be built in front of an existing failing seawall.

(3) Each figure shows coarse aggregate forming a chamber to hold stormwater before it flows through weep holes in the seawall or retaining wall.

(4) The director may accept an alternate configuration proposed by an applicant if it provides equivalent water quality protection.

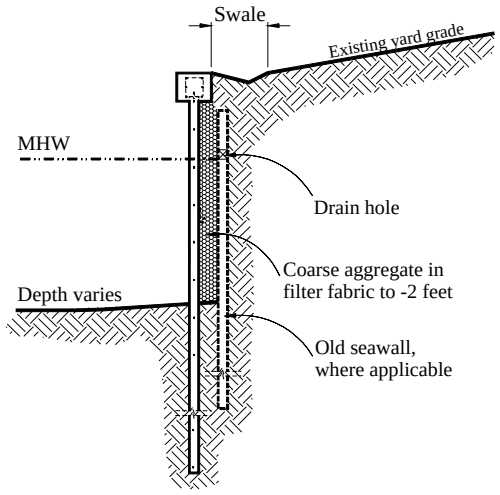


Figure 26-3

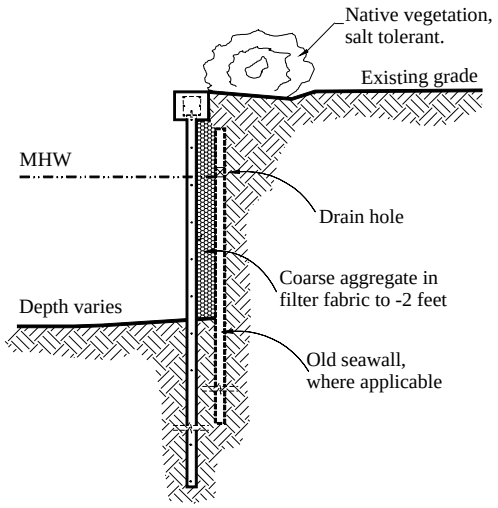


Figure 26-4

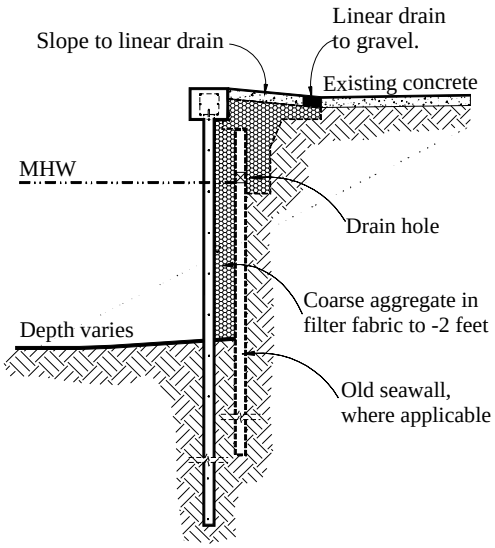


Figure 26-5

(b) When new or replacement seawalls are permitted in an artificial water body below the mean high-water line in accordance with § 26-75(c), shallow-water habitats must be created immediately seaward of the seawall.

(1) Desirable foundations for shallow-water habitats are illustrated in Figures 26-6, 26-7, 26-8, 26-9, and 26-10.

(2) Shallow-water habitats need not be created where they would interfere with identified watercraft tie-up areas but otherwise shall be placed along the entire length of seawalls including *underneath* docks.

(3) The director may accept an alternate configuration proposed by an applicant provided that it provides equivalent habitat.

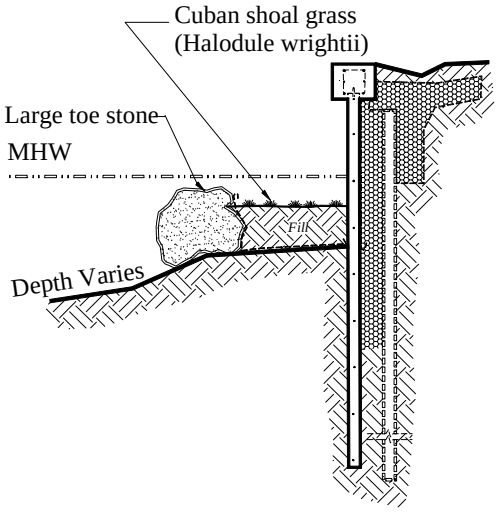


Figure 26-8

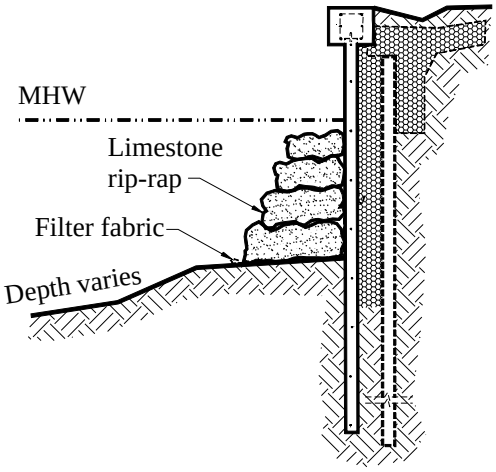


Figure 26-6

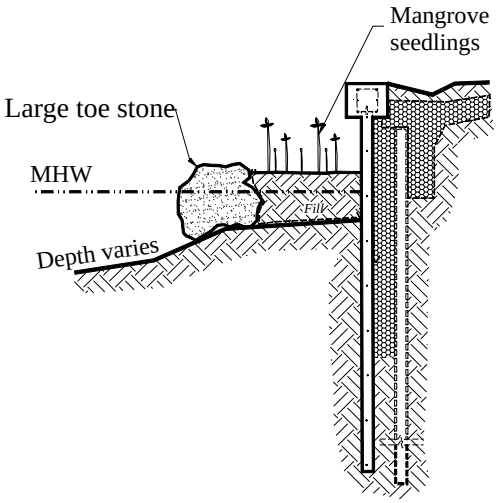


Figure 26-9

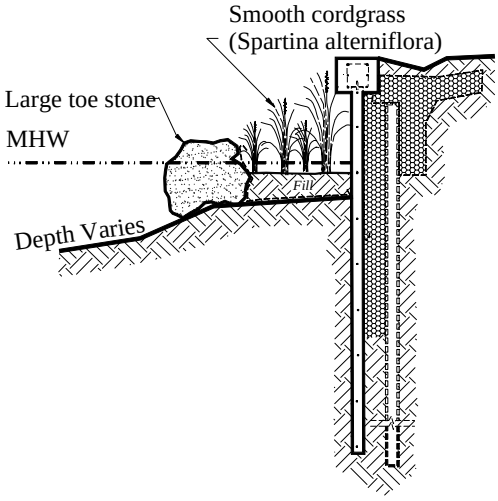


Figure 26-7

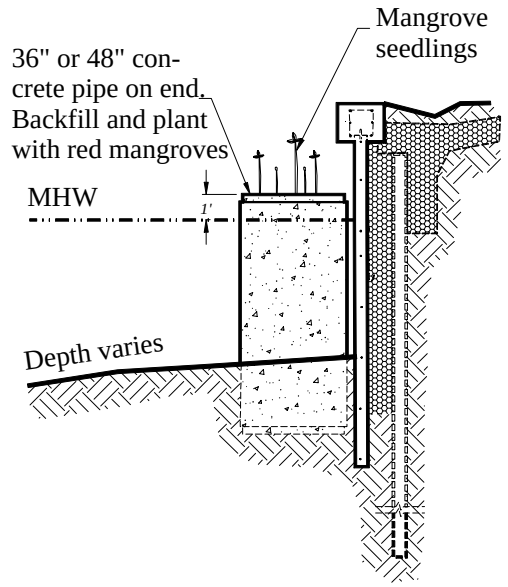


Figure 26-10

Sec. 26-77. Seawalls and retaining walls along natural water bodies.

(a) The Fort Myers Beach Comprehensive Plan, primarily through Policy 5-D-1, strictly regulates hardened structures along the natural shoreline.

(b) New or expanded seawalls are not allowed along natural water bodies. Retaining walls are permitted along natural water bodies, except along the Gulf of Mexico.

(c) Existing seawalls along natural water bodies other than the Gulf of Mexico may be maintained, but may not be rebuilt if one or more of the following conditions exists:

(1) if buildback could cause excessive shoreline erosion or endanger shorelines of surrounding properties; or
(2) if buildback could be a threat to public safety or could block access to state-owned land or beaches; or
(3) if buildback would threaten wetlands; or
(4) if buildback would be more than one foot waterward of the existing seawall alignment on adjacent shorelines.

If none of these four conditions exist and a replacement seawall is permitted, the replacement seawall must be constructed in the same manner as specified in § 26-76(a) and (b).

(d) Existing seawalls and retaining walls along the Gulf of Mexico may be maintained, but may not be rebuilt.

(1) The town has established the following priorities to protect buildings along the Gulf of Mexico prior to publicly sponsored beach renourishment:
    a. first, allow the building to be moved away from the shoreline;
    b. second, allow emergency renourishment (including the use of trucked-in sand on the beach);
    c. third, allow a temporary riprap revetment if the first two priorities are not possible.
(2) Any use of other hardened surfaces or structures along the Gulf of Mexico is strongly discouraged by the Fort Myers Beach Comprehensive Plan and would require a specific variance from this article.

Sec. 26-78. Riprap revetment.

(1) Riprap must be located and placed so as not to damage or interfere with the growth of wetland vegetation.
(2) Material used for riprap should be sized properly for intended use and installed on top of filter fabric or equivalent material to prevent erosion of the subgrade.
(3) Mangroves or other approved wetland vegetation must be planted 3 feet on center in compliance with § 26-76(c) for added shoreline stabilization and ecological benefit within the riprap. Other wetland mitigation techniques may be considered in lieu of vegetation planting. However, no vegetation planting is required for riprap revetments constructed in an artificial water body surrounded by uplands when the canal has a minimum of 50% of the bank having seawalls, or for a linear distance less than 300 feet where both adjoining properties have seawalls.

Sec. 26-79. Protection of vegetation during construction.

(a) ***Specific permit conditions.*** Conditions for the protection of shoreline vegetation can be placed on permits issued in accordance with this article. The conditions can include the method of designating and protecting mangroves to remain after construction, replacement planting for mangroves removed due to construction, and required removal of invasive exotic vegetation.

(b) ***Mangrove removal.***

(1) ***Docks, fishing piers, and observation decks.*** Mangrove removal necessary for access walkway construction is limited to the minimum extent necessary to gain access to the structure. To the greatest extent possible, the access must be located to:
    a. use existing natural openings;
    b. use areas infested with invasive exotic vegetation;
    c. avoid larger mangroves; and
    d. provide a maximum width of four feet and a maximum height of eight feet above the level of the walkway base.

(2) ***Seawalls, retaining walls, and riprap revetment.***

a. Mangrove removal along natural water bodies is prohibited.
b. Mangrove removal in artificial water bodies is prohibited for retaining walls and riprap revetments.
c. Mangrove removal in artificial water bodies is permitted when such removal is unavoidable due to authorization of a seawall in accordance with § 26-75(c), and then only to the extent specifically indicated on the permit.

(c) ***Mangrove replacement and plantings.***

(1) For each mangrove removed due to lawful construction, three mangroves must be replanted at an alternate location on the subject property. If planting on the subject property is not appropriate, alternative forms of mitigation, such as payment into a mitigation bank, may be allowed.
(2) Mangrove plantings must be container grown, no less than one year old, eight inches in height, and have a guaranteed 80% survivability rate for at least a 5-year period. Mangrove plantings must be planted 3 feet on center. Mangrove replanting is required if the 80% survivability rate is not attained.

(d) ***Damage to vegetation.*** If there is damage to wetlands vegetation beyond that authorized by the permit within one year of the installation of a seawall, retaining wall, or revetment, the dead vegetation must be replaced at the property owner's expense with the double the plantings that would have been required in accordance with subsection (c).

Sec. 26-80. Turbidity.

(a) All structures must be placed so as to provide the least possible impact to aquatic or wetland vegetation.

(b) During work that will generate turbidity, turbidity screens must be installed and properly maintained until turbidity levels are reduced to normal (ambient) levels.

Sec. 26-81. Marina design and location

(a) Marina design, uses, and locations must be consistent with Policies 4-B-6, 4-B-7, and 5-E-7 of the Fort Myers Beach Comprehensive Plan and all portions of this code.

(b) Refer to ch. 10 and 34 for more detailed design, use, and locational requirements for marinas.

Sec. 26-82. Dredging, new and maintenance.

(a) ***Incidental dredging.*** Dredging that is incidental to construction allowed by this article may be approved on the same permit, provided that:

(1) All dredging limits must be clearly defined;
(2) Methods to control turbidity and dispose of dredging spoil must be indicated; and
(3) The proposed dredging is determined by the director to be the minimum necessary to accommodate construction and reasonable use of the permitted structure.

(b) ***Channel dredging and beach renourishment.*** Town-sponsored projects involving maintenance dredging of canals or beach renourishment do not require a permit under this article, but must be approved in accordance with ch. 2, article VI. Privately sponsored dredging projects other than those specified in subsection (a) must obtain a permit under this article and a development order pursuant to ch. 10, and must be fully consistent with this code and the Fort Myers Beach Comprehensive Plan, including the habitat protection requirements of the conservation element.

Secs. 26-83--26-110. Reserved.

ARTICLE III. MARINE SANITATION [2]

Sec. 26-111. Purpose.

The purpose of this article is to protect the water quality and the health of the citizens of the town and county from pollution resulting from sewage and other waste or discharges from marine-related activities.

Sec. 26-112. Reserved.

Sec. 26-113. Reserved.

Sec. 26-114. Applicability of article.

(a) This article shall apply to waters of the incorporated area of the Town of Fort Myers Beach.

(b) This article shall be operative to the extent that it is not in conflict with F.S. ch. 327 or any other state or federal regulation.

Sec. 26-115. Discharge of waste material prohibited.

(a) It is unlawful for any person to discharge or permit or control or command to discharge any raw sewage, garbage, trash, or other waste material into the waters of the Town of Fort Myers Beach.

(b) Every vessel owner, operator, and occupant shall comply with United States Coast Guard regulations pertaining to marine sanitation devices and with United States Environmental Protection Agency regulations pertaining to areas in which the discharge of sewage, treated or untreated, is prohibited.

(c) The marine sanitation provisions found in F.S. § 327.53 apply to the waters of the Town of Fort Myers Beach and may be enforced through any of the methods provided by this code.

Sec. 26-116. Marina sanitation facilities.

(a) Any marina which provides mooring for boats for live-aboard purposes with installed onboard sewer systems which are not designed and approved for overboard discharge must have:

(1) Public restrooms with facilities for sewage disposal and bathing; and
(2) A sewage disposal system to which all live-aboard vessels can pump out, and such system must be approved by the county.

(b) All garbage shall be collected at least once a week and transported in covered vehicles or covered containers. Burning of refuse in the marina is prohibited.

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[2] ***Cross reference(s)–****Zoning regulations pertaining to marine facilities, § 34-1861 et seq.*

CHAPTER 27
PERSONAL WATERCRAFT[1] AND PARASAILING[2]

[1] *Originally adopted as Chapter 27 by the Fort Myers Beach Personal Watercraft Ordinance, Ordinance 96-27.*

[2] *Originally adopted as Chapter 28 by the Fort Myers Beach Parasailing Ordinance, Ordinance 97-02, and later amended by Ordinance 99-04.*

ARTICLE I. DEFINITIONS AND ENFORCEMENT

Secs. 27-1--27-44. Reserved.

Sec. 27-45. Definitions.

For the purposes of this chapter, the following terms, phrases, words, and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

Beach means that area of sand along the Gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.

Business shall mean any personal watercraft rental or parasailing activity business, including any commercial activity engaged in the rental, leasing, or bailment for consideration of personal watercraft or parasailing.

Eco-tour shall mean an educational tour led by a guide knowledgeable in environmental and ecological preservation, where the guide can communicate with the tour members and offer commentary about the ecological, environmental, and archaeological significance of Estero Bay.

Edge of wet sand means the point where the visible darkening or staining of the beach sand from wave action is no longer detectable.

FWCC means the Florida Fish & Wildlife Conservation Commission or its successor.

Littoral waters mean that part of the ocean or sea which abuts the shoreline and includes the shore to the ordinary high watermark. For purposes of this chapter, the littoral right to use such waters shall be limited to the waters within the boundaries of the land-based site as those boundaries extend into the water at right angles from the shoreline.

Operate means to navigate or otherwise use any vessel in, on, or under the water.

PAL shall mean Parasailing Activity License.

Parasailing or ***parasailing activity*** shall mean the act of towing a person or object over the water, suspended beneath a parachute, kite, or other similar contrivance.

Person means any individual, partnership, firm, corporation, association, or other entity.

Personal watercraft means a vessel less than 16 feet in length which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

PWVL shall mean Personal Watercraft Vendor's License.

Town manager shall include the designee(s) of the town manager of the Town of Fort Myers Beach.

Site means the plot or parcel of land or combination of contiguous lots or parcels of land.

Slow speed means no speed greater than that which is reasonable and prudent to avoid either intentionally or negligently disturbing, colliding with, or injuring manatees and which comports with the duty of all persons to use due care under the circumstances. A vessel in a slow speed zone that:

(1) is operating on a plane is not proceeding at slow speed;
(2) that is in the process of coming off plane and settling into the water, which action creates more than no or minimum wake, is not proceeding at slow speed;
(3) that produces no wake or minimum wake is proceeding at slow speed;
(4) that is completely off plane and which has settled into the water and is proceeding without wake or with minimum wake is proceeding at slow speed.

"Slow speed" means any through-the-water speed slow enough that the boat is neither planing nor moving with an elevated bow. A vessel that is operating at slow speed shall not be emitting a wake.

Steerage way means the minimum rate of motion required for the helm of the vessel to have effect.

Vessel means a motor propelled or artificially propelled vehicle and every other description of boat, watercraft, barge, and air boat other than a seaplane on the water, used or capable of being used as a means of transportation on water including personal watercraft. This term shall not include rafts, floats, or floatation devices, whether of canvas, vinyl, rubber, Styrofoam, or other substance, intended or capable of assisting in the floatation of a person on or in the water.

Wet sand means the area on the beach where the sand is saturated by sea water from wave action. This area is identified by a visible darkening or staining of the beach sand from the water driven onshore by wave action.

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

Sec. 27-46. Area of enforcement.

The area of enforcement of the provisions of this chapter shall be all public navigable waters, creeks, bayous, canals and channels, whether natural or man-made, located within the Town of Fort Myers Beach, including all public waters within the jurisdiction of the town in which the tide ebbs and flows. This chapter does not apply to the county-maintained or county-marked channels.

Sec. 27-47. Means of enforcement.

The provisions of this chapter shall be enforced by members of all duly authorized law enforcement agencies within the town and through enforcement mechanisms established by this code.

ARTICLE II. PERSONAL WATERCRAFT

Sec. 27-48. Regulations for operation of personal watercraft.

In addition to other regulations in this code, all personal watercraft shall also be operated in the following manner:

(1) A person may not operate a personal watercraft unless each person riding on or being towed behind such vessel is wearing a type I, type II, type III, or type V personal flotation device, other than an inflatable device, approved by the United States Coast Guard.

(2) A person operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch must attach such lanyard to his person, clothing, or personal flotation device as is appropriate for the specific vessel.

(3) A person shall not operate a personal watercraft at any time between one-half hour before sunset and one-half hour after sunrise. However, agents or employees of law enforcement agencies or fire/emergency rescue services are exempt from this subsection while performing their official duties.

(4) A personal watercraft must at all times be operated in a reasonable and prudent manner. Maneuvers which unreasonably or unnecessarily endanger life, limb, or property, including, but not limited to, weaving through congested vessel traffic, jumping the wake of another vessel unreasonably or unnecessarily close to such other vessel or when visibility around such other vessel is obstructed, and swerving at the last possible moment to avoid collision shall constitute reckless operation of a vessel. Failure to operate a personal watercraft in such a careful and prudent manner shall constitute careless boating in violation of this chapter.

Sec. 27-49. Regulations and locations for personal watercraft rentals.

Any business engaged in the rental, leasing, bailment for consideration, or otherwise providing transportation for remuneration, of personal watercraft for use by the public on any waters of the Town of Fort Myers Beach, must meet the following requirements:

(1) A business is required to obtain a Lee County occupational license which shall be issued to the personal watercraft operations office.
   a. The operations office shall be located at a land-based site; and,
   b. The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, county-owned or town-owned beach accesses, or any residentially zoned land that must be traversed to gain beach access. That direct access will be used for all necessary business-related beach access that is customary in the course and operation of the personal watercraft business at the particular licensed land-based site; and,
   c. All business transactions such as the exchange of consideration or remuneration for the rental, leasing, bailment, or any other type of transaction between the commercial rental operator and customer shall occur on the land-based site for which the occupational license is issued; and,
   d. The personal watercraft shall only be rented or operated on the littoral waters offshore of the land-based site for which the occupational license is issued until the personal watercraft travels beyond the 500 feet offshore slow speed limit.

(2) A business must have and maintain a telephone and an operable marine radio at its land-based operations office.

(3) A business may not knowingly lease, hire, or rent a personal watercraft to any person who is under 18 years of age (see also F.S. § 327.54)). No person under the age of 14 may operate any personal watercraft.

(4) During the sea turtle nesting season (May 1 through October 31), personal watercraft may not be moved across the beach unless:
   a. any state permits that may be required

for this activity have been issued;

b. such movement begins only after 9:00 AM, or after completion of daily monitoring for turtle nesting activity by a FWCC-authorized marine turtle permit holder, whichever occurs first; and

c. the movement does not disturb any sea turtle or sea turtle nest (see also § 14-74(c)).

(5) Businesses may not allow their personal watercraft to be used above slow speed within 500 feet of swimmers, waders, or people floating in/on the water.

(6) Personal watercraft rental businesses shall have a motorized chase vessel with an operational marine radio in good running condition that meets all United States Coast Guard safety requirements kept at the personal watercraft launching site during all hours of the business operation. The chase vessel may be a personal watercraft reserved for this purpose.

(7) Each personal watercraft must be registered in the name of the business and have a Florida vessel registration number affixed thereon.

(8) Identification markings shall be placed on each personal flotation device worn by operators of the personal watercraft which distinguishes the business from other businesses engaged in the rental of personal watercraft. Said marking shall also be located where the personal watercraft are launched. The identification marking, which will be assigned to the business by the town upon issuance of the PWVL, shall be not less than 9" by 5" in size and of a contrasting color to the personal flotation device.

(9) Personal watercraft may be moored in the water during the operating hours of the business, or on the beach during operating hours in accordance with the following: Personal watercraft must be set back 12 feet landward from the edge of wet sand. Between the hours of 9:00 PM and 7:00 AM from May 1 until October 31, all personal watercraft and associated equipment, including but not limited to mooring lines, must be removed from the beach and placed behind the dune line.

a. If there is no dune line and the beach is wide, personal watercraft and associated equipment must be moved to a point that is at least 200 feet from the water line at all times.

b. If there is no dune line and the beach is less than 200 feet wide, personal watercraft and associated equipment must be moved to the adjacent permanent structure and landward of any seawall.

Where compliance with the foregoing provision would cause an undue hardship, the town manager may designate a different storage location after determining the minimum changes from the requirements of this subsection.

(10) In order to adequately monitor the operation of the personal watercraft, one employee per five personal watercraft actually rented must be located so as to observe the operation of the vessel by the party renting the personal watercraft.

(11) Fuel tanks may not be stored on the beach but may be stored at the business location provided all applicable federal, state, and local fire, safety, and environmental regulations are met.

(12) Fueling of personal watercraft on the beach or in the water shall require a spillproof nozzle or other acceptable device designed for prevention of fuel overflow. Any spillage of fuel onto the beach or into the water is a violation of this code.

(13) Except in locations which have permanent 500-foot markers, the personal watercraft vendor shall place temporary markers in the water not less than 500 feet seaward from the beach to which the personal watercraft are to be launched during each day of personal watercraft operations. All such markers shall be removed each day by the personal watercraft vendor no later than a half hour after sunset. The personal watercraft vendor must instruct each personal watercraft operator:

a. To travel at slow speed until past said markers;

b. To maintain a distance of not less than 500 feet from the shoreline while operating the personal watercraft;

c. To travel at slow speed when returning to the shore; and

d. To not travel within environmentally sensitive areas (within the 1000-foot territorial limits of the town) except with an eco-tour operator or guide associated

with a business with a valid PWVL permit.

(14) Each operator shall provide a buoy lane consisting of 6 buoys, with a minimum width of 15 feet and a maximum of 75 feet.

(15) Each PWVL (jet ski) operator is limited to 8 rentals per location plus one chase vehicle. When 6 or more rentals are in use, the chase vehicle must be manned and in the water. An operator may request a variance to allow additional rentals per location by using the standards and procedures in ch. 34.

(16) *Safe handling instructions.*

a. Each patron shall receive standardized rules provided by the operator translated in four languages. All owners, operators, PWVL license holders, and employees will obey the same standardized rules. Such rules are included in § 27-58.

b. If the FWCC adopts safe handling instructions in accordance with F.S. § 327.39(6)(b), operators must comply with those regulations, which shall be deemed as equivalent to complying with the previous subsection, provided the state instructions are translated into the same four languages.

(17) Operators must also comply with all other applicable boating and personal watercraft provisions of state law such as those found in F.S. § 327.39.

(18) No person shall offer for rent, lease, or bailment for consideration, a personal watercraft within the Town of Fort Myers Beach except from a personal watercraft rental business which fully complies with the regulations set forth in this code and this chapter.

(19) No person shall conduct any personal watercraft rental business within the Town of Fort Myers Beach except from a business holding a valid PWVL and which fully conforms to the terms of this chapter.

(20) No person shall offer for rent, lease, or bailment for consideration a personal watercraft which is not registered in the name of the business and which does not have a valid Florida vessel registration number affixed thereon.

ARTICLE III. PARASAILING

Sec. 27-50. Regulations and locations for parasail activities.

Any person engaged in parasail activities for consideration or remuneration by the public on any waters of the Town of Fort Myers Beach, must meet the following requirements:

(a) A person is required to obtain a Lee County occupational license which shall be issued to the parasailing activities operations office.

(1) The operations office shall be located at a land-based site; and,

(2) The land-based site shall have direct access to the beach. Direct access shall not include public rights-of-way, county-owned or town-owned beach accesses, or any residentially zoned land that must be traversed to gain beach access; and,

(3) All business transactions such as the exchange of consideration or remuneration or any other type of transaction between the PAL and customer shall occur on the land-based site for which the occupational license is issued: and,

(4) A person must have and maintain a telephone and an operable marine radio at its land-based operations office.

(b) No person shall offer a ride on a parasail within the Town of Fort Myers Beach except at a parasail activities site which fully complies with the regulations set forth in this code and this chapter.

(c) No person shall have a parasailing operation within the Town of Fort Myers Beach except from a business holding a valid PAL and which fully conforms to the terms of this chapter.

(d) No person shall use a vessel for parasailing activity which is not registered in the name of the business and which does not have a valid Florida vessel registration number affixed thereon.

(e) Each parasailing vessel must be registered in the name of the business and have a Florida vessel registration number affixed thereon.

(f) Parasail operations must have a primary location at a site in conformance with this code or which otherwise specifically permits parasail activity. Parasail operators may pick up and return customers at other sites provided that the parasail operator has obtained written permission on a form provided by the town from the landowner where a PWVL has been issued. Written permission shall be kept on file at the PAL's primary location. In no event shall a parasail operator or his agents or employees solicit at the beach where they are picking up and returning customers.

(g) Parasail operators will pick up and drop off customers at the beach location pursuant to (2) above. This process will be accomplished through buoy lanes within the 500-foot zone consisting of 6 buoys, with a minimum width of 15 feet and a maximum of 75 feet. In a congested area, a parasail captain may avoid hazard by approaching to the right or left of the buoy lane.

(h) Operators must be at least 1,000 feet from shore when they inflate the chute or deflate the chute and while flying.

(i) Operators must limit the length of the line to 1,200 feet and may not fly the chute over or within 500 feet of the pier or within 1,000 feet of the beach. Further, all parasail and all operations must cease at sunset.

(j) Operators must also comply with all applicable boating and parasailing provisions of state law such as those found in F.S. § 327.37.

ARTICLE IV. ADDITIONAL RULES AND PROCEDURES APPLYING TO BOTH PERSONAL WATERCRAFT AND PARASAILING

Sec. 27-51. Additional rules applying to both PWVL and PAL businesses.

(a) Businesses holding a valid PWVL or PAL shall be situated together with their vessels where appropriate upon a site authorized by the remainder of this code plus the provisions of this chapter to have such business and shall not:

(1) be located within 500 feet of any other business offering personal watercraft for rent or lease or parasailing activities, except for businesses that are co-located in accordance with § 27-54(e); or

(2) be located on any beach or land north of or beyond an imaginary line extending from the Sanibel Lighthouse and Bowditch Point on Estero Island; or inland of the Big Carlos Pass Bridge.

(b) Businesses holding both a valid PWVL and a valid PAL may rent personal watercraft and operate a parasailing activity business from a single location provided the location meets all requirements for both licenses.

(c) Businesses holding a valid PWVL or PAL must meet the following requirements:

(1) ***Other boating regulations.*** All businesses and their vessels are required to comply with the town's Vessel Control and Water Safety Ordinance (Ordinance 96-26 as amended) and with Florida Statutes Chapter 327.

(2) ***Insurance.*** A business must have and maintain comprehensive third-party liability insurance in accordance with § 27-56.

(3) ***Structures on the beach.*** During its regular business hours only, a business may place one free-standing structure on the beach at its land-based site to conduct business with the public.

a. This structure may be a table, podium, booth, or storage box.

b. The total horizontal dimension of this structure may not exceed a horizontal

dimension of 4 feet by 6 feet, except for any awning, umbrella, or integral roof whose sole purpose is to provide shade.

c. This structure must be portable and never be left on the beach before or after regular business hours.

(4) ***Signs on the beach.*** This structure may contain a maximum of three identification or promotional signs painted on or mounted flat against the structure, no one of which can exceed 8 square feet as measured in accordance with § 30-91.

a. Any rate charts or state-mandated informational signs smaller than 2 square each shall not be counted as part of the signage limitation above.

b. No signs or other advertising for the business are permitted on the beach other than the signage permitted on a table, podium, booth, or storage box.

(5) ***Signs off the beach.*** A business may also have one portable sandwich-board sign displayed at its land-based site during regular business hours if such signs are otherwise permitted by ch. 30 of this code at that site. However, any such sign:

a. must be placed indoors after business hours;

b. must not be illuminated; and

c. must not be placed on the beach at any time.

(6) ***Removing nonconforming structures from the beach.*** Any legal nonconforming tables, podiums, booths, storage boxes, signs, or other structures on the beach as of September 24, 2001, may remain for up to twelve additional months but immediately thereafter must be removed or modified to be in conformance with this section.

Sec. 27-52. PWVL and PAL applications; regulatory fees.

(a) Application for a PWVL or PAL license shall be made to the town manager on a form provided by the town.

(b) Information to be provided by the applicant shall include, at a minimum:

(1) ***Business location:***

a. The STRAP number and street address from which the personal watercraft or parasailing activity business will operate;

b. If the applicant is not the owner of the property from which the business will be operated, the applicant shall submit a notarized letter of authorization from the owner of the property to the applicant.

(2) ***Ownership information:***

a. Business owner's name, home address, local address, telephone number;

b. Manager's name, home address, local address, telephone number;

c. Mailing address at which notice of any town information pertinent to any personal watercraft rental or parasailing activity business shall be considered received and binding upon the applicant or PWVL or PAL holder, on the fifth day after first-class mail is posted to said address;

d. State sales tax number.

(3) ***Business equipment information:***

a. The number of, and a description of, the vessels to be used by the business, including model, year, manufacturer, color, and Florida vessel registration number(s).

b. For PWVL applications only, a description of the chase vessel(s) to be kept at the place of business as well as the Florida vessel registration number(s).

(4) ***Proof of insurance:*** Proof of required insurance.

(5) ***Fire report:***

a. For PWVL applications: Prior to annual license renewal, the fire marshal will submit evidence of a fire safety inspection to the town.

b. For PAL applications: Proof of compliance with fire regulations.

(6) ***CPR certification:*** For PWVL applications only, proof of CPR certification of sufficient persons so that there will be one in attendance at all times of operation.

(7) ***Annual fee:*** Pays an annual fee of:

a. $60 for town administrative processing costs; and

b. $30 for the right to offer for business, as herein provided, the rental of personal watercraft or the right to operate a parasailing activity business; and

c. $80 for town enforcement costs.

(c) ***Misrepresentation.*** Applicants who misrepresent information provided under this section shall not be issued a PWVL or PAL, or if issued, may suffer suspension or revocation of the PWVL or PAL.

(d) ***Cap on number of licenses.*** PWVLs and PALs and license renewals shall be issued on an annual basis coinciding with the town's fiscal year, October 1 through September 30.

(1) There shall be no more than ten (10) PWVL licenses outstanding at any point in time.
(2) There shall be no more than seven (7) PAL licenses outstanding at any point in time.
(3) See § 27-55 for regulations on transfers of existing PWVLs and PALs.

Sec. 27-53. PWVL and PAL renewals.

(a) Except as provided in this chapter, upon application the town manager may renew the PWVL or PAL of any applicant who:

(1) Held a valid PWVL or PAL and operated the personal watercraft rental or parasailing activity business during the previous year. The following evidence of such operation shall be accepted if provided separately for the specific business location and the specific license (PWVL or PAL) for which the renewal is requested:
    a. Copy of a valid *Application to Collect and/or Report Tax in Florida* (DR-1) for the previous year, and
    b. Evidence that tax payments have been made at least quarterly during the previous year in accordance with that specific application; and
(2) Has provided the town with new or updated information, documents, and fees listed in this chapter and continues to meet the other regulations set forth in this code; and
(3) Pays a late processing fee of $25 for any renewal application filed after October 1.

(b) Upon application, the town manager may renew any PWVL or PAL suspended under this chapter, but any remaining term of suspension shall be applied to the renewed license, and during said term the PWVL or PAL confers no rights to offer the rental of any personal watercraft or to operate any parasailing activity.

(c) Any PWVL or PAL not renewed by October 15th shall be void and of no further use or effect whatsoever. No business deemed to be a nonconforming use in accordance with the provisions of this chapter or other provisions of this code, which fails to renew its license in a timely manner, shall again be issued a license except in conformity with the regulations then in effect.

Sec. 27-54. Display of PWVL and PAL licenses.

Any business offering the rental of personal watercraft or parasailing activities shall display the PWVL or PAL in plain sight at the location from which the rental of personal watercraft is offered or at the parasail activities operation's office.

Sec. 27-55. Transferability of PWVL and PAL licenses.

(a) ***Transferability.*** Provided that this chapter has been complied with, the PWVL or PAL is transferable to a new owner and/or to a different location if:

(1) The location the business will be transferred to complies with the minimum separation requirements of this chapter; and
(2) The new business owner files an amended application with the town providing the information required in this chapter; and
(3) Transfer of a PAL to a new conforming location is only allowed when there are seven (7) or fewer licenses outstanding.
(4) Transfer of a PWVL to a new conforming location is only allowed when there are ten (10) or fewer licenses

(b) ***Nonconforming PWVLs.*** Personal watercraft vendors who established or commenced business at a location on or before December 2, 1996, that does not comply with the location requirements set forth in this chapter may continue to operate as a nonconforming use after December 2, 1996, unless terminated for failure to obtain a PWVL or renewal as required by this chapter, voluntary discontinuation of business for a period of thirty (30) days or more, or revocation of the PWVL.

(c) ***Nonconforming PALs.*** Parasail operators who established or commenced business at a location on or before January 21, 1997, that does not comply with the location requirements set forth in this chapter, may continue to operate as a nonconforming use after January 21, 1997, unless

terminated for failure to obtain a PAL or renewal as required by this chapter, voluntary discontinuation of business for a period of thirty (30) days or more, or revocation of the PAL.

Sec. 27-56. Insurance.

(a) No person shall operate a personal watercraft or parasailing activity business unless covered by a comprehensive general liability insurance policy insuring the public against bodily injury or property damage resulting from or incidental to the operation, use, or rental of personal watercraft or parasailing activity. At a minimum, the policy shall provide coverage of not less than $500,000 per occurrence and $1,000,000 per aggregate. The policy shall list the Town of Fort Myers Beach as an additional insured, and shall provide that coverage not be canceled or materially altered except after 30 days' written notice has been received by the town, and be written through insurers licensed and authorized to do business in the State of Florida. The town shall also require a copy of the declaration page of the operator's insurance policy with a listing of all insured watercraft by serial number.

(b) Evidence of said coverage is subject to acceptance and approval by the town manager prior to issuance of PWVL or PAL.

(c) Coverage shall remain in full force during the entire time that the PWVL or PAL is valid and outstanding. Failure to provide such proof shall render the PWVL or PAL null and void, and of no further use and effect. The holder's subsequent application for a new PWVL or PAL shall be subject to the regulations for a new business and shall lose the nonconforming status afforded under this chapter.

Sec. 27-57. Penalty.

Violation of the provisions of this chapter, or failure to comply with any of the requirements, shall constitute a civil infraction. Any person who violates this chapter or fails to comply with any provision shall upon conviction thereof be fined $150 for the first violation; $300 for the second and third violation; and the town shall consider license revocation for more than three violations of this chapter, and in addition the violator shall pay all costs and expenses involved in the case.

Sec. 27-58. Standardized rules.

RULES

1. Operators must go slow speed until past all idle speed buoys. Operator must travel perpendicular to shore when entering or leaving the marked idle speed zone.
2. Operators must remain 200 feet from any watercraft and 500 feet from swimmers, waders or people floating in the water. Operator must yield right of way to all other vessels.
3. All renters must be at least 18 years of age.
4. Operator may not be under the influence of drugs or alcohol.
5. Operator must stay in the boundaries set by the rental vendor and in sight of rental location at all times.
6. No operator shall operate watercraft in a hazardous manner.
7. Operators must listen to and obey all verbal and written rules. If any rules are broken, operator's ride will be terminated. No refunds!

REGLAS

1. El operador tiene que ir a una velocidad despacia hasta que a pasado todas las marcas de velocidad. El operator tiene que viajar perpendicular a la costa cuando entrando o saliendo la zona marcada para una velocidad ociosa.
2. El operator tiene que quedarse 200 pies de cualquier bote y 500 pies de los nadadores o personas flotando en la agua. Operadores tienen que cedar a todas los buques.
3. Todos operadores tienen que ser a lo menos 18 años de edad.
4. Operadores no queden estar en la influencia de drogas o alcohol.
5. Operadores tienen que quedarce siempre en el limite hecho por las personal de alquilo y en la vista del lugar de alquilo.
6. Operadores no deben conducir el equipo en una manera dañoso o peligroso.
7. Operadores tienen que poner atención a todas las regulaciónes oral y escritas. Si alguna regulacion no es seguida el alquilo va a ser terminado. El dinero no va hacer devolvido!

Vorschriften zur Mietung eines Wasserfahrzeuges

#1. Der Bediener muss mit langsamer Geschwindig Keit fahren, bis er alle weissen Bojen passiert hat. Beim ReinKommen oder VerLassen der markierten Geschwindigkeitszone muss er sich senkrecht zum strand bewegen.
#2. Der Bediener muss 60 m von Wasserfahrzeugen und 152 m von Schwimmern, Watvogeln und anderen Leuten, die sich im Wasser befinden, Abstand halten. Er muss allen Booten, die von rechts Kommen, Vorfahrt gewahren.
#3. Der Bediener muss mindestens 18 jahre alt sein.
#4. Der Bediener darf nicht unter Einfluss von Drogen oder Alkohol stehen.
#5. Der Bediener muss sich innerhalb der Grenze, die vom Vermieter gesetzt wird, und in der Sicht des Vermietungs standes bleiben.
#6. Der Bediener soll das Fahrzeug nicht ordnungswidrig fahren.
#7. Der Bediener sollte alle mundlichen und schriftlichen regeln befolgen. Falls irgendeine Regel missbraucht wird, wird die Fahrt sofort beendet. Es erfolgt keine Kostenerstattung.

REGLES SANDART

Regle #1 • Vitesse

Chaque conducteur doit garder une vitesse ralentie jusqu'au niveau des bouees. La rentree ou la sortie du jet ski doit etre perpendiculaire a la plage et toujours effectuee au ralenti.

Regle #2 • Distance

Le conducteur doit se tenir a 60 metres des autres vehicules, a 152 metres des nageurs et des matelats pneumatiques, ou bien des gens qui flottent. Le jet ski doit laisser la prioritee a droite.

Regle #3 • Age

Tout les conducteurs doivent avoir 18 ans ou plus, sans exception!

Regle #4 • Drogue & Alcohol

Tour les conducteurs doivent etre sobres!

Regle #5 • Delimitation

Chaque conducteur doit rester a tout temps dans les limites du territoire imposees par la maison de location.

Regle #6 • Courtoisie

L'operateur doit toujours conduire avec prudence.

Regle #7 • Regle d'Or

L'operateur doit preter attention et obeir a tout conseil et reglementation ecrite. Si les regles ne sont pas suivies, le conducteur sera disqualifie(e), sans etre rembourse(e)!

CHAPTERS 28[3] AND 29 RESERVED

[3] *Chapter 28, originally adopted by the Fort Myers Beach Parasailing Ordinance, Ordinance 97-02, and later amended by Ordinance 99-04, has been incorporated into Chapter 27 of this code.*

CHAPTER 30 — SIGNS

Sec. 30-1. Purpose and intent of chapter.

The town council finds and declares:

(a) An excess of signs causes a visual blight on the appearance of the town by detracting from views of structures and open space. This visual blight adversely affects the aesthetic quality of life and traffic safety on Fort Myers Beach for residents, businesses, pedestrians, and persons in vehicles. In order to promote the appearance of the town, while protecting the rights of sign owners to expression and identification, the regulation of existing and proposed signs is necessary to protect the public health, safety, and general welfare.

(b) The purpose of this chapter is to encourage signs which are integrated with and harmonious to the buildings and sites which they occupy, to eliminate excessive and confusing sign displays, to preserve and improve the appearance of the town as a place in which to live and work and as an attraction to nonresidents who come to visit or trade, and to restrict signs which increase the probability of accidents by distracting attention or obstructing vision.

(c) This chapter provides minimum standards to safeguard life, safety, property, and public welfare by regulating size, construction, location, electrification, operation, and maintenance of all signs and sign structures exposed to public view within the town. These standards are content-neutral and regulate based on the form, and not the content, of signs. The visual appearance and traffic safety of the town cannot be achieved by measures less restrictive than the procedures and standards of this chapter.

(d) It is the intent of the Town Council that protection of First Amendment rights shall be afforded by these sign regulations. Accordingly, any sign, display or device permitted under these regulations may contain, in lieu of any other copy, any otherwise lawful non-commercial message that complies with all other requirements of this code. The noncommercial message may occupy the entire sign area or any portion thereof, and may substitute for or be combined with the commercial message. The sign message may be changed from commercial to noncommercial, or from one noncommercial message to another, as frequently as desired by the sign's owner, provided that the sign is not prohibited and the sign continues to comply with all requirements of this code.

Sec. 30-2. Definitions and rules of construction.

(a) In case of any difference of meaning or implication between the text of this chapter and any other law or regulation, this chapter shall control.

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

Alteration. Any change in copy, color, size, or shape, which changes appearance of a sign, or a change in position, location, construction, or supporting structure of a sign, except that a copy change on a sign specifically designed for the use of replaceable copy, e.g., a reader board with changeable letters, is not an alteration.

Animated sign. Any sign, including electronic, laser, video, or digital displays, that uses movement or change of lighting to depict action or create a special effect or scene. Electronic message boards, electronic changing message centers, and any signs with flashing lights are considered to be animated signs.

Awning sign. Any sign consisting of letters which are painted or installed on a lawful awning, but not including a back-lit awning.

Back-lit awning. An awning with a translucent covering material and a source of illumination contained within its framework.

Balloon sign. One or more balloons, with or without messages or illustrations, that are used as a temporary or permanent sign or as a means of directing attention to a business or organization or to a commodity, service, or entertainment.

Banner. A temporary sign of flexible plastic, cloth, or any other fabric, either enclosed or not enclosed in a rigid frame, that is secured or mounted to allow movement caused by the atmosphere, including “streamers” and “pennants” but not including flags.

Bench sign. A sign that is painted on or attached to any part of a bench, seat, or chair placed one or adjacent to a public street, public plaza, or beach access.

Building numbers. The building number assigned by Lee County as the official premises address, painted or affixed to a building, mailbox, or similar structure.

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

Business information sign. Any sign containing the name or address of a building and may include hours of operation, information to customers such as business hours and telephone number, “open” and “closed,” “shirts and shoes required,” “no soliciting,” “no loitering,” emergency information, professional and trade association information, and credit card information.

Canopy. A permanent roof-like shelter open on four sides, to protect an area from the elements, such as over gasoline pumps.

Canopy sign. Any permanent sign attached to or constructed in, on, or below a canopy.

Commercial message. Any sign, wording, logo, or other representation that, directly or indirectly, names, advertises, or calls attention to a business, product, service, or other commercial activity. For purposes of this chapter, terms such as sale, special, clearance, or other words which relate to commercial activity shall be deemed to be commercial messages. The identification by name of an apartment or condominium development on a residential sign at the apartment or condominium development site shall not be considered to be a commercial message.

Construction sign. A temporary sign identifying a construction project and the persons, firms, or businesses participating in the construction project.

Development identification sign. A permanent sign, which is either a freestanding sign or a sign located on a subdivision entry feature or perimeter wall, at a main entrance to a subdivision or development, identifying the name of the development or subdivision.

Directional sign. Any sign which serves solely to designate the location of or direction to any place, activity, facility, or area and contains no commercial message.

Double-faced sign. A single plane with items of information identical on both sides and mounted as a single structure.

Election sign. A sign temporarily installed in the ground or attached to a building relating to the election of a person to a public office or relating to a matter to be voted upon at a federal, state, or local election.

Emitting sign. A sign designed to emit visible smoke, vapor, particles, or odor, or a sign which produces noise or sounds capable of being heard, even though the sounds produced may not be understandable.

Face of sign. The entire area of a sign on which copy could be placed.

Flag. Any fabric or bunting used as a symbol (as of a nation, government, political subdivision or other entity) or as a signaling device.

Freestanding sign. Any sign supported by structures or supports that are placed on, or anchored in, the ground and that are independent from any building, wall, fence, vehicle, or object other than the sign structure for support.

Frontage. The distance measured along a public street right-of-way or a private street easement between the points of intersection of the side lot lines with the right-of-way of the easement line.

Government sign. Any sign erected and maintained pursuant to and in discharge of any governmental function, or required by law, ordinance or other governmental regulation.

Illuminated sign. Any electrically operated sign or any sign for which an artificial source is used in order to make readable the sign's message, including internally and externally lighted signs and reflectorized, glowing, or radiating signs.

Incidental sign. A sign, generally informational, that has a purpose that is secondary to the use of the site on which it is located, such as "No Parking," "Entrance," "Exit," "Telephone," "Open," "Beware of Dog," "No Trespassing," "Welcome," and other similar directives. The term incidental sign shall not include a sign designed to be transported by means of wheels, a sandwich-board sign, or a skid-mounted sign, regardless of the nature of the information that such sign may contain.

Inflatable object. An object of any shape that is expanded or capable of expansion by means of air or gas, such as a balloon, wind sock, or air tube, and which is used as a means of attracting attention to a site, product, or event.

Licensed contractor. A person holding a valid contractor's license issued by the Lee County construction board.

Maintain. To preserve from decline, keep in an existing state or retain in possession or control.

Menu display box. A small plaque or display case, not exceeding four (4) square feet in area and four (4) inches in depth, located on an exterior building wall, that displays a restaurant's menu near its entrance for the convenience of potential patrons who arrive on foot.

Monument sign. A free-standing sign with internal structural supports, where the height from the ground to the highest point on the sign is less than the sign's greatest horizontal dimension.

Motion picture sign. A sign capable of displaying moving pictures or images in conjunction with an outdoor advertising structure, accessory sign, or advertising statuary visible from any public street or sidewalk.

Nameplate sign. A non-illuminated identification sign indicating only the name, address, and/or occupation of an occupant or group of occupants of a building.

Non-commercial sign. A sign which contains no commercial message.

Open house sign. A sign identifying property for sale, rent, or lease and temporarily open for inspection.

Off-premises sign. Any sign normally used for promoting a business, individual, products, or service available somewhere other than the premises where the sign is located. A sign containing a non-commercial message shall not be considered to be an off-premises sign.

Parasite sign. Any sign not exempted by this chapter, for which no permit has be issued, and which is hung from, attached to, or added onto an existing sign.

Permit board. A freestanding device erected on a construction site for the sole purpose of providing a conspicuous display of and shelter for the permits required for construction activities being performed on such construction site. A permit board may display a contractor name or logo so long as such display does not exceed one (1) square foot.

Pole sign. A free-standing sign supported by an exposed structure of poles or other supports where the height of the exposed sign supports extends more than eighteen (18) inches from the ground to the bottom of the sign. A free-standing sign that meets this chapter's requirements for a monument sign is not considered to be a pole sign.

Portable sign. Any movable sign not permanently attached to the ground or a building.

Projecting sign. A sign which is attached to a building and projects more than eighteen (18) inches above, below, or outward from, and is supported by, a wall, parapet, or ceiling of a building.

Public body. Any government or governmental agency of the United States, the state, the county, or the Town of Fort Myers Beach.

Real estate sign. A temporary sign which advertises the sale, exchange, lease, rental, or availability of the parcel, improved or unimproved, upon which it is located.

Residential sign. Any sign, not otherwise defined or regulated in this chapter as an allowed sign in a residential zoning district, that is located in a district zoned for residential uses and does not contain any commercial message.

Roof sign. Any sign erected upon a roof or roof-mounted equipment. Signs placed flat against the steep slope of a mansard roof will not be considered roof signs.

Sandwich-board sign. An easily moveable sign not attached to the ground that is supported by its own frame which generally forms the cross-sectional shape of an A. For purposes of this code, sandwich-board signs are not considered portable signs.

Sign. Any name, figure, character, outline, display, announcement, or device, or structure supporting the same, or any other device of similar nature designed to attract attention or convey a message outdoors, and shall include all parts, portions, units, and materials composing the same, together with the frame, background, and supports or anchoring thereof.

Sign face. An exterior display surface of a sign including non-structural trim exclusive of the supporting structure.

Snipe sign. A sign of any material, including paper, cardboard, wood, and metal, when tacked, nailed, or attached in any way to trees, telephone poles, or other objects located or situated on a public road right-of-way, or any sign which is installed on property without the permission of the property owner.

Special event sign. A temporary sign announcing a social function, promotional, or fund raising event, sponsored by a private, not-for-profit, or governmental entity which is open to the public, and which is distinct from the usual and customary business day functions of the organization.

Temporary sign. A sign displayed for a fixed, terminable length of time. Temporary signs are intended to be removed after the temporary purpose has been served. Included are for sale, lease or rent signs, political signs, service signs, special event signs, construction signs, directional signs to special or temporary events, and signs of a similar nature.

Vehicle sign. Any sign permanently or temporarily attached to or placed on a vehicle, including a motor vehicle, boat, trailer, or bicycle or human powered vehicle, where the vehicle is parked so as to be visible from the public right-of-way or parked on public property so as to clearly provide a commercial message close to the public right-of-way, unless said vehicle is used by a proprietor or employee of the business for the purpose of commuting between the business location and home or is used in the usual course or operation of a business. Factors to be considered in determining whether a vehicle is used in the usual course or operation of a business shall include, but

not be limited to, whether the vehicle is inoperable, whether the vehicle has a current registration in the State of Florida, the role the vehicle plays in the business, the frequency with which the vehicle is used in the operation of the business, and whether the size of the sign makes it impractical or dangerous to operate the vehicle. Any sign bearing a commercial message that is attached to or painted on a vehicle that is routinely parked or otherwise located on a site or sites other than the site where the business is located, or a sign whose size makes it impractical or dangerous to operate the vehicle, shall be presumed to be a prohibited vehicle sign.

Wall sign. Any sign attached to or painted on the wall of a building or structure and extending no more than eighteen (18) inches outward from the wall in a plane approximately parallel to the plane of said wall.

Window sign. Any sign viewable through and/or affixed in any manner to a window or exterior glass door such that it is viewable from the exterior, including signs located inside a building but visible primarily from the outside of the building.

Cross-reference--*Definitions and rules of construction generally, 1-2.*

Sec. 30-3. Reserved.

Sec. 30-4. Applicability of chapter.

(a) ***Generally.*** Except as otherwise provided in this chapter, it shall be unlawful for any person to erect, construct, enlarge, move, or convert any sign in the Town of Fort Myers Beach, or cause such work to be done, without first obtaining a sign permit for each such sign as required by this chapter.

(b) ***Exceptions***.

(1) This chapter shall not apply to any sign erected by the federal, state, county, or Town of Fort Myers Beach government or to the placement of temporary signs not exceeding eight (8) square feet in area within a right-of-way for purposes of business identification or access location, when necessitated by road construction and when authorized by the county or town.

(2) The following activities shall not be considered the creation of a sign:

a. *Change of copy.* Changing the copy on existing signs.
b. *Maintenance.* Painting, repainting, cleaning, or other normal maintenance and repair of a sign not involving change of copy, structural, or electrical changes.
c. *Window displays.* Changes in the content of show window displays, provided all such displays are within the building.

Sec. 30-5. Prohibited signs.

The following signs are prohibited:

(1) ***Any signs which are not designed, located, constructed, or maintained in accordance with the provisions of this chapter***, or which do not meet the requirements of all applicable Town of Fort Myers Beach, state, and federal codes.
(2) ***Signs that resemble any traffic control device***, official traffic control signs or emergency vehicle markings.
(3) ***Signs located at the intersection of any street right-of-way*** in such a manner as to obstruct free and clear vision, or at any location where, by reason of the position, shape, or color, the sign may interfere with or obstruct the view of any authorized traffic sign, signal, or device; or which make use of the word “stop,” “look,” “drive-in,” “danger,” or any other word, phrase, symbol, or character in such a manner as to interfere with, mislead, or confuse vehicular traffic.
(4) ***Animated signs*** except those displaying only cycling time or temperature.
(5) ***Back-lit awnings.*** However, any business with an existing back-lit awning as of December 31, 2004, may continue to use that awning and may place or replace signage on that awning provided it otherwise conforms to this code. This right shall end if the business is discontinued or moved to a different location, or if the building is rebuilt or substantially improved.
(6) ***Balloons or balloon signs***.
(7) ***Banners, pennants, or other flying paraphernalia***, except as permitted in § 30-141 (temporary signs).
(8) ***Bench signs***.
(9) ***Canopy signs.***
(10) ***Emitting signs.***

(11) ***Inflatable objects***.
(12) ***Motion picture signs.***
(13) ***Obscene signs***.
(14) ***Off-premises signs***.
(15) ***Parasite signs***.
(16) ***Pole signs***.
(17) ***Portable signs***.
(18) ***Roof signs***.
(19) ***Sandwich-board signs***. Except as permitted by §§ 27-51(c)(4) and (5) for PWVL and PAL businesses.
(20) ***Signs with any lighting or control mechanism*** which causes radio, television, or other communication interference.
(21) ***Signs erected, constructed, or maintained so as to obstruct or be attached to any fire-fighting equipment*** or any window, door, or opening used as a means of ingress or egress or for fire-fighting purposes, or placed so as to interfere with any opening required for proper light and ventilation.
(22) ***Signs which are placed on any curb, sidewalk, post, pole***, hydrant, bridge, tree, or other surface located on public property or over or across any street or public street except as may otherwise expressly be authorized by this chapter.
(23) ***Snipe signs***.
(24) ***Vehicle signs.***
(25) ***Window signs*** which cover more than thirty (30) percent of the window glass surface area.

Sec. 30-6. Exempt signs.

The following signs are exempt from the permitting requirements of this chapter:

(1) ***Awning signs***. Awning signs consisting of one line of letters or building or address numbers on the hanging border, or an identification emblem, insignia, initial, or other feature not exceeding an area of eight (8) square feet painted or installed elsewhere on an awning.
(2) ***Building numbers.*** Posted building numbers must be between three (3) and eight (8) inches high for detached dwellings and for individual businesses, institutional, and multifamily buildings. Numbers on buildings that are set back more than fifty (50) feet from the street must be between eight (8) and eighteen (18) inches high. If the building number is prominently displayed on an identification sign for a multiple occupancy complex, the number need not be repeated for individual businesses within that complex.
(3) ***Business information signs***. Business information signs provided that such signs are posted on the entrance doors or within a window.
(4) ***Flags*** that contain no commercial message.
(5) ***Garage sale signs***. Garage sale signs, provided they are erected not more than 24 hours prior to the sale and are removed within 72 hours of the time they were erected.
(6) ***Government and public safety signs***. Governmental signs for control of traffic and other regulatory purposes, street signs, danger signs, signs of public service companies indicating danger, "no parking" signs, and aids to service or safety which are erected by or on the order of a public official in the performance of his public duty.
(7) ***Incidental signs*** not exceeding two (2) square feet in area per sign and limited to two (2) signs per parcel or lot. Additional incidental signs shall require a permit for each such additional sign.
(8) ***Instructional signs*** or symbols located on and pertaining to a parcel of private property, not to exceed four (4) square feet in area per sign.
(9) ***Interior signs***. Signs located within the interior of any building, or within the inner or outer lobby, court, or entrance of any theater. This does not, however, exempt such signs from the structural, electrical, or material specifications as set out in this code and the Florida Building Code.
(10) ***Legal notices***. Legal notices and official instruments.
(11) ***Memorial signs or tablets***. Memorial signs or tablets, names of buildings, and date of erection when cut into any masonry surface or when constructed of bronze or other incombustible materials.
(12) ***Nameplates***. Any sign not exceeding one and one-half (1½) square feet in area per sign and not exceeding two (2) in number per lot. Such signs shall not be illuminated, and they shall not project over any public right-of-way.
(13) ***Posted property signs***. Posted property signs, not to exceed one and one-half (1½) square feet in area per sign and not

exceeding two (2) in number per lot. Such signs shall not be illuminated, and they shall not project over any public right-of-way.

(14) ***Public information signs***. Any sign used for public information or direction erected either by or at the direction of a public body.

(15) ***Real estate, open house, and model signs***. Real estate, open house, and model signs.

(16) ***Sandwich-board signs***, but only as permitted by §§ 27-51 (c)(4) and (5) for PWVL and PAL businesses.

(17) ***Signs incorporated on machinery or equipment***. Signs incorporated on machinery or equipment at the manufacturer's or distributor's level, which identify or advertise only the product or service dispensed by the machine or equipment, such as signs customarily affixed to vending machines, newspaper racks, telephone booths, and gasoline pumps.

(18) ***Special event signs.***

(19) ***Symbols or insignia of religious orders***, historical agencies, or identification emblems of religious orders or historical agencies, provided that no such symbol, plaque or identification emblem shall exceed sixteen (16) square feet in area.

(20) ***Temporary signs***. Temporary election signs, special event signs, and real estate signs as provided in § 30-141.

(21) ***Tow Away Zone signs*** erected pursuant to and in compliance with Section 715.07, Florida Statutes.

(22) ***Warning signs***. Signs warning the public of the existence of danger, to be removed upon subsidence of danger.

(23) ***Waterway signs***. Directional signs along inland waterways.

(24) ***Window signs***. Interior window signs which identify or advertise activities, services, goods, or products available within the building.

(25) In single-family residential zoning districts, no more than one (1) residential sign, in addition to any directional signs, flags, incidental signs, and temporary signs that may be otherwise allowed, shall be erected or located on the site and shall not exceed four (4) square feet in sign area and, if freestanding, five (5) feet in height.

(26) In multifamily zoning districts, one (1) residential sign per street frontage of the site, in addition to any directional signs, flags, incidental signs and temporary signs that are otherwise allowed, shall be located on the site, provided, however, that in no event shall the total number of such signs exceed two (2) per site. The maximum sign area for each residential sign shall be sixteen (16) square feet and, if freestanding, the maximum height shall not exceed eight (8) feet.

Secs. 30-7–30-50. Reserved.

Sec. 30-51. Violation of chapter; penalty.

The town manager or designee is authorized to pursue any one or combination of the enforcement mechanisms provided in this code or by law for any violation of this chapter. Penalties may be assessed against any owner, agent, lessee, tenant, contractor, or any other person using the land, building, or premises where such violation has been committed or shall exist; any person who knowingly commits, takes part in or assists in such violation; and any person who maintains any sign or sign structure in violation of this chapter or in dangerous or defective condition.

Sec. 30-52. Reserved.

Sec. 30-53. Powers and duties of town manager.

(a) ***Generally***. The town manager is hereby authorized and directed to administer and enforce the regulations and procedures and to delegate the duties and powers granted to and imposed upon him under this chapter.

(b) ***Specific powers and duties***.

(1) **Issuance or denial of permits and certificates**.

a. It shall be the duty of the town manager or designee, upon receipt of a completed application for a sign permit, to examine such plans and specifications and other data and, if the proposed structure is in compliance with the requirements of this section and all other applicable provisions of this chapter, to issue to the applicant a written permit evidencing the applicant's compliance therewith.

Permits shall be issued within fifteen (15) days of receipt of a complete application. Issuance of the permit shall in no way prevent the town manager or designee from later declaring the sign to be illegal if, upon further review of the information submitted with the application or of newly acquired information, the sign is found not to comply with the requirements of this chapter.

b. No sign permit or certificate of compliance shall be issued except in compliance with this chapter and any other applicable ordinances and laws or court decisions.

(2) **Lapse**. A sign permit shall lapse automatically if the business license for the premises lapses, is revoked, or is not renewed. A sign permit shall also lapse if the business activity on the premises is discontinued for a period of thirty (30) days and is not renewed within thirty (30) days from the date written notice is sent from the town to the last permittee that the sign permit will lapse if such activity is not resumed. A sign permit shall also lapse if the sign for which it is issued either is not erected and/or placed within one hundred eighty (180) days following the issuance of the sign permit or is removed for a period of sixty (60) days. Once a sign permit has lapsed, it shall be considered void and a new application and review process shall be necessary in order to have the sign permit re-issued.

Sec. 30-54. Variances.

Requests for variances or deviations from the terms of this chapter shall be administered and decided in conformance with the requirements for variances and deviations which are set forth in ch. 34.

Sec. 30-55. Permits; inspections.

(a) ***Sign permit required; modifications***.

(1) Except as otherwise provided for in this chapter, no sign shall be located, placed, erected, constructed, altered, replaced, enlarged, moved, or converted in the Town of Fort Myers Beach, without first obtaining a sign permit.

(2) In the event a sign is located, installed, or maintained upon real property in the Town of Fort Myers Beach without any required permits, after the expiration or lapse of a sign permit, or otherwise in violation of the requirements of this Chapter, the owner of the real property where the sign is located shall be responsible for the prompt removal of such sign and shall be responsible for and subject to all fines or penalties resulting from such violation.

(b) ***Application for sign permit***. In order to obtain a permit to erect, alter, or relocate any sign under the provisions of this chapter, an applicant therefore shall submit to the town a sign permit application, which shall include:

(1) A completed application form that includes the following:

a. The name, address, and telephone number of the applicant.

b. The name, address, and telephone number of the person constructing the sign, as well as the name, address, and telephone number of the owner of the sign.

c. Information as to the type of sign to be erected, e.g., monument, projecting, or wall-sign; illuminated or non-illuminated; temporary or permanent.

d. The approximate value of the sign to be installed, including the installation cost, and information concerning the design of the sign and the copy that will appear on the sign.

(2) *A site location plan* that includes the following:

a. Location by street address and legal description (tract, block, and lot) of the building, structure, or lot where the sign is to be erected or installed.

b. A fully dimensioned plot plan, to scale, indicating the location of the sign relative to property lines, rights-of-way, streets, easements, sidewalks, and other buildings or structures on the premises, as well as the location, size, and type of any other existing signs whose construction requires a sign permit.

c. A sea turtle lighting plan for all lighted signs that are visible from the beach, including signs that are within buildings.

d. A landscape plan for sign installations that will include landscaping.

(3) *Application fee*. Applications for a permit to erect, construct, alter, or extend a sign or sign structure shall be accompanied by a fee in the amount established by the Town Council.

(4) *A drawing to scale* showing the design of the sign, including dimensions, sign size, method of attachment, and source of illumination, and showing the relationship to any building or structure to which it is or is proposed to be installed or affixed.

(5) Plans indicating the scope and structural detail of the work to be done, including details of all connections, supports, footings, and materials to be used.

(6) Where determined to be necessary, a copy of stress sheets and calculations indicating that the sign is properly designed for dead load and wind pressure in any direction.

(7) Where determined to be necessary, a listing of all materials to be utilized in the construction of the sign, or, in the alternative, a statement that all materials are in compliance with the Florida Building Code.

(8) If applicable, an application, and required information for such application, for an electric permit for all signs that include electric components. Electrical components must be UL-approved and installed in conformance with the listing.

(9) All signs, except exempt signs and certain temporary signs, are required to be installed or erected only by a licensed sign contractor or licensed electrical sign contractor. All persons engaged in the business of installing or maintaining signs involving, in whole or part, the erection, alteration, relocation, or maintenance of a sign or other sign work in or over or immediately adjacent to a public right-of-way or public property is used or encroached upon by the sign installer shall agree to hold harmless and indemnify the Town of Fort Myers Beach and its officers, agents, and employees from any and all claims of negligence resulting from the erection, alteration, relocation, or maintenance of a sign or other sign work.

(10) *Expiration of sign permit.* A sign permit shall expire and become null and void six months from the date of issuance, except that it may be extended for good cause by the town manager or designee.

(11) *Inspections*. All signs for which a permit is required by this chapter must be inspected by the town to ensure compliance with this chapter and all other applicable regulations. Failure to obtain a final satisfactory inspection within the permit period or any renewal shall render the permit invalid, and the applicant shall be required to reapply for a permit or remove the sign or sign or structure.

(12) *Identification number*. All signs that were issued a permit after September 13, 1999, must have the sign permit number affixed to the upper right corner of the sign. The town will maintain digital photographs of all signs in the town in town hall.

Sec. 30-56. Non-conforming signs.

(a) ***Non-conforming sign compliance***. All signs that do not conform to the requirements of this chapter shall be considered to be non-conforming signs. All non-conforming signs shall be either removed or brought into conformity with this chapter no later than December 31, 2011. The owner of the real property on which such non-conforming signs exist shall be responsible for ensuring that such signs are removed or brought into conformity.

(b) ***Non-conforming sign permits***. Sign permits will not be issued for the alteration, replacement, or repair of any non-conforming signs.

(c) ***Exception***. Signs that have been designated as historically significant pursuant to § 30-57 below, shall not be considered to be non-conforming signs. Such signs shall be governed by the provisions of § 30-57.

Sec. 30-57. Designation of historically significant signs.

Any existing sign may be nominated for designation as historically significant as provided herein.

(a) Nomination of a sign for designation as historically significant shall be made on an application provided by the director. The application should document the historical background of the sign.

(b) The historic preservation board will hold a public hearing on the nomination and will use the historic preservation element of the town's comprehensive plan as a guideline to consider the nomination. The following criteria will be considered where applicable:

(1) Whether the sign is associated with historic person(s), event(s), or location(s);
(2) Whether the sign provides significant evidence of the history of the product, business, or service represented;
(3) Whether the sign is characteristic of a specific historic period;
(4) Whether the sign is an outstanding example of the art of sign-making, through its craftsmanship, use of materials, and/or design; and
(5) Whether the sign is a local landmark that is popularly recognized as a focal point in the community.

(c) The historic preservation board will, after hearing public comment, vote to recommend that the Town Council either approve or deny historically significant status to the nominated sign.

(d) Following the historic preservation board public hearing, the Town Council will hold a public hearing to consider the nomination. In order to approve the designation of a sign as historically significant, the Town Council must find that the sign meets one or more of the criteria in § 30-57(b) and is consistent with the town comprehensive plan's historic preservation element.

(e) A sign that has been designated historically significant may remain as a legal non-conforming sign notwithstanding the provisions of § 30-56 (non-conforming signs). If a sign that has been designated as historically significant is damaged or destroyed, it may be reconstructed, but such reconstruction must duplicate in all respects the sign that was damaged or destroyed.

Secs. 30-58–30-90. Reserved.

Sec. 30-91. Computation of sign area.

(a) The area of a sign shall include all lettering, wording, and accompanying designs and symbols together with the background, whether open or enclosed, on which they are displayed but not including any supporting framework and bracing which are incidental to the display. The sign area shall be measured from the outside edges of the sign or the sign frame, whichever is greater, excluding the area of any supporting structures that are not part of the display.

(b) When a single sign structure is used to support two or more signs, or unconnected elements of a single sign other than individual letters or symbols, the sign area shall be computed on each sign face in the same manner as the sign area of a single sign. If the faces of a multi-faced sign are separated at any point by more than eighteen (18) inches, then each sign face shall constitute a separate sign.

(c) The area of a double-faced sign shall be computed on only one (1) side, provided, however, that where both sides are unequal in size, the area for the larger side shall be used.

(d) Where a sign consists of individual letters or symbols attached to or painted on a surface, building wall or window, the area shall consist of the single smallest rectangle or other regular geometric shape which encompasses all of the letters and symbols, including the sign background.

Sec. 30-92. Measurement of sign height.

The vertical height of a freestanding sign shall be the vertical distance measured from the highest adjacent grade or the crown of the adjacent street, whichever is higher, to the highest point of the sign face or its supporting structural elements.

Sec. 30-93. Location.

(a) ***Visibility triangle***. No sign shall be erected that would impair visibility at a street intersection or driveway entrance as described in § 34-3131 of this code.

(b) ***Street setbacks.*** No sign or portion of a sign shall be erected closer than three (3) feet to any sidewalk or bike path or to any street right-of-way unless at least eight (8) feet of vertical clearance is maintained.

(c) ***Signs near the beach.*** Other portions of this code may affect the location or lighting of signs. For example:

(1) Signs are permitted in the EC zoning district only if approved through the special exception process or as a deviation in the planned development zoning process (see § 6-366(b)), or where explicitly permitted by §§ 14-5 or 27-51. Where signs are permitted by § 27-51, equivalent signs containing non-commercial messages may be substituted.
(2) A sea turtle lighting plan is required for new signs with artificial light sources that are visible from the beach, including signs that are within buildings. Guidelines for ensuring that sea turtle nesting habitat will not be directly or indirectly illuminated are found in § 14-79.

(d) ***Clearance from power lines***. Signs shall be located no closer than ten (10) feet from all overhead electrical lines and conductors and no closer than three (3) feet from all secondary voltage service drops.

Sec. 30-94. Construction standards.

(a) ***Generally***. All signs shall comply with the appropriate detailed provisions of the Florida Building Code relating to design, structural members, illumination, and connections. All electrical work shall be Underwriters' Laboratories approved or be certified by an electrician licensed in accordance with article II of ch. 6 of this code. Signs shall also comply with the additional standards set forth in this section.

(b) ***Structural design***.
(1) The town manager or designee may require wind load calculations for signs prior to issuance of a permit.
(2) A wall must be designed for and have sufficient strength to support any sign that is attached thereto.

(c) ***Materials for monument signs.***
(1) All monument signs shall be self-supporting structures erected on and permanently attached to the ground.
(2) All wood permitted to be used, whether for new permanent signs, for replacement of existing permanent signs, or for any part thereof, shall be rot and termite resistant through open-cell preservation methods as specified by the American Wood Preservation Association, or by any other open-cell preservation treatment approved by the Florida Building Code.

(d) ***Electric signs***.
(1) All electric signs shall be certified by a licensed electrical contractor that the sign meets the standards established by the Florida Building Code. All electric signs shall be erected and installed by a licensed sign contractor. The electrical connection to a power source shall be performed by a licensed electrical contractor.
(2) Artificial light used to illuminate any sign from outside the boundaries of the sign shall be screened in a manner which prevents the light source from being visible from any abutting right-of-way or adjacent property. See ch. 14 of this code for sea turtle lighting restrictions.
(3) All externally illuminated signs must also comply with the technical standards for lighting found in § 34-1833.

(e) ***Supports and braces***. Metal supports or braces shall be adequate for wind loading. All metal wire cable supports and braces and all bolts used to attach signs to brackets or brackets and signs to the supporting building or structure shall be made of galvanized steel or of an equivalent corrosive resistant material. All such sign supports shall be an integral part of the sign.

(f) ***Anchoring***. No sign shall be suspended by chains or other devices that will allow the sign to swing due to wind action. Signs shall be anchored to prevent any lateral movement that would cause wear on supporting members or connections.

(g) ***Maximum angle for double faced signs***. Double faced signs with opposing faces having an interior angle greater than 30 degrees shall not be permitted.

Sec. 30-95. Sign identification and marking.

Unless specifically exempted from permit requirements of this chapter, all signs shall be photographed and filed with permit numbers in town hall.

Sec. 30-96. Maintenance.

(a) All signs, including their supports, braces, guys, and anchors, shall be maintained so as to present a neat, clean appearance. Painted areas and sign surfaces shall be kept in good condition, and illumination, if provided, shall be maintained in safe and good working order.

(b) Weeds and grass shall be kept cut in front of, behind, underneath, and around the base of monument signs for a distance of ten feet, and no rubbish or debris that would constitute a fire or health hazard shall be permitted under or near such signs.

Secs. 30-97–30-150. Reserved.

Sec. 30-151. Temporary signs.

The following temporary signs are permitted in all zoning districts subject to the following regulations. It shall be unlawful to erect, cause to be erected, maintain, or cause to be maintained any temporary sign which fails to comply with the following regulations.

(a) ***Temporary business announcement signs*** not exceeding sixteen (16) square feet in area and eight (8) feet in height are permitted for a new business, or an existing business that has moved to a new location where there are no permanent signs for such business. Such signs are permitted for a period of not more than sixty (60) days or until installation of permanent sign(s), whichever occurs first. No temporary announcement sign shall be permitted that exceeds either the number or size of permanent signs otherwise permitted by this chapter for the occupancy or location. Sign permits are required for temporary business announcement signs.

(b) ***Construction signs***.

(1) One construction sign shall be permitted per construction project on each street frontage. The sign shall be erected no earlier than five (5) days prior to the commencement of construction, shall be confined to the construction site, and shall be removed prior to issuance of a certificate of occupancy.
(2) Construction signs may only denote the name of the architect, engineer, contractor, subcontractor, owner, future tenant financing agency, or other persons performing services or labor or supplying materials for the project.
(3) Maximum size limitations for construction signs shall be as follows:
    a. For all residential and nonresidential developments, one non-illuminated sign not exceeding sixteen (16) square feet in area and eight (8) feet in height may be erected on each street frontage.
    b. All construction signs must be located within the construction site.
    c. Sign permits are required for construction signs.

(c) ***Development signs***.

(1) A development sign may be permitted in any residential development wherein more than twenty (20) percent of the total number of lots, homes, or living units remain unsold, subject to the following regulations:
    a. One non-illuminated development sign not exceeding sixteen (16) square feet in area and eight (8) feet in height may be permitted at each street entrance into the subdivision or development.
    b. The sign shall be located within the subdivision or development site.
    c. Permits for development signs shall be valid for no more than one (1) year and may be renewed annually provided more than twenty (20) percent of lots, homes, or dwelling units remain unsold.
(2) One non-illuminated development sign per street frontage may be permitted in any commercial zoning district to promote the sale or rental or lease of lots or units within the development. The maximum sign area shall be sixteen (16) square feet and the maximum height shall be ten (10) feet.
(3) Sign permits are required for all development signs.

(d) ***Election signs***. Election signs are permitted as follows:

(1) *Sign area and height.* Election signs shall have a maximum area of four (4) square feet and, if freestanding, a maximum height of three (3) feet.
(2) *Number.* In residential zoning districts, the number of election signs shall be limited to one (1) per ten (10) linear feet of street frontage. In commercial zoning districts, the

number of election signs shall be limited to one (1) per twenty (20) feet of street frontage.

(3) *Timing and removal*. Election signs may be erected no earlier than thirty (30) days prior to the primary or general election to which they relate and shall be removed no later than ten (10) days after the election, provided, however, that an election sign erected prior to a primary election may remain posted continuously until ten (10) days after the general election when the candidate referenced in the sign advances from the primary to the general election. In the event an election sign is displayed on a site outside of the time period allowed herein, or in the event the number of election signs located on a property exceed the number permitted herein, such sign(s) remaining outside the allowed period or the excess number of such signs shall no longer be deemed election signs, but instead, based on the zoning district, shall be treated as and subject to all conditions and regulations applicable to residential signs or non-commercial signs for the site at which the sign is located. If the one "residential sign" or "non-commercial sign" allowed as exempt under § 30-6 is already located on the site where the election sign is located, then any such election sign displayed on a site either beyond the permitted time period for election signs or in excess of the number of allowed signs per site, such sign(s) shall no longer be deemed to be an exempt sign, but instead shall be treated as and subject to all conditions and regulations applicable to a non-exempt sign located on the site.

(e) ***Permit boards.***

(f) ***Special event signs.*** For special events where a special event permit is required, no signs relating to the event shall be erected until a special events permit has been obtained from the town. The following regulations shall also apply:

(1) Special event signs may be erected no earlier than fourteen (14) days prior to a proposed event and must be removed within two (2) days after the event.

(2) Special event signs shall not exceed sixteen (16) square feet in area and eight (8) feet in height.

(3) Banners may be strung for special events if approved as part of a special events permit and shall be subject to the same duration limitations as other special event signs.

(4) The persons(s) or organization(s) sponsoring the special event shall post with the town a cash bond of two hundred dollars ($200.00). The cash bond shall be refunded upon removal of the sign(s) by the sponsoring person(s) or organization(s) and verification of their removal by the town. The cash bond shall be forfeited to the town in the event one (1) or more of the special event signs are not removed within two (2) days after the conclusion of the special event.

(g) ***Real estate signs***. Real estate signs shall be permitted on properties where the owner is actively attempting to sell, rent, or lease such property, either personally or through an agent, as follows:

(1) All properties listed for sale may have one (1) non-illuminated sign, perpendicular to the roadway, that is not more than four (4) square feet in area and five (5) feet in height. Not more than one (1) sign for each street frontage shall be permitted. Waterfront (canal, bay, lagoon, or beach) properties may also have one (1) monument sign which is no more than twelve (12) inches in height and twenty-four (24) inches in width and is located on the water frontage side of the property so that such sign is visible from the water.

(2) The sign face may have the name of the licensed real estate professional, the real estate company or other licensed entity, any required professional indicia, and a phone number and/or address. The sign face may additionally state, "For Rent" or "For Lease" or both, but such statements must be included within the sign face.

(3) No riders (such as name of agent, "sold," "sale pending," "pool," "price reduced," etc.) shall be attached to the sign.

(4) If a property is both for sale and for rent, only one sign is allowed.

(5) No signs may be fastened to trees.

(6) No "goal post" supports are allowed.

(7) *"Open house" signs*. "Open house" signs are allowed as follows:

a. One (1) "open house" sign per property per street and waterbody frontage.

b. The area of any "open house" sign must not exceed four (4) square feet in area and three (3) feet in height, and the sign(s) may be placed only upon the property to be sold or leased.
c. The sign(s) shall be displayed only when the premises are actually available for inspection by a prospective buyer or tenant.

(h) ***Temporary directional signs***. For temporary events with a duration of one (1) day or less, temporary directional signs may be placed in the right-of-way along Estero Boulevard and at each intersection on the most direct route between Estero Boulevard and the property where the temporary event is taking place. Such signs may be placed on the day of the event only and must be removed within twenty-four (24) hours after the termination of the event. Such signs shall be no more than four (4) square feet in area and may only contain a brief description of the event, the address for the event and a directional arrow.

Sec. 30-152. Development identification signs.

Development identification signs shall be subject to the following:

(a) ***Residential development identification signs***.
(1) *Entrance signs.* Permanent wall or monument signs for identification purposes only, giving only the name of the condominium, subdivision, or development, may be permitted at each main entrance into such subdivision or development. Subdivision or development entrances which contain a median strip separating the entrance and exit lanes may be permitted:
   a. A single monument sign located in the median strip of the entrance, provided that it is set back a minimum of fifteen (15) feet from the right-of-way of the public access road and a minimum of five (5) feet from the edge of the pavement of the entrance and exit lanes, or
   b. Two single-faced signs equal in size and located on each side of the entranceway.
(2) *Limitations.*
   a. The condominium, subdivision, or development shall have a property owners' association or similar entity which will be responsible for maintenance of the sign.
   b. The face of each permitted main entrance identification sign shall not exceed twenty-five (25) square feet and five (5) feet in height.
   c. The sign may be illuminated with a steady light so shielded as to not allow the light to interfere with vehicular traffic. See ch. 14 of this code for sea turtle lighting restrictions.
   d. The sign should be incorporated into accessory entrance structural features such as a wall or landscaping.

(b) ***Schools, churches, day care centers, parks, recreational facilities, and libraries***. A school, church, day care center, park, recreational facility, or library shall be permitted one (1) monument or wall-mounted identification sign and one (1) directory sign within the property line, with maximum sign area of twenty-four (24) square feet and a maximum height of five (5) feet.

Sec. 30-153. Maximum sign area.

(a) ***Single and multifamily residential uses in residential zoning districts***. Except for those signs identified as exempt signs in § 30-6 and temporary signs in § 30-141, no signs are allowed on sites containing residential uses in residential zoning districts. Any such exempt or temporary sign(s) located on a residential site in a residential zoning district shall comply with the regulations for exempt sign(s) contained in § 30-6 and the regulations for temporary signs contained in § 30-141.

(b) ***Commercial uses in commercial zoning districts***. All signs located in commercial zoning districts, except for those signs identified as exempt signs in § 30-6 and temporary signs in § 30-141, shall comply with the following sign area limitations.
(1) For a parcel of land containing one (1) or two (2) business establishments, each separate business establishment shall be allowed a maximum of thirty-two (32) square feet of sign area.
(2) For a parcel of land containing three (3) or more business establishments, each establishment shall be allowed a maximum of sixteen (16) square feet of sign area. An additional thirty-two (32) square feet of sign

area may be utilized to identify the commercial development.

(3) The maximum sign area provided herein may be allocated among a combination of one (1) or more monument signs, projecting signs, and/or wall signs.

Sec. 30-154. Standards for monument signs, projecting signs, and wall signs in commercial zoning districts.

Except as may be otherwise provided herein, all monument signs, projecting signs, and wall signs located in commercial zoning districts shall comply with the following regulations.

(a) Buildings that are required to meet the commercial design standards in §34-991-1010 cannot install internally lit box signs (see Figure 30-1). When internally lit signs are permitted for buildings that are not required to meet the commercial design standards, the sign face must be designed so that illumination occurs only on individual letters or symbols. An opaque background panel must be used so that the internal light only passes through the letters or symbols. This requirement also applies to all signs with changeable copy. See Figure 30-2 for an example of illuminated letters on an internally lit sign face.

Figure 30-1

Figure 30-2

(b) ***Location***. Monument signs must be set back at least three (3) feet from any public right-of-way or roadway easement, provided, however, that monument signs may be located in a lawfully developed landscaped median strip that is within a public or private right-of-way or easement where the holder(s) of the right-of-way or easement have consented to the location of the monument sign in such right-of-way or easement. Monument signs located in such median strips must be set back a minimum of two (2) feet from the edge of the pavement and must not violate the visibility requirements of § 34-3131. Wall signs and projecting signs may extend over public sidewalks provided they maintain a minimum clear height above sidewalks of eight (8) feet and do not extend closer than two (2) feet to an existing or planned curb.

(c) Monument signs may be elevated provided that the bottom of the sign is no more than eighteen (18) inches above the highest adjacent grade. The maximum height of a monument sign is five (5) feet.

(d) A wall sign must not extend above the lowest edge of the building's eaves or above the highest horizontal members of the fence or wall to which it is attached.

(e) A projecting sign must not extend more than three (3) feet above the lowest edge of the building's eaves.

Sec. 30-155. Severability.

(a) ***Generally***. If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or work of this chapter is declared unconstitutional by a final and valid judgment or decree of any court of competent jurisdiction, this declaration of unconstitutionality or invalidity shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this chapter.

(b) ***Severability where less speech results***. This subsection shall not be interpreted to limit the effect of subsection (a) above, or any other applicable severability provisions in the Code or any adopting ordinance. The town council specifically intends that severability shall be applied to these sign regulations even if the result would be to allow less speech in the town, whether by subjecting currently exempt signs to permitting or by some other means.

(c) ***Severability provisions pertaining to prohibited signs***. This subsection shall not be interpreted to limit the effect of subsection (a) above, or any other applicable severability provisions in the code or any adopting ordinance. The town council specifically intends that severability shall be applied to § 30-5, "Prohibited signs," so that each of the prohibited sign types listed in that section shall continue to be prohibited

irrespective of whether another sign prohibition is declared unconstitutional or invalid.

(d) ***Severability of prohibition on off-premises signs and commercial advertising signs***. This subsection shall not be interpreted to limit the effect of subsection (a) above, or any other applicable severability provisions in the code or any adopting ordinance. If any or all of chapter 30 “Signs” or any other provision of the town’s code is declared unconstitutional or invalid by the final and valid judgment of any court of competent jurisdiction, the town council specifically intends that that declaration shall not affect the prohibition on off-premises signs contained in § 30-5.

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 34
ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES

ARTICLE I. IN GENERAL

ARTICLE II. ZONING PROCEDURES

ARTICLE V. NONCONFORMITIES

ARTICLE I.
IN GENERAL

Sec. 34-1. Purpose and intent of chapter.

(a) The purpose of this chapter is to encourage and promote, in accordance with present and future needs, the safety, health, order, convenience, prosperity, and general welfare of the citizens of the Town of Fort Myers Beach, to recognize and promote real property rights, and to provide:

(1) for efficiency and economy in the process of development,
(2) for the appropriate and best use of land,
(3) for preservation, protection, development, and conservation of the historical and natural resources of land, water, and air,
(4) for convenience of traffic and circulation of people and goods,
(5) for the use and occupancy of buildings,
(6) for healthful and convenient distribution of population,
(7) for adequate public utilities and facilities,
(8) for promotion of the amenities of beauty and visual interest,
(9) for protection of the character and maintenance of the stability of residential and business areas, and
(10) for development in accordance with the Fort Myers Beach Comprehensive Plan.

(b) These purposes are furthered by establishing zoning districts and by regulating the location and use of buildings, signs, and other structures, water, and land, by regulating and limiting or determining the height, bulk, and access to light and air of buildings and structures, the area of yards and other open spaces, and the density of use. To accomplish these objectives, the regulations and districts and accompanying maps have been designed with reasonable consideration, among other things, to the character of the districts and their peculiar suitability for particular uses.

(c) No building or structure, or part thereof, shall hereafter be erected, constructed, reconstructed, altered, or maintained, and no existing use, new use, or change of use of any building, structure, or land, or part thereof, shall be made or continued except in conformity with the provisions of this code. Special regulations apply to certain nonconforming buildings and uses as provided in article V of this chapter.

(d) Other chapters of this code also provide standards that supplement this chapter. For example, ch. 10 includes standards for:

(1) Mandatory construction of sidewalks during development along major streets; see § 10-289.
(2) Approved piping materials for use in rights-of-way; see § 10-296(d).
(3) Driveways that cross drainage swales, including residential driveways; see § 10-296(o).
(4) Stormwater discharge and erosion control requirements; see § 10-601–608.

Sec. 34-2. Definitions.

The following words, terms, and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates a different meaning:

Abutting property, unless specifically stated otherwise within this chapter, means properties having a boundary line, or point or portion thereof, in common, with no intervening street right-of-way or easement, or any other easement over 25 feet in width.

Access, vehicular means the principal means of vehicular ingress and egress to abutting property from a street right-of-way or easement.

Accessory apartment. See §§ 34-1177–1178.

Accessory building or structure. See *Building or structure, accessory*.

Accessory use. See *Use, accessory*.

Administrative office means an office which is customarily ancillary and subordinate to the permitted principal use of the property and which is used for clerical and administrative functions of the principal use. This term shall be interpreted to include managers or association offices for residential rental property, subdivisions, recreational vehicle parks and similar type activities.

Aggrieved person or party means anyone who has a legally recognizable interest which is or which

may be adversely affected by an action of or an action requested of the town council or any other person or board that has been delegated such authority by the town council.

Alter and ***alteration*** mean any change in size, shape, character, or use of a building or structure.

Amateur radio antenna/tower means a structure erected and designed to receive or transmit radio waves by licensed amateur radio operators.

Amusement device means any mechanical device or combination of devices which carries or conveys passengers on, along, around, over, or through a fixed or restricted course or within a defined area for the purpose of giving its passengers amusement, pleasure, or excitement. This definition shall specifically include all amusement devices, amusement attractions, and temporary structures regulated by F.S. ch. 616 and the state department of agriculture and consumer services.

Amusement device, permanent means a device which is used, or intended to be used, as an amusement device or amusement attraction that is erected to remain a lasting part of the premises.

Animal clinic or kennel means an establishment providing for the diagnosis and treatment of ailments of animals other than humans, or for the temporary care of more than four dogs or cats (except litters of four months of age or less) for a fee, and which may include facilities for overnight care. See division 7 of article IV of this chapter.

Applicant means any individual, firm, association, syndicate, copartnership, corporation, trust, or other legal entity, or their duly authorized representative, commencing proceedings under this chapter.

Application, town-initiated means any application in which the town council is designated as the applicant, regardless of whether the town is the owner of the subject parcel.

Application, owner-initiated means any application that is not town-initiated.

Application or ***appeal*** means any matter lying within the jurisdiction of the town council.

Architect means a professional architect duly registered and licensed by the state.

Assisted living facility means a residential land use, licensed under ch. 58A-5 F.A.C. which may be a building, a section of a building, a section of a development, a private home, a special boarding home, a home for the aged, or similar place, whether operated for profit or not, which undertakes through its ownership or management to provide, for a period exceeding 24 hours, housing and food service plus one or more personal services for four or more adults not related to the owner or administrator by blood or marriage. A facility offering services for fewer than four adults shall be within the context of this definition if it advertises to or solicits the public for residents or referrals and holds itself out to the public as an establishment providing such services. These facilities are not synonymous with the term “health care facility” or “nursing home.” For purposes of this definition only, the term “personal services” means services in addition to housing and food service, which include but are not limited to personal assistance with bathing, dressing, ambulation, housekeeping, supervision, emotional security, eating, supervision of self-administered medications, restoration therapy, and assistance with securing health care from appropriate sources.

ATM and ***automatic teller machine*** mean an unattended banking station located outside of or away from the principal bank building and in operation beyond normal lobby hours, operated by computerized equipment, and capable of carrying out specific banking transactions.

Authorized representative means any person who appears with the permission of and on behalf of another person and who provides legal argument or relevant competent evidence through testimony, submission of documents, or otherwise.

Automobile fuel pumps means vehicle fuel dispensing devices providing an accessory use to a permitted retail establishment. No other vehicle service is permitted by approval of automobile fuel pumps. For purposes of determining the number of “pumps,” a “pump” may serve only one vehicle at a time. If a pump island contains a pump which can be used simultaneously by two vehicles, then it is counted as two pumps.

Automobile rental means the use of any building, land area, or other premises or portion thereof primarily for the rental (not leasing) of automobiles and light trucks. Incidental servicing and maintenance of the rental vehicles, excluding body/frame repair and painting, is a normal ancillary function.

Automobile repair means establishments that primarily offer parts installation and general vehicle servicing including diagnostic centers and the servicing of brakes, electrical systems, engines, glass, mufflers, oil, radiators, tires, transmissions, upholstery, etc. Automobile repair establishments may also provide body/frame repair, painting, and similar services when ancillary to general vehicle servicing.

Bar or cocktail lounge mean any establishment devoted primarily to the retailing and on-premises drinking of beer, wine, or other alcoholic beverages.

Beach or bay access means a right-of-way or easement that provides at least pedestrian access to beaches, bays, canals, or wetlands.

Bed-and-breakfast inn means a public lodging establishment with nine or fewer guest units that serves breakfast to overnight guests. A bed-and-breakfast inn may be located in a single building or in a cluster of separate buildings. See division 19 of article IV of this chapter.

Boat means any vessel, watercraft, or other artificial contrivance used, or which is capable of being used, as a means of transportation, as a mode of habitation, or as a place of business, professional, or social association on waters of the town, including:

(1) Foreign and domestic watercraft engaged in commerce;
(2) Passenger or other cargo-carrying watercraft;
(3) Privately owned recreational watercraft;
(4) Airboats and seaplanes; and
(5) Houseboats or other floating homes.

Boat dealers are establishments primarily engaged in the display, sales, or leasing of new or used motorboats, yachts, and other watercraft, including boat trailers. Incidental servicing and repairs and the stocking of replacement parts is a normal ancillary function.

Boat repair and service means establishments primarily engaged in minor repair service to small watercraft, including the sale and installation of accessories. See *Marina.*

Boatyard means a boating or harbor facility located on or having direct access to navigable water for building, maintaining, and performing extensive repair on boats and small ships, marine engines, and equipment. A boatyard shall be distinguished from a marina by the larger scale and greater extent of work done in a boatyard and by the use of dry dock, marine railway, or large capacity lifts used to haul out boats for maintenance or repair. See *Marina*.

Building means any structure, either temporary or permanent, having a roof intended to be impervious to weather, and used or built for the shelter or enclosure of persons, animals, chattels, or property of any kind. This definition shall include vehicles situated on private property and serving in any way the function of a building, but does not include screened enclosures not having a roof impervious to weather.

Building or structure, accessory 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. See *Building, principal*.

Building, conventional means:

(1) A building, built upon the site and upon its own permanent foundation, constructed of basic materials such as wood, masonry, or metal or minimally prefabricated components such as roof trusses, wall panels, and bathroom/kitchen modules, and conformable to the locally adopted building, electrical, plumbing, and other related codes; or
(2) A building manufactured off the site in conformance with F.S. ch. 553, pt. IV (or ch. 9B-1, F.A.C.), subsequently transported to its site complete or in modules and fixed to its own foundation with no intention to relocate.

Building coverage. See § 34-634.

Building heights. See § 34-631.

Building material sales includes establishments selling new or used building materials such as lumber, roofing, siding, shingles, drywall, brick, tile, cement, sand, or gravel.

Building, principal means a building in which is conducted the main or principal use of the premises on which the building is situated.

Bus terminal. See *Transit terminal*.

Car wash means establishments primarily engaged in washing cars or in furnishing facilities for the self-service washing of cars.

Carnival means an enterprise which travels from community to community, generally staying for ten days or less in any one location, and which offers one or more amusement devices or attractions.

Carport means a freestanding or attached structure, consisting of a roof and supporting members such as columns or beams, unenclosed from the ground to the roof on at least two sides, and designed or used for the storage of motor-driven vehicles owned and used by the occupants of the building to which it is accessory.

Clubs. See *Membership organization*.

Commercial means an activity involving the sale of goods or services carried out for profit.

Commercial accessory use means the use of a structure or premises that is customarily incidental and subordinate to the principal use of a commercial structure or premises. See *Use, principal*. Typical commercial accessory uses are: *Parking lots, accessory*; *Storage, indoor*; and *Telephone booth or pay telephone station*. Various divisions of article IV of this chapter describe permitted commercial accessory uses. Uses that are listed separately on Table 34-1 of this code, such as drive-throughs and automobile fuel pumps, are not commercial accessory uses and are permitted only in zoning districts where they are explicitly identified in Tables 34-1 and 34-2.

Commercial antenna (see definition in § 34-1442)

Communication tower (see definition in § 34-1442)

Community residential home means a dwelling unit licensed to serve clients of the state department of children and family services which provides a living environment for one to six unrelated residents who operate as the functional equivalent of a family, including such supervision and care by a supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents. Residents include only aged persons as defined in F.S. § 400.618(3), as amended; physically disabled or handicapped persons as defined in F.S. § 760.22(7), as amended; developmentally disabled persons as defined in F.S. § 393.063(11), as amended; nondangerous mentally ill persons as defined in F.S. § 394.455(3), as amended; or children as defined in F.S. § 39.01(8) and F.S. § 39.01(10), as amended.

Compatible means, in describing the relation between two land uses, buildings or structures, or zoning districts, the state wherein those two things exhibit either a positive relationship based on fit, similarity or reciprocity of characteristics, or a neutral relationship based on a relative lack of conflict (actual or potential) or on a failure to communicate negative or harmful influences one to another.

Comprehensive plan means the document, and its amendments, adopted by the town council pursuant to F.S. ch. 163, for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the town. The terms “comprehensive plan” and “the Fort Myers Beach Comprehensive Plan” are synonymous.

Continuance. See § 34-231.

Continuing care facility *(CCF)* means a facility, licensed under F.S. ch. 651, which undertakes through its ownership or management to provide housing and food service to adult residents. The facility must meet the criteria for exemption from the Fair Housing Act Amendments of 1988, title VII USC.

Contractor’s shop means a room or group of rooms used by a contractor for the custom fabrication of building-related products such as, but not limited to, air conditioning duct work, pool screen enclosures, door trim, etc., and for the interior storage of materials, but which does not

include any exterior fabricating or use any exterior storage area, Specifically prohibited is the storage or parking of heavy construction equipment such as cement trucks, cranes, bulldozers, well-drilling trucks and other similar heavy equipment, or wrecking or demolition debris.

Contractor's storage yard means a lot or parcel upon which a contractor maintains an area to store and maintain construction equipment and other materials customarily used in the trade carried on by the contractor. Storage of wrecking debris is prohibited.

Coastal construction control line. See definition in § 6-333(a).

Corner lot. See *Lot, corner.*

Cross-access agreement means an agreement between adjacent property owners in which internal connections are provided between adjoining parking areas in order to minimize the number of driveways from the parking areas to streets.

Cultural facility means facilities of historic, educational, or cultural interest, such as art galleries, aquariums, botanical gardens, concert halls, historical sites, and museums.

Day care center, adult means a facility or establishment which undertakes through its ownership or management to provide basic services such as but not limited to a protective setting, social or leisure time activities, self-care training, or nutritional services to three or more adults not related by blood or marriage to the owner or operator, who require such services. This definition shall not be interpreted to include overnight care.

Day care center, child means a facility or establishment which provides care, protection, and supervision for six or more children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit. This definition shall not include public or nonpublic schools which are in compliance with the Compulsory School Attendance Law, F.S. ch. 232. The term "child day care center" is synonymous with the terms "preschool" and "nursery school."

Deferral. See § 34-231.

Denial with prejudice means that the request being acted upon is formally denied and shall not be resubmitted, except as provided for in § 34-84(4)a.

Denial without prejudice means that the specific request being acted upon is formally denied but that a modification of the request may be considered as set forth in § 34-84(4)b.

Density means an existing or projected relationship between numbers of dwelling units and land area. See § 34-632 for methods of computing residential densities.

Developer means any individual, firm, association, syndicate, copartnership, corporation, trust, or other legal entity commencing development.

Development and ***to develop.*** A development includes the construction of any new buildings or other structures on a lot, the relocation of any existing buildings, or the use of a tract of land for any new uses. To develop is to create a development.

Development of regional impact *(DRI)* means any development which, because of its character, magnitude, or location, would have a substantial effect upon the health, safety, or welfare of citizens of more than one county.

Deviation means a departure from a specific regulation of this code, when requested and approved by the town council as part of the application for a planned development (see § 34-932(b). A deviation is not the same as a variance in that the criteria for granting a variance in § 34-87(3) need not be met.

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

Dock means a structure built across wetlands or open water used for the mooring of watercraft or for fishing, observation, or similar recreational activities.

Domestic tropical birds means birds not indigenous to the state or the United States that are commonly kept as pets in a home, including but not

limited to canaries, finches, lovebirds, parrots, parakeets, cockatiels, and mynah birds.

Double-frontage lot means any lot, not a corner or through lot, having two or more property lines abutting to a street right-of-way or easement.

Drive-through means an establishment or portion thereof where a patron is provided products or services without departing from his automotive vehicle or in which the patron may temporarily depart from his vehicle in a nonparking space while servicing it, such as a do-it-yourself car wash or fuel pump. The terms "drive-through," "drive-in," and "drive-up" are synonymous. Drive-throughs are classified as Type 1 when they serve land uses with lower volumes and limited hours such as banks and pharmacies, and Type 2 when they serve land uses that typically have higher volumes and/or extended hours such as convenience stores, automobile fuel pumps, and car washes. See § 34-620(g) regarding the prohibition on drive-through lanes for restaurants and § 34-676(f) regarding drive-through lanes in the DOWNTOWN zoning district.

Drug paraphernalia. See § 34-1551.

Dwelling unit means a room or rooms connected together, which could constitute a separate, independent housekeeping establishment for a family, for owner occupancy, or for rental or lease on a weekly, monthly, or longer basis as specified in this code for various zoning districts, and physically separated from any other rooms or dwelling units which may be in the same structure, and containing sleeping and sanitary facilities. The term "dwelling unit" shall not include rooms in certain assisted living or continuing care facilities (see § 34-1415) or in lawful accessory apartments in owner-occupied homes (see § 34-1178(d)). See also *Guest unit* and *Living unit*.

Dwelling unit*, types.*

(1) *Single-family* means a single conventional detached building designed for one dwelling unit and which could be used for occupancy by one family.
(2) *Two-family* means a single conventional detached building designed as two dwelling units attached by a common wall or roof.
(3) *Live/work unit* means a single dwelling unit in a detached building, or in a multifamily or mixed-use building, that also accommodates limited commercial uses within the dwelling unit. The predominate use of a live/work unit is residential, and commercial activity is a secondary use. See § 34-1773.
(4) *Work/live unit* means a single dwelling unit in a detached building, or in a multifamily, mixed-use, or commercial building, where the predominate use of the unit is commercial. See § 34-1774.
(5) *Mobile home* means a building, manufactured off the site in conformance with the Federal Mobile Home Construction and Safety Standards (24 CFR 3280 et seq.), subsequently transported to a site complete or in sections where it is emplaced and tied down in accordance with ch. 15C-1, F.A.C., with the distinct possibility of being relocated at a later date. See §§ 34-1921–1950.
(6) *Multiple-family building* means a group of three or more dwelling units within a single conventional building, attached side by side, or one above another, or both, regardless of whether the land on which the building is located is under common, single, or individual ownership. Freestanding dwelling units with at least one wall on a side or rear property line are also considered to be part of multiple-family buildings. Dwelling units, other than caretaker's quarters, which are included in a building which also contains permitted commercial uses shall also be deemed to be multiple-family dwelling units.
(7) *Caretaker* means a single dwelling unit, whether in a freestanding building or part of another structure, that is permitted in some zoning districts as an accessory use to house an on-site caretaker.

Easement means a grant of a right to use land for specified purposes. It is a nonpossessory interest in land granted for limited use purposes.

Engineer means a professional engineer duly registered and licensed by the state.

Enlargement and ***to enlarge***. An enlargement is an addition to the floor area or volume of an existing building, or an increase in that portion of a tract of land occupied by an existing use.

Entrance gate means a mechanized control device which is located near the point of access to a development which serves to regulate the ingress of

vehicles to the interior of the development for the purpose of security and privacy.

Environmentally sensitive land means any lands or waters, the development or alteration of which creates or has the potential to create a harm to the public interest due to their value as sources of biological productivity, as indispensable components of various hydrologic regimes, as irreplaceable and critical habitat for native species of flora and fauna, or as objects of scenic splendor and natural beauty. Among these types of land are those designated wetlands.

Equivalent means the state of correspondence or virtual identity of two land uses or zoning districts that exhibit similar levels of effects on each other and the community at large as defined by such factors as their intensities and schedules of use and activity, their demands for services and infrastructure such as roads and water and sewer systems, their impacts on natural resources and other similar parameters. The term "equivalent" is not synonymous with the term "compatible."

Essential service building means a free-standing building or structure exceeding 6 feet in height or 100 square feet in area that, except for its size would qualify as an "essential services." See division 14 of article IV of this chapter.

Essential service equipment means an above-ground structure that exceed 27 cubic feet, but less than 6 feet high and 100 square feet in area, and that except for its size would qualify as "essential services" See division 14 of article IV of this chapter.

Essential services means the erection, construction, alteration, or maintenance, by a public or private utility company for the purpose of furnishing adequate service by such company for the public health, safety, or general welfare, of electrical and communication cables, poles, and wires, and water and sewer collection, transmission or distribution mains, drains, and pipes, including fire hydrants. This definition includes necessary transformers, switching equipment, meters, pumps, and similar equipment which is less than 27 cubic feet in size, but does not include communication towers which are regulated by division 11 of article IV of this chapter or telephone booths or pay telephone stations which are regulated by §§ 34-638(d)(2)e and 34-2019(b). This definition shall not be interpreted to include buildings, structures, or uses listed as "essential service equipment" or "essential service building" (as defined herein). See division 14 of article IV of this chapter.

Existing only. When this term (or its abbreviation EO) is used in Table 34-1, it describes a specific land use that is permitted only if that use lawfully existed on the same property on August 1, 1986. Such lawfully existing use shall have the same rights as a permitted use and may be expanded or reconstructed on the same parcel in accordance with all applicable regulations.

Family means one or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit, provided that a group of five or more adults who are not related by blood, marriage, or adoption shall not be deemed to constitute a family. The term "family" shall not be construed to mean a club, monastery, convent, or institutional group.

Family day care home, as defined in F.S. § 403.302, means an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, whether or not operated for profit. A family day care home shall be allowed to provide care for one of the following groups of children, which shall include those children under 13 years of age who are related to the caregiver:

(1) A maximum of four children from birth to 12 months of age.
(2) A maximum of three children from birth to 12 months of age, and other children, for a maximum total of six children.
(3) A maximum of six preschool children if all are older than 12 months of age.
(4) A maximum of 10 children if no more than 5 are preschool age and, of those 5, no more than 2 are under 12 months of age.

Floor area means the total area of every story of a building, or portion thereof, within the surrounding exterior walls of the building or structure.

Floor area ratio. See § 34-633.

Food and beverage service means the provision of food or beverages for members and guests of a membership organization or recreation hall but not available to the general public. See the provisions of article IV, division 5, of this chapter relating to on-premises consumption of alcoholic beverages.

Garage sale or ***yard sale*** mean an informal sale of used household or personal articles, such as furniture, tools, or clothing, held on the seller's own premises, or conducted by several people on one of the sellers' own premises. Garage and yard sales are limited to not more than one week in duration, with sales limited to two garage or yard sales per year. See *Residential accessory use.*

Glare means bright or brilliant light emitting from a point source of light, or reflected or refracted from a point source of light, with an intensity great enough to:

(1) reduce an observer's ability to see;
(2) cause an observer to experience momentary blindness or a temporary loss of visual performance or ability; or
(3) cause an observer with normal sensory perception annoyance or discomfort to the degree which constitutes a nuisance.

Golf course means a tract of land laid out for at least nine holes for playing the game of golf and improved with tees, greens, fairways, and hazards. Miniature golf is classified as a *Recreation facility, commercial* and not as a golf course.

Gross floor area includes the total floor area of a building within the surrounding exterior walls. See also § 34-633.

Group quarters means a building in which a number of unrelated individuals that do not constitute a family live and share various spaces and facilities for, for example, cooking, eating, sanitation, relaxation, study, and recreation. Examples of group quarters include assisted living facilities, rooming houses, and other similar uses.

Guest unit means a room or group of rooms in a hotel/motel or bed-and-breakfast inn that are designed to be used as temporary accommodations for one or more people traveling together. All guest units provide for sleeping and sanitation, although sanitation may be provided through shared bathrooms. Guest units may be equipped with a partial or full kitchen. See division 19 of article IV of this chapter.

Habitable means space in a structure available for living, sleeping, eating, cooking, or any commercial purposes. However, storage space is not considered to be habitable space.

Hardship means an unreasonable burden that is unique to a parcel of property, such as peculiar physical characteristics. Economic problems may be considered but may not be the sole basis for finding the existence of a hardship.

Health care facility means an establishment such as a nursing home or hospice that is primarily engaged in furnishing medical, nursing, or other care to persons residing on the premises, but not including hospitals.

Helistop means an area, either at ground level or elevated on a structure, licensed, or approved for the landing and takeoff of helicopters, but without auxiliary facilities such as parking, waiting room, fueling, and maintenance equipment.

Hidden path means an interconnected system of pedestrian and bicycle pathways throughout the town that improves mobility and promotes community interaction (see Objective 2-A of the Fort Myers Beach Comprehensive Plan).

Home care facility means a conventional residence in which up to three unrelated individuals are cared for, but without provision for routine nursing or medical care.

Home occupation means a business, occupation, or other activity undertaken for gain carried on by an occupant of a dwelling unit as an accessory use which is clearly incidental to the use of the dwelling unit for residential purposes and which is operated in accordance with the application provisions of article IV, division 18, of this chapter. See also *Dwelling unit, live/work unit* and *Dwelling unit, work/live unit*.

Hospital means a medical establishment that offers services more intensive than those required for room, board, personal services, and general nursing care, and offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for injury or infirmity.

Hotel/motel means a building, or group of buildings on the same premises and under single control, which are kept, used, maintained or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay to transient guests for periods of one day or longer. See division 19 of article IV of this chapter.

Independent living unit means a unit which is authorized only as a part of a licensed continuing care facility (CCF), which may be equipped with a kitchen.

Intensity means a measurement of the degree of customarily nonresidential uses based on use, size, impact, bulk, shape, height, coverage, sewage generation, water demand, traffic generation, or floor area ratios. See also §§ 34-633–634.

Land means earth, water, and air above, below, or on the surface, and includes any improvements or structures customarily regarded as land.

Land use means the development that has occurred on the land, the development that is proposed by a developer on the land, or the use that is permitted or permissible on the land under the Fort Myers Beach Comprehensive Plan or an element or portion thereof, land development regulations, or a land development code, as the context may indicate.

Landscape architect means a professional landscape architect duly registered and licensed by the state.

Laundromat means a business that provides washing, drying, dry cleaning, or ironing machines for hire for customers to use on the premises.

Lawful or lawfully means a building, use, or lot which was permitted by right, special exception, variance, special permit, or other action at the time it was built, occupied, or subdivided, and such building, use, or lot was located in compliance with the comprehensive plan and zoning regulations for the district in which located, or in accordance with the terms of the variance.

Light trespass means light emitting from a point source of light that falls outside the boundaries of the property on which the point source of light is located and which constitutes a nuisance to a reasonable person of normal sensory perception.

Live-aboard means the use of a boat as a living unit.

Living unit means any temporary or permanent unit used for human habitation. See *Dwelling unit* and *Guest unit*.

Loading space, off-street means a space logically and conveniently located for pickups or deliveries or for loading or unloading, scaled to delivery vehicles expected to be used and accessible to such vehicles when required off-street parking spaces are filled.

Local planning agency. See article II, division 3 of this chapter.

Lock-off accommodations means a single guest unit or living unit designed in such a manner that at least one room and a bathroom can be physically locked off from the main unit and occupied as a separate unit. Each portion may have a separate outside entry, or share a common foyer with separate lockable interior doors, or share a lockable door or doors separating the two units. See § 34-632 and division 19 of article IV of this chapter.

Lot means a parcel of land considered as a unit. See also *Lot, corner*.

Lot area means the total horizontal area within the lot lines.

Lot, corner means:

(1) A lot located at the intersection of two or more streets where the corner interior angle formed by the intersection of the two streets is 135 degrees or less; or

(2) A lot abutting a curved street if straight lines drawn between the intersections of the side lot lines and the street right-of-way or easement to the foremost point of the lot form an interior angle of less than 135 degrees.

Lot line means a line which delineates the boundary of a lot.

Lot line, front means the lot line which separates the lot from a street right-of-way or easement.

Lot line, rear means that lot line which is parallel to or concentric with and most distant from the front lot line of the lot. In the case of an irregular or triangular lot, a line 20 feet in length, entirely within the lot, parallel to or concentric with and at the

maximum possible distance from the front lot line, shall be considered to be the rear lot line. In the case of a through lot, there shall be no rear lot line. In the case of a double-frontage lot, the line directly opposite from the front line shall be designated as either a rear line or a side line depending upon the designation of the adjacent property. In the case of corner lots, the rear lot line shall be the line most nearly parallel to or concentric with and most distant from the front lot line most prevalent along the block.

Lot line, side means any lot line which is not a front or rear lot line.

Lot measurement, depth.

(1) For lots lawfully created prior to January 28, 1983, depth of a lot shall be considered the distance between the midpoints of straight lines connecting the foremost points of the side lot lines in the front and the rearmost points of the side lot lines in the rear.
(2) For lots lawfully created after January 28, 1983, depth of a lot shall be considered to be the distance between the front lot line and the rear lot line as measured at the midpoint of the front lot line to the midpoint of the rear lot line. To determine the midpoint of a curved line, a straight line is drawn connecting the points of intersection of the curved line with the side lot lines. A line drawn perpendicular to the midpoint of the straight line to the point it intersects the curved line shall determine the midpoint of the curved line for purposes of this chapter.

Lot measurement, width.

(1) For lots lawfully created prior to January 28, 1983, width of a lot shall be considered to be the average distance between straight lines connecting front and rear lot lines at each side of the lot, measured as straight lines between the foremost points of the side lot lines in front (where they intersect with the street line) and the rearmost points of the side lot lines in the rear.
(2) For lots lawfully created after January 28, 1983, width of a lot shall be considered to be the distance between the side lot lines (or a front and side lot line for corner lots) as measured along the minimum required street setback line. See § 34-637(c) for exceptions.

Lot, through means any lot having two opposite lot lines abutting a street right-of-way or easement.

Manufactured housing. See *Building, conventional*.

Manufacturing means establishments which are primarily engaged in the mechanical or chemical transformation of materials or substances into new products, as well as establishments primarily engaged in assembling component parts of manufactured products if the new product is not a permanent structure or other fixed improvement.

Marina means a commercial water-dependent use located on property adjacent to water with direct access to a navigable channel. The primary function must be to provide commercial dockage, mooring, storage, and service facilities for watercraft and land-based facilities and activities necessary to support the water-dependent use. The term "marina" does not include boatyards, nor does it include cruise ships and similar uses that draw large amounts of vehicular traffic (see § 34-620(f)), nor does it apply to docks, davits, boathouses, and similar docking facilities that are accessory or ancillary and subordinate to:

(1) residential buildings that are located on the same premises and under the same ownership or control as the docks, davits, boathouses, boat ramps, and similar docking facilities; and
(2) commercial establishments that are not water-dependent uses.

Marina accessory uses means uses normally ancillary and subordinate to a marina, including but not limited to: boat dealers; sale of marine fuel and lubricants, marine supplies, boat motors, and boat parts; restaurant or refreshment facility, boat rental, minor boat rigging, boat repair and service, and motor repair. However, no dredge, barge, or other work dockage or service is permitted and no boat construction or reconstruction is permitted. See *Boatyard*.

Membership organization means an organization operating with formal membership requirements with the intent to pursue common goals or activities.

Mini-warehouse means any building designed or used to provide individual storage units with separate exterior doors as the primary means of access to individuals or businesses for a fee. The

storage units must be used solely as dead storage depositories for personal property, inventory, and equipment and not for any other use.

Mixed-use building means a single building that contains two different land uses, such as commercial and residential uses, or commercial and civic uses.

Mobile home. See *Dwelling unit, types*.

Moor means to secure a vessel with lines.

Multiple-family building. See *Dwelling unit, types*.

Multiple-occupancy complex means a parcel of property under one ownership or singular control, or developed as a unified or coordinated project, with a building or buildings housing more than five occupants conducting a business operation of any kind.

Nonconforming building, nonconforming lot,* or *nonconforming use – see definitions in § 34-3202 of article V of this chapter.

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.

Offices, general or medical mean a room or group of rooms where a business, government, profession, agency, or financial institution provides its services, but excluding uses listed as residential, lodging, retail, marine and civic in division 2 of article III of this chapter and otherwise classified by this code, and excluding uses that the director deems to have potential impacts that differ substantially from conventional office uses. Incidental retail sales and indoor storage may be provided in conjunction with these services. The following types of establishments are not considered to be offices for the purposes of this chapter: *Automobile rental Drive-throughs (Type 1 or Type 2)*; and *Wholesale establishments*. See also *Administrative office*.

Opaque means the quality of blocking visibility through a material. For instance, concrete is 100% opaque; clear glass is 0% opaque; and a picket fence with 3-inch pickets separated by 3 inches of space is 50% opaque.

Parasailing operations office means a land-based site that can qualify for a parasailing activity license in accordance with chapter 27 of this code. Parasailing operations offices are permitted as resort accessory uses and also by special exception in certain zoning districts.

Parcelization means dividing a given unit of real property into multiple parcels, units, or fractions. Examples of parcelization include, but are not limited to, divisions of land, fractional or timeshare units for specific periods of time, condominiums, and cooperatives.

Park, neighborhood means a recreational area open to the public and no larger than one acre that primarily serves the immediately surrounding neighborhood.

Park, community or regional means a recreational area open the public and larger than one acre that is designed to serve the entire community or larger areas.

Parking garage means a building or structure that allows the parking of motor vehicles on two or more levels, whether the garage is provided only for vehicles of occupants of the principal use or the garage is available for the use of the general public. However, for the purposes of this chapter, a building containing two or more levels of parking only for the vehicles of occupants of the principal use shall not be considered a parking garage if is built below and fully within the perimeter of the remainder of the principal building.

Parking lot, accessory means an area of land set aside for the temporary parking of vehicles owned or leased by the owner of the premises, guests, employees, or customers of the principal use. See *Commercial accessory use.*

Parking lot, shared permanent means a parking lot which constitutes the principal use of the property and which is available to the public for a fee, or which may be leased to individual persons or assigned to specific businesses or properties.

Parking lot, seasonal means a area of land set aside temporarily to provide parking to meet seasonal demands, as set forth in § 34-2022.

Personal services means establishments primarily engaged in providing frequent or recurrent services involving the care of a person or his or her personal goods or apparel, such as beauty and barber shops, clothing alterations and repair, health clubs, and laundry drop-off points. The following types of establishments are not considered to be personal services for the purposes of this chapter: *Automobile rentals*, *Car wash*, *Laundromat* (whether self-service or operator-assisted); and *Mini-warehouse*. This chapter contains specific regulations for certain personal services (for example, see §§ 34-3066–3100 on tattoo studios and body piercing).

Personal watercraft operations *office* means a land-based site that can qualify for a personal watercraft vendor's license in accordance with chapter 27 of this code. Personal watercraft operations offices are permitted as resort accessory uses and also by special exception in certain zoning districts.

Place of worship means a structure or structures designed primarily for accommodating an assembly of people for the purpose of religious worship, including related religious instruction, church, or synagogue ministries involving classes for 100 or less children during the week, and other church or synagogue sponsored functions which do not exceed the occupancy limits of the building.

Planned development. See article III, division 6 of this chapter.

Plat means a plat as defined by F.S. ch. 177.

Plaza means an unroofed public open space designed for pedestrians that is open to the sidewalk on at least one side.

Point source of light means a manmade source emanating light, including but not limited to: incandescent, tungsten-iodine (quartz), mercury vapor, fluorescent, metal halide, neon, halogen, high-pressure sodium, and low-pressure sodium light sources, as well as torches, campfires, and bonfires.

Premises means any lot, area, or tract of land.

Premises, on the same means being on the same lot or building parcel or on an abutting lot or adjacent building in the same ownership.

Principal building. See *Building, principal*.

Principal use. See *Use, principal*.

Processing and warehousing means the storage of materials in a warehouse or terminal and where such materials may be combined, broken down or aggregated for transshipment or storage purposes where the original material is not chemically or physically changed. The term "processing and warehousing" shall mean an establishment essentially for storage and shipment as opposed to a manufacturing establishment.

Property line. See *Lot line*.

Recreation hall means a building owned or operated by a condominium or homeowners' association for a social or recreational purpose, but not for profit or to render a service which is customarily carried on as a business.

Recreation facilities.

(1) *Recreation facilities, commercial* means recreation equipment or facilities not classified as a *Park, neighborhood* or *Park, community or regional*, or as personal, private-on-site, or private-off-site recreation facility, but instead operated as a business and open to the public for a fee. (*Golf courses* are defined separately in this section.)
(2) *Recreation facilities, personal* means recreation equipment or facilities such as swimming pools, tennis, shuffleboard, handball or racquetball courts, swings, slides, and other playground equipment provided as an accessory use on the same premises and in the same zoning district as the principal permitted use and designed to be used primarily by the owners, tenants, or employees of the principal use and their guests. See *Residential accessory use*.
(3) *Recreation facilities, private ON-SITE* means recreation hall, equipment, or facilities such as swimming pools, tennis, shuffleboard, handball, or racquetball courts, swings, slides, and other playground equipment which are owned, leased or, operated by a homeowners', co-op, or condominium

association and located in the development or neighborhood controlled by the association.

(4) *Recreation facilities, private OFF-SITE* means recreation hall, equipment, or facilities such as swimming pools, tennis, shuffleboard, handball, or racquetball courts, swings, slides, and other playground equipment which are owned, leased or operated by a homeowners', co-op, or condominium association for use by the association's members and guest, but which are not located in the development or neighborhood controlled by the association.

(5) *Recreation facility, public* means a recreation facility operated by a governmental agency and open to the general public.

Recreational vehicle means a recreational vehicle type unit which is so defined in F.S. § 320.01(b). It is primarily designed as temporary living quarters for recreational, camping or travel use, and has its own motive power or is mounted on or drawn by another vehicle. Because the statutory definition set forth in F.S. § 320.01(b) changes, the definition of the term "recreational vehicle," as used in this chapter, is intended to change with such statutory changes so as to be consistent with them. See also § 34-694.

Recreational vehicle park means a parcel (or portion thereof) or abutting parcels of land designed, used or intended to be used to accommodate two or more occupied recreational vehicles. See § 34-694 and division 31 of article IV of this chapter.

Recreational vehicle park, expanded means the preparation of additional sites, by the construction of facilities for servicing the sites on which the recreational vehicles are to be located (including the installation of utilities, final site grading, pouring of concrete pads or the construction of streets). This shall not be interpreted to include pads for utility rooms, enclosures or storage sheds where explicitly permitted. See division 31 of article IV of this chapter.

Religious facilities means religious-related facilities and activities, which may include but are not limited to bus storage facilities or areas, convents, rectories, monasteries, retreats, church or synagogue ministries involving classes for more than 100 children during the week, and assisted living facilities.

Rental of beach furniture means a business that provides beach chairs, umbrellas, and similar equipment for a fee. Rental of beach furniture is permitted as a resort accessory use and also by right in certain zoning districts. See divisions 1 and 2 of ch. 14 and § 34-3151.

Residence. See *Dwelling unit and Living unit*

Residential accessory use means the use of a structure or premises that is customarily incidental and subordinate to the principal use of a residential structure. See *Use, principal*. Typical residential accessory uses are: carports and garages; decks, gazebos, patios, and screen enclosures; dock, personal (§ 34-1863); fences and walls (division 17 in article IV); garage sales or yard sales (see definition in this section); recreation facilities, personal; seawalls (ch. 26); and storage sheds. Division 2 and other portions of article IV provide regulations for many residential accessory uses.

Resort means a mixed-use facility that accommodates transient guests or vacationers as well as longer-term residents. Resorts contain at least one hotel/motel and at least 50 total units, which include a combination of dwelling units and guest units and may also include timeshare units, and provide food service, outdoor recreational activities, and/or conference facilities for their guests.

Resort accessory use means the use of a structure or premises that is customarily incidental and subordinate to a resort. See *Use, principal*. Typical resort accessory uses are: *Amusement devices* (§§ 34-2141–2145 and 34-3042); *Golf courses*; *Parasailing operations office* (ch. 27); *Personal watercraft operations office* (ch. 27); and *Rental of beach furniture* (ch. 14).

Restaurant means an establishment whose principal business is the sale of food or beverages to customers in a ready-to-consume state. See § 34-620(f) regarding the prohibition on drive-through lanes for restaurants.

Retail store means an establishment operating within a fully enclosed building that provides goods and incidental services directly to consumers where

such goods are available for immediate purchase or rental. Retail stores are classified as small (less than 5,000 square feet) or large (more than 5,000 square feet), based on gross floor area per establishment. The following types of establishments are not considered to be retail stores for the purposes of this chapter: *Automobile fuel pumps*, *Automobile rentals*, *Marina*, and *Mini-warehouse*.

Rooming house means a residential building used, or intended to be used, as a place where sleeping or housekeeping accommodations are furnished or provided for pay to guests or tenants on a weekly or longer basis in which less than ten and more than three rooms are used for the accommodation of such guests or tenants.

School means an educational institution run by a public agency, a church or synagogue, or a not-for-profit organization. See division 32 of article IV of this chapter.

Seawall has the meaning provided in § 26-41 for both seawalls and retaining walls.

Setback means the minimum horizontal distance required between a specified line and the nearest point of a building or structure. See also "build-to" lines in § 34-662 and setback exceptions in § 34-638(d).

(1) *Street setback* means the setback extending across the front of a lot measured from the edge of an existing street right-of-way or street easement. See definition of "*Lot line, front*" and § 34-638.
(2) *Side setback* means the setback, extending from the required street setback to the required rear lot line, or opposing street setback in the case of a double-frontage lot, measured from the side lot line. There are two types of side setbacks, those applying to waterfront lots and those applying to non-waterfront lots. See definition of "*Lot line, side*" and§ 34-638.
(3) *Rear setback* means the setback, extending across the rear of a lot, measured from the rear lot line. See definition of "*Lot line, rear*" and § 34-638.
(4) *Water body setback* means the setback measured from the mean high water line (MHWL), or the control elevation line if applicable, of a water body. See § 34-638.

Shield means to establish a visual and sound barrier by the use of a berm, wall, screening, or other methods that will not permit the sound or sight of the facility in question to be apparent from adjoining property.

Shoreline means a straight or smoothly curved line which, on tidal waters, follows the general configuration of the mean high-water line, and which on nontidal waters is determined by the annual average waterline. Boat slips and other manmade or minor indentations shall be construed as lying landward of the shoreline and are considered upland when computing the lot area of waterfront property.

Single-family residence. See *Dwelling unit, types*.

Special exception. See *Use, special exception*.

Storage means the safekeeping of any goods, wares, products, or other commodities in any area for more than 48 hours for later use or disposal. The term "storage" includes the keeping of boats, cars, recreational vehicles, etc., for others, whether or not compensation is made to the property owner. The term shall not include animals, nor shall it apply to normally anticipated outdoor display of products for sale such as by boat, mobile home, construction equipment or vehicle dealers, or landscaping materials, or customary and usual activities accessory to agricultural or residential dwellings.

Storage, dead means the storage of goods, wares, products, or other commodities, with no sales, conferences, or other human activity other than the placement, removal, or sorting of stored items.

Storage, indoor means storage accessory to a permitted use and which is contained wholly within a building. When listed as a permitted or permissible use in the zoning district regulations, it shall not be construed to mean a warehouse or a mini-warehouse. See *Commercial accessory use.*

Storage, open means any storage not defined as indoor storage.

Story (floor) means that portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above, including space at ground level as the first story

provided it is six feet or more in height. Space within a roofline that is entirely non-habitable shall not be considered to be a story. See § 34-631.

STRAP number is a means of property identification which consists of seventeen digits including the section, township, range, area, and parcel numbers.

Street means a public or private thoroughfare which affords vehicle access to the principal means of ingress or egress to a lot. The term "street" is synonymous with the terms "avenue," "boulevard," "drive," "lane," "place," "road," and "way," or similar terms.

Street right-of-way, existing is a general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to transportation purposes, which has been dedicated to the public and accepted by the town council or board of county commissioners.

Structure means that which is built or constructed. The term "structure" shall be construed as if followed by the words "or part thereof."

Surveyor or professional surveyor means a Professional Surveyor and Mapper (PSM) duly registered and licensed by the state.

Telephone booth or pay telephone station means a telephone installation made available for use by the general public for a fee, whether installed in an enclosed booth, attached to a pole, post, or pedestal, or attached to a building. A telephone booth or pay telephone station is not an "essential service" nor "essential service equipment," nor is it considered to be a "Residential Accessory Use." See *Commercial accessory use.*

Temporary use. See *Use, temporary*.

Theater means a building or part thereof that seats more than 200 people and is devoted to showing motion pictures, or for dramatic, musical, or live entertainment.

Through lot. See *Lot, through.*

Timeshare unit means any dwelling unit, guest unit, or living unit for which a timesharing plan, as defined in F.S. ch. 721, has been established and documented. See § 34-632 for determining density of timeshare units that include "lock-off accommodations."

Transient guest means any guest registered as provided for in F.S. § 513.01(7), for six months or less.

Transit terminal means a location where airport shuttles may stop to load or unload passengers and luggage and which allows convenient transfers to local trolleys and taxis.

Two-family. See *Dwelling unit, types*.

Unified control means that a single property owner or entity has been authorized by all owners of the property to represent them and to encumber the parcel with covenants and restrictions applicable to development of the property as approved by the town.

Use means any purpose for which a building or other structure or a tract of land may be designed, arranged, intended, maintained, or occupied; or any activity, occupation, business, or operation carried on, or intended to be carried on, in a building or other structure or on a tract of land.

Use, accessory means a use of a structure or premises which is customarily incidental and subordinate to the principal use of the structure or premises. See *Use, principal*; *Commercial accessory use*; *Residential accessory use*; and *Resort accessory use*.

Use, mixed means the development of land or building or structure with two or more different but compatible uses, such as but not limited to residential, office, retail, commercial, public, entertainment or recreation uses, in a compact urban form.

Use permitted by right means a use or uses which, by their very nature, are allowed within the specified zoning district provided all applicable regulations of the town are met. Permitted use includes the principal use of the land or structure as well as accessory uses, unless specifically stated to the contrary.

Use, principal means the primary purpose for which land or a structure or building is used.

Use, public means the use of any land, water, or building by a public agency for a public service or purpose.

Use, special exception means a use or certain specified departures from the regulations of this chapter that may not be appropriate generally or without restriction throughout a zoning district, but which, when controlled as to number, area, location, or relation to the neighborhood, would promote the public health, safety, welfare, order, comfort, convenience, appearance, or prosperity, and may be permitted, in accordance with all applicable regulations.

Use, temporary means a use or activity which is permitted only for a limited time, and subject to specific regulations and permitting procedures. See article IV, division 37 of this chapter.

Use variance. *See Variance, use.*

Variance means a departure from the provisions of this chapter or from any town ordinance (excluding building codes) relating to building and other structural setbacks, lot dimensions such as width, depth, or area, structure or building height, open space, buffers, parking or loading requirements, floor area ratio, design, landscaping, and similar regulations. A variance may not involve the actual use of the property, building, or structures, procedural requirements, or definitions. A variance may be granted in accordance with the procedures set forth in § 34-87. See *Variance, use* and *Variance, procedural*.

Variance, de minimis means a variance that differs so little from an adopted regulation that the variance's effects on the public health, safety, and welfare would be inconsequential. See § 34-87(3).

Variance, procedural means any departure from the procedural requirements of this chapter, chapter 10 or any other ordinance. Procedural variances are never permitted.

Variance, use means any departure from the provisions of this chapter and not specifically included in the definition set forth under *Variance* or *Variance, procedural*. The term "use variance" also means any attempt to vary any one or more of the definitions set forth in this chapter, either directly or indirectly. Use variances are never permitted.

Vehicle and equipment dealers means the use of any building or land area for the display, sales, leasing, or storage of automobiles, trucks, trailers, recreational vehicles, construction equipment, and similar vehicles and equipment. See also *Automobile rental* and *Boat dealers*.

Water-dependent uses means land uses for which water access is essential and which could not exist without water access.

Water-related uses means land uses that might be enhanced by proximity to the water but for which water access is not essential.

Water, body of means any artificial or natural depression in the surface of the earth that is inundated with daily tidal flows, and all adjacent wetlands as defined in § 14-293.

(1) *Artificial bodies of water* means man-made canals and similar water bodies that extend a natural water body into uplands.
(2) *Natural bodies of water* include the Gulf of Mexico, Matanzas Pass, Estero Bay, Ostego Bay, Buccaneer Lagoon, and similar water bodies that were created by natural geophysical forces.

Wetlands are defined in § 14-293. Wetlands in the Town of Fort Myers Beach are generally indicated on the future land use map of the Fort Myers Beach Comprehensive Plan, but the precise boundaries of wetlands shall be determined by this definition.

Wholesale establishment means a place of business primarily engaged in preparing and selling merchandise to retailers, other businesses, or other wholesale establishments, and operating completely within an enclosed building.

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

Sec. 34-3. Rules of construction.

The following rules of construction apply to the text of this chapter:

(1) Where the term "ordinance," "law," "statute," or "map" is referred to in the text, it is meant to include the phrase "as adopted and as amended from time to time" unless specifically stated to the contrary in the text.
(2) In case of any difference of meaning or implication between the text of this chapter and any caption, illustration, summary table, or illustrative table, the text will control.
(3) Where this chapter refers to a specific federal, state, county, or town agency, department or division, it will be interpreted to mean "or any succeeding agency authorized to perform similar functions or duties."

Sec. 34-4. Applicability of chapter; deed restrictions and vested rights.

(a) ***Scope of chapter.*** The provisions of this chapter shall apply uniformly to all land, water, buildings, and structures now or hereafter located in the Town of Fort Myers Beach.

(b) ***Deed restrictions.*** The provisions of this chapter shall be held to be minimum requirements adopted for the promotion of the public health, safety, and welfare. It is not intended by this chapter to interfere with, abrogate, or annul any easements, covenants, or other agreement between the parties; provided, however, that, where this chapter imposes a greater restriction upon the uses of structures, land, and water, or requires more open space, than is required by other rules or regulations, or by easements, covenants, or agreements, by recorded deed, plat, or otherwise, the provisions of this chapter shall govern. The town shall not be responsible for the enforcement of private deed restrictions.

(c) ***Vested rights.*** Nothing in this chapter is to be interpreted or construed to give rise to any vested right in the continuation of any particular use, district or zoning classification or any permissible activities therein; and such use, district, zoning classification, and permissible activities are hereby declared to be subject to subsequent amendment, change, or modification as may be necessary to the protection of public health, safety, and welfare.

Sec. 34-5. Interpretation of chapter.

(a) The interpretation and application of the provisions of this chapter shall be reasonably and uniformly applied to all property within the Town of Fort Myers Beach. The provisions of this chapter are regulatory.

(b) The provisions of this chapter shall be held to be the minimum requirements adopted for the protection and promotion of the public health, safety, comfort, convenience, order, appearance, prosperity, or general welfare, and for securing safety from fire and other dangers, providing adequate light and air, and preventing excessive concentration of population.

(c) Whenever the regulations and requirements of this chapter are at variance with the requirements of any other lawfully enacted and adopted rules, regulations, ordinances, or laws, the most restrictive shall apply.

Secs. 34-6--34-50. Reserved.

ARTICLE II. ZONING PROCEDURES

DIVISION 1. GENERALLY

Sec. 34-51. Notice of public hearings required.

No public hearing required by this chapter shall be held by local planning agency or town council until notice of the public hearing has been provided in accordance with the requirements set forth in this article.

Sec. 34-52. Communications with public officials.

(a) *Definitions.* The following terms and phrases, when used in this section, shall have these meanings:

Ex parte communication means any direct or indirect communication in any form, whether written, verbal or graphic, with the town council or local planning agency, by any person outside of a public hearing and not on the record, concerning substantive issues in any proposed or pending quasi-judicial action relating to appeals, variances, rezonings, special exceptions or any other quasi-judicial action assigned by statute, ordinance or administrative code.

Legislative action means the formulation of a general rule or policy, such as enacting a comprehensive plan or a comprehensive rezoning of multiple properties.

Public official means an elected or appointed member of a town board or commission that recommends or takes quasi-judicial actions, specifically including all members of the town council and the local planning agency. Members of the town staff are not public officials under this definition unless they also serve on a board or commission that recommends or takes quasi-judicial actions.

Quasi-judicial action means the application by the local planning agency or town council of a previously adopted general rule or policy that will have an impact on a limited number of persons or property owners, such as individual appeals, variances, rezonings, and special exceptions.

Unrestricted communication means any communication by the public with public officials which are specifically allowed and encouraged, for instance, communications regarding the town budget or the general welfare of the community; or legislative actions such as proposed ordinances or general changes to the Fort Myers Beach Comprehensive Plan.

(b) Any person not otherwise prohibited by statute, charter provision, or ordinance may discuss with any local public official the merits of any matter on which action may be taken by any board or commission on which the public official is a member.

(1) Except for quasi-judicial actions (such as appeals, variances, rezonings, and special exceptions), the town encourages unrestricted communications between all public officials and town residents, visitors, businesspeople, and property owners.
(2) When discussions on pending quasi-judicial actions (such as administrative appeals, variances, rezonings, and special exceptions) take place *prior to* an advertised public hearing, the following procedures, which mirror those in F.S. § 286.0115(1), shall remove any presumption of prejudice arising from such ex parte communications with public officials:
    a. The substance of any ex parte communication with a public official which relates to quasi-judicial action pending before the official is not presumed prejudicial to the action if the subject of the communication and the identity of the person, group, or entity with whom the communication took place is disclosed and made a part of the record before final action on the matter.
    b. A public official may read a written communication from any person. However, a written communication that relates to quasi-judicial action pending before a public official shall not be presumed prejudicial to the action, and such written communication shall be made a part of the record before final action on the matter.

c. Public officials may conduct investigations and site visits and may receive expert opinions regarding quasi-judicial action pending before them. Such activities shall not be presumed prejudicial to the action if the existence of the investigation, site visit, or expert opinion is made a part of the record before final action on the matter.
d. Disclosure made pursuant to subsections a., b., and c. must be made before or during the public meeting at which a vote is taken on such matters, so that persons who have opinions contrary to those expressed in the ex parte communication are given a reasonable opportunity to refute or respond to the communication. This subsection does not subject public officials to the Code of Ethics for Public Officers and Employees (part III of F.S. ch. 112) for not complying with this paragraph.

Sec. 34-53. Fees and charges.

(a) The schedule of fees and charges for matters pertaining to this chapter shall be posted in the office where permits applications are filed. The charges listed may be changed by resolution of the town council. In the absence of a resolution by the town council, the director shall charge fees that are comparable to the fees charged by the board of county commissioners for similar applications.

(b) No permit shall be issued and no inspection, public notice, or other action relative to a zoning matter shall be instituted until after such fees and charges have been paid.

Secs. 34-54--34-80. Reserved.

DIVISION 2. TOWN COUNCIL

Sec. 34-81. Appointment of local planning agency.

The town council shall appoint the members of the local planning agency.

Sec. 34-82. Initiation of zoning actions.

The town council or the town manager may initiate rezonings, special exceptions, variances, developments of regional impact, land development code amendments, formal interpretations of this code and the Fort Myers Beach Comprehensive Plan, and other actions as may be specified in this code. See division 4 of this article for specific application requirements.

Sec. 34-83. Land use ordinance amendments or adoption.

(1) ***Function.*** The town council shall hold public hearings on all proposed land use ordinance amendments or adoptions.
(2) ***Considerations.*** When deciding whether to adopt a proposed land use ordinance or amendment, the town council shall consider the Fort Myers Beach Comprehensive Plan and the recommendation of the local planning agency.
(3) ***Decisions and authority.*** The decision of the town council on any proposed land use ordinance amendment or adoption is final.
(4) ***Appeals.*** Appeals of any decision concerning land use ordinance amendments or adoption shall be taken in accordance with applicable state law.

Sec. 34-84. General procedures for actions on specific zoning applications.

(1) ***Function.*** The town council shall hold public hearings (see §§ 34-231 through 34-265) on the following applications: rezonings, appeals from administrative actions, variances, special exceptions, and developments of regional impact.
(2) ***Prior hearings.*** Public hearings before the town council shall be held after the local planning agency has held its hearing on these applications and rendered its formal recommendation to the town council, except for appeals of administrative actions, applications for interpretations of this code, and certain interpretations of the comprehensive plan, which shall require only a single public hearing before the town council.

(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 not affect a person's eligibility 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 October 1 of the appointment year. Each application 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 Ordinance 08-11 shall be up to four members for a one-year term and three members for a two-year term. If otherwise qualified, a member may be repeatedly appointed for an additional term by Town Council without a limitation in number of terms served.

(b) Appointments shall be made annually at the first available meeting of the council in November. The term of any member which would otherwise expire in April, 2008, will be extended to the first available Town Council meeting in November, 2008, or until such member's successor has been appointed, whichever is sooner. The term of any member which would otherwise expire in April, 2009, will be extended to the first available Town Council meeting in November, 2009, or until their successor has been appointed, whichever is sooner.

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

each individually owned timeshare unit as defined by F.S. ch. 721 counts as one unit, regardless of the number of individuals who jointly own the unit.

2. In order to verify ownership, the applicants shall furnish the town, as part of their application, a complete list of all unit owners, identified by unit number and timeshare period, as applicable, along with proof that all unit owners who did not join in the application were given actual written notice thereof by the applicants, who shall verify the list and fact of notice by sworn affidavit.
3. So as to protect the legal rights of nonparticipating unit owners, the application shall be accompanied by a letter of opinion from a licensed Florida attorney, who shall attest that he has examined the declaration of condominium, the bylaws of the condominium association, and all other relevant legal documents or timeshare documents, as applicable, and concluded that the act of applying or petitioning to the town violates none of the provisions therein, or any federal or state law regulating condominiums or timeshare plans, or the rights of any of the nonparticipating unit owners, as derived from such documents and laws, and that approval of the requested act by the town would violate no such rights.

c. Where the property is a subdivision, an application or petition may be initiated by no less than 75 percent of the total number of lot or parcel owners and the homeowners' association, if applicable.

1. For purposes of this subsection, a subdivision is an area of property defined by a specific boundary in which lot divisions have been established on a plat that has been recorded in either a plat book or official records book whereby legal descriptions are referred to by lot or parcel number. This term may include any unit or phase of the subdivision and not the entire subdivision.
2. In order to verify ownership, the applicants shall furnish the town, as part of their application, a complete list of all lot owners, identified by lot number, along with proof that all lot owners who did not join in the application were given actual written notice thereof by the applicants, who shall verify the list and fact of notice by sworn affidavit.

(2) The town, which for purposes of this section shall mean the town council or town manager.

(b) ***Application submittal and official receipt procedure.*** The application procedure and requirements in this section apply to all applications for rezoning, special exceptions, appeals from administrative action, and variances.

(1) All properties within a single application must be abutting. The director may, at his discretion, allow a single application to cover non-abutting properties where it is in the public interest due to the size or scope and nature of the request, and there is a rational continuity to the properties in question.
(2) No application shall be accepted unless it is presented on the official forms provided by the director, or on computer-generated forms containing the same information.
   a. Forms shall include but not be limited to disclosure forms for corporations, trusts, and partnerships, and disclosure of information regarding contract purchases and their percentages of interest.
   b. Disclosure shall not be required of any entity whose interests are solely equity interests which are regularly traded on an established securities market in the United States or another country.
   c. Disclosure forms shall be provided by the director. Such completed disclosure forms shall be included in the materials distributed to the local planning agency and the town council.
   d. Subsections (b)(2)a. through c. of this section shall not apply to town-initiated rezonings.
(3) Before an application may be accepted, it must fully comply with all information requirements enumerated in § 34-202 and 34-203, as applicable, unless specifically stated otherwise in this chapter.
(4) The applicant shall ensure that an application is accurate and complete. Any additional expenses necessitated because of inaccurate

or incomplete information shall be borne by the applicant.

(5) Upon receipt of the completed application form, all required documents, and the filing fee, the director will begin reviewing the application for completeness, or, in the case of planned development applications, begin reviewing the application for sufficiency pursuant to § 34-213.

Sec. 34-202. General submittal requirements for applications requiring public hearing.

(a) ***All applications.*** Every request for actions requiring a public hearing under this chapter shall include the following. However, upon written request using a form prepared by the director, the director may modify the submittal requirements contained in this section where it can be clearly demonstrated that the submission will have no bearing on the review and processing of the application. The request for a waiver or modification must be submitted to the director prior to submitting the application. A copy of the request and the director's written response must accompany the application and will become a part of the permanent file.

(1) ***Legal description***. A legal description of the property. The application shall include a copy of the plat or plats, if any, and the correct STRAP number(s). If the application includes multiple abutting parcels or consists of other than one or more undivided platted lots, the legal description must specifically describe the perimeter boundary of the total property, by metes and bounds with accurate bearings and distances for every line, but need not describe each individual parcel. However, the application must provide the STRAP number for every parcel. The director has the right to reject any legal description which is not sufficiently detailed to locate the property on official maps.

(2) ***Boundary survey or certified sketch of description***. A certified sketch of description, unless the subject property consists of one or more undivided platted lots in a subdivision recorded in the official Lee County Plat Books. The director may require a boundary survey where there is a question regarding the accuracy of the legal description of the property or a question regarding the location of structure(s) or easement(s) that may be relevant to the review of the application. All certified sketches and boundary surveys must meet the minimum technical standards for land surveying in the state, as set out in ch. 61G 17-6, *F.A.C.* The perimeter boundary must be clearly marked with a heavy line and must include the entire area that is the subject of the application.

(3) ***Confirmation of ownership***. If at any time during the review process the director concludes there is a question regarding ownership of the property, the director may require submittal of a title insurance policy, attorney's opinion of title, or ownership and encumbrance report.

(4) ***Area location map***. A map, at a suitable scale, drawn on an 8½-inch by 11-inch sheet of paper, that depicts the property described in the legal description in relation to the surrounding neighborhood. The map shall be sufficiently referenced to streets, waterways, and other physical boundaries so as to be clearly identifiable to the general public.

(5) ***Property owners list***. A complete list of all owners of the property subject to this request and their mailing addresses. If multiple parcels are involved, a map showing the owners' interest must be provided. The applicant is responsible for the accuracy of the list and map. For town-initiated actions only, names and addresses shall be deemed to be those appearing on the latest tax rolls of the county.

(6) ***Surrounding property owners list***. A complete list, and two sets of mailing labels, of all property owners, and their mailing addresses, for all property within 500 feet of the perimeter of the subject parcel or the portion thereof that is the subject of the request. This list shall also include the owners of all individual condominium units within the 500-foot perimeter, plus the managing entity of any timeshare properties. For the purpose of this subsection, names and addresses of property owners, condominium owners, and timeshare managers will be deemed to be those appearing on the latest tax rolls of the county at the time of application. The applicant shall be responsible for the accuracy of such list. In the event that more than six months lapses between the time of application and the date of mailing courtesy notices for the scheduled

public hearing, the director may require the applicant to submit a new list and mailing labels.

(7) ***Surrounding property owners map***. The application shall include a zoning map or other similar map displaying all of the parcels of property within 500 feet of the perimeter of the subject parcel or the portion thereof that is subject of the request, referenced by number or other symbol to the names on the surrounding property owners list. The applicant shall be responsible for the accuracy of the map.

(8) ***Additional material***. Additional material, depending on the specific type of action requested, may be required as set forth in §§ 34-202(b) and 34-203.

(9) ***Filing fee***. All fees, in accordance with the fee schedule (see § 34-53), shall be paid at the time the application is submitted.

(b) ***Additional submittal requirements for owner-initiated applications.*** In addition to the submittal requirements set forth in subsection (a), every application initiated by a property owner involving a change in the zoning district boundaries, or a request for special exception, appeal from administrative action, or variance, for his own property, shall include the following:

(1) ***Evidence of authority***.

a. *Ownership interests.* The names of all persons or entities having an ownership interest in the property, including the names of all stockholders and trust beneficiaries (see § 34-201(b)(2)a. through c.).

b. *Applicant's statement.* Notwithstanding the requirements of § 34-201(a)(1)a., the applicant for any action requiring a public hearing must sign a statement, under oath, that he is the owner or the authorized representative of the owner(s) of the property and that he has full authority to secure the approval(s) requested and to impose covenants and restrictions on the referenced property as a result of the action approved by the town in accordance with this code. This must also include a statement that the property owner will not transfer, convey. sell, or subdivide the subject parcel unencumbered by the covenants and restrictions imposed by the approved action.

c. *Agent authorization.* The applicant may authorize agents to assist in the preparation and presentation of the application. The town will presume that any agent authorized by the applicant has the authority to bind the property with respect to conditions.

(2) ***Property restrictions***. The application shall include a copy of the deed restrictions or other types of covenants and restrictions on the subject parcel, along with a statement as to how the restrictions may affect the requested action. If there are no restrictions on the property, the applicant must indicate so on the application form.

(3) ***Boundary sketch.*** The boundary sketch shall include the location of existing structures on the property.

(4) ***Confirmation of ownership***. If at any time during the review process the director concludes there is a question regarding ownership of the property, the director may require submittal of a title insurance policy, attorney's opinion of title, or ownership and encumbrance report.

(5) ***Sketch of proposed building***. All applications for planned development zoning, variances, appeals from administrative action (where relevant), and special exceptions must be accompanied by a sketch or sketches that indicate the physical character of the proposed building(s), and in the case of variances, the difference between the proposal and the configuration that would be allowed without the variance.

Sec. 34-203. Additional requirements for certain applications requiring public hearing.

(a) ***Developments of regional impact.*** Developments of regional impact shall comply with the information submittal and procedural requirements of F.S. ch. 380, as administered through the Southwest Florida Regional Planning Council. If the development of regional impact requires specific zoning actions (i.e., rezoning), the procedures and requirements of § 34-202 and this section of this chapter shall be met. Additionally, even if the development of regional impact does not require specific zoning action, the applicant must submit a traffic impact statement, as described in § 34-212(6) and detailed in § 10-286. Thresholds

for developments of regional impact can be found in F.A.C. ch. 28-24.

(b) ***Planned developments.*** Planned development rezonings must comply with the additional submittal requirements in § 34-212. Additional procedural requirements are set forth in §§ 34-211–220.

(c) ***Rezonings.*** Requests for rezonings shall, in addition to the requirements of § 34-202, include a statement of the basis or reason for the rezoning. Such statement is to be directed, at a minimum, to the guidelines for decision-making embodied in § 34-85(2). This statement may be utilized by the town council and staff in establishing a factual basis for the granting or denial of the rezoning.

(d) ***Special exceptions.*** Applications for a special exception shall, in addition to the requirements of § 34-202, include the following:

(1) A statement as to how the property qualifies for the special exception requested, and what impact granting the request would have on surrounding properties. Such statement shall be directed, at a minimum, to the guidelines for decision-making embodied in § 34-88. This statement may be utilized by the town council in establishing a factual basis for granting or denial of the special exception.

(2) A site development plan detailing the proposed use, including, where applicable, the following:
   a. The location and current use of all existing structures on the site, as well as those on adjacent properties within 100 feet of the perimeter boundaries of the site.
   b. All proposed structures and uses to be developed on the site.
   c. Proposed fencing and screening, if any.
   d. Any other reasonable information which may be required by the director which is commensurate with the intent and purpose of this chapter.

(3) *On-premises consumption of alcoholic beverages.* If the request is for a consumption-on-premises permit:
   a. The site plan must include a detailed parking plan.
   b. A written statement describing the type of state liquor license to be acquired, e.g., 2 COP, SRX, 11C, etc., and the anticipated hours of operation for the business, must be submitted.

(e) ***Variances.*** Applications for a variance from the terms of this chapter shall, in addition to the requirements of § 34-202, include the following:

(1) A document describing:
   a. The section number and the particular regulation of this code from which relief (variance) is requested;
   b. The reason why the variance is needed;
   c. What effect, if any, granting of the variance would have on adjacent properties;
   d. The nature of the hardship which is used to justify the request for relief; and
   e. A statement as to how the property qualifies for the variance, directed, at a minimum, to the guidelines for decision-making embodied in § 34-87.

(2) A site plan describing:
   a. All existing and proposed structures on the site;
   b. All existing structures within 100 feet of the perimeter boundary of the site; and
   c. The proposed variance from the adopted standards.

(3) Any other reasonable information which may be required by the director which is commensurate with the intent and purpose of this code.

(f) ***Use or procedural variances.*** Use and procedural variances are not legally permissible, and no application for a use variance nor a procedural variance will be processed. The director will notify the applicant when a more appropriate procedure, e.g., rezoning or special exception, is required.

(g) ***Modifications to submittal requirements.*** Upon written request, on a form prepared by the director, the director may modify the submittal requirements contained in this section or in other portions of this code where modifications are specifically authorized, where it can be clearly demonstrated by the applicant that the submission will have no bearing on the review and processing of the application. The request and the director's written response must accompany the application submitted and will become a part of the permanent file. The decision of the director is discretionary and may not be appealed.

Secs. 34-204–34-210. Reserved.

Subdivision II. Additional Procedures for Planned Development Zoning Districts

Sec. 34-211. Generally.

(a) Planned development zoning districts are described in §§ 34-612(3) and 34-931–990.

(b) The application and procedure requirements described in this division are a supplement to the general requirements for rezoning applications found in this article.

(c) The applicant may initiate the planned development process by requesting an optional preapplication conference. In this request, the applicant shall provide a description of the property in question, the location of the property, the existing use, special features, and the use proposed. Through this meeting, the applicant may avail himself of staff in order to be oriented to the planned development process, to determine what application materials are required, and to be advised of the impacts of the Fort Myers Beach Comprehensive Plan, surrounding development and zoning, and other public policy on the development proposal.

Sec. 34-212. Application for a planned development.

An applicant for a planned development shall provide the following information, supplemented, where necessary, with written material, maps, plans, or diagrams. Wherever this section calls for the exact or specific location of anything on a map or plan, its location shall be indicated by dimensions from an acceptable reference point, survey marker, or monument.

(1) ***General application.*** A general application for public hearing in accordance with the requirements set forth in §§ 34-201, 34-202, and 34-203.
(2) ***Filing fee.*** The filing fee (see § 34-53).
(3) ***Evidence of unified control***. The same documentation evidencing unified control as is required by ch. 10 for development orders.
(4) ***Master concept plan.*** A clearly legible master concept plan, to be no less than 24 inches by 36 inches in size and at an appropriate scale to adequately show the proposed development in detail, including the following information:
   a. The general size, configuration, and location of each development phase, and a description of the phasing of construction, unless the development is to be constructed in a single phase;
   b. The maximum height of any proposed buildings or structures, using this code's means of measuring height (see § 34-631);
   c. Proposed principal and accessory land uses, identifying such uses by citing the same uses allowed by a specific zoning district, or by citing the enumerated uses of one or more use groups or sub-groups as found in Tables 34-1 and 34-2 of this article.
   d. The number of units proposed for each use, in terms of dwelling units by type, hotel or motel guest units, gross square feet of types of commercial uses, and maximum floor area ratios (see § 34-633);
   e. The minimum width and composition of any proposed buffers along the perimeter of the subject property. References to types of buffers as described in ch. 10 are acceptable;
   f. The location of any environmentally sensitive land and water, based upon standard environmental data and verified by a field inspection by town staff. An engineering survey is not required until the plan has been incorporated into an application for a development order;
   g. The exact location of all points of vehicular ingress and egress from existing easements or rights-of-way into the development;
   h. Access and facilities for public transit, where applicable;
   i. The general location of stormwater management areas;
   j. The specific location of any requested deviations, including sample detail drawings that illustrate the effect of the proposed deviation.
   k. The exact location of existing rights-or way and easements, whether or not those easements are recorded; and
   l. Proposed dedications, if any, including public beach access, boat ramps, park or recreation areas, open space, or other easements.

(5) ***Architectural elevations.*** The master concept plan shall be accompanied by architectural elevations or a three-dimensional rendering that show, at a minimum, all building facades adjoining public streets. These drawings may substitute for the sketches required by § 34-202(b)(5) If any aspects of a proposed commercial or mixed-use building do not comply with the commercial design standards in §§ 34-991–34-1010, the applicant may request one or more deviations from those standards in accordance with § 34-932(b).

(6) ***Traffic impact statement.*** A traffic impact statement in the same format and to the same degree of detail required for development orders (see § 10-286), unless waived by the director in accordance with § 34-202(a).

Sec. 34-213. Sufficiency and completeness.

No hearing will be scheduled for any application for a planned development until the application has been found sufficient.

(1) All applications for planned developments will be deemed sufficient unless a letter advising the applicant of insufficiencies has been mailed within 15 working days of the payment of the application fee. All amended applications will be deemed sufficient unless a subsequent letter advising the applicant of any insufficiencies has been mailed within 15 working days of the resubmittal. The contents of insufficiency letters will be limited to brief explanations of the manner in which insufficient applications do not comply with the formal requirements in this section.

(2) Subsequent to notification that the application has been found to be insufficient, the applicant has 60 days to submit supplemental or corrected documents, unless a longer time is agreed to in writing by the director and the applicant prior to the expiration of the 60 days. If the supplement or corrections are not submitted within the 60 days (or other time period agreed to) the application will be deemed withdrawn.

(3) Once an application has been found sufficient, any new information submitted by the applicant, or any changes made to information submitted by the applicant, may, at the discretion of the director, be grounds for a deferral or continuance of the public hearing, depending on the advertised status of the hearing.

(4) In those instances where a proposed planned development is identified by the director as a possible development of regional impact, the applicant shall be notified that the application will be deemed sufficient only when accompanied by either a binding letter of interpretation from the state department of community affairs or a complete and sufficient ADA.

Sec. 34-214. Application for an amendment.

(a) Applications for amendments to an approved master concept plan or its attendant documentation, including a time extension, will require as much information as is needed to describe the changes requested, to specify the incremental change in impacts expected from the amendment, and to detail the changes in surrounding land uses, if any, that have occurred since the original application was made.

(b) In addition, the application and master concept plan must update the entire planned development:

(1) Precise locations of newly constructed buildings must be shown.

(2) All deviations previously approved or now requested must be clearly indicated.

(3) If the land development code has changed since the previous approval, the proposed amendment must be based on the current regulations (for example, the proposed uses and deviations must reflect the terminology and regulations in the current code).

(4) The intent is to have resolutions that amend a planned development be current and complete and not require references to a previous resolution on the same property.

(c) Some amendments can be approved administratively as provided in § 34-219; the remainder shall proceed through the public hearing process described in § 34-216.

Sec. 34-215. Documentation of unified control.

(a) Any applicant for a rezoning or master concept plan confirmation under the planned development regulations as provided in this article

shall submit documentation demonstrating unified control over the subject property.

(b) If the initial applicant conveys all or part of the subject property to a subsequent purchaser, the conveyance is subject to the original documentation demonstrating unified control unless amended documentation is filed with the director. This amended documentation must be filed within 60 days of closing in a form acceptable to the town attorney. This requirement shall not apply to individual homesites or units of a residential development or to any development wherein the obligation to enforce the regulations and conditions or covenants and restrictions is delegated to property owners or a condominium association or cooperative

Sec. 34-216. Public hearings.

(a) ***Hearing before the local planning agency.*** After an application is complete, the application will be scheduled for a public hearing before the local planning agency.

(1) At the public hearing the local planning agency will consider the application in accordance with article II of this chapter.

(2) The recommendation made to the town council must be supported by the guidelines set forth in § 34-85 of this chapter. In addition, the findings must address whether the following criteria can be satisfied:
   a. The proposed use or mix of uses is appropriate at the subject location;
   b. Sufficient safeguards to the public interest are provided by the recommended special conditions to the concept plan or by other applicable regulations;
   c. All recommended special conditions are reasonably related to the impacts on the public's interest created by or expected from the proposed development.
   d. The proposed use meets all specific requirements of the comprehensive plan that are relevant to the requested planned development, such as the following:
      1. Policies 4-B-4 and 4-C-3 on commercial uses in the "Mixed Residential" category.
      2. Policies 4-B-5 and 4-C-3 on commercial rezonings in the "Boulevard" category.
      3. Policy 4-C-4 on building heights taller than the standard height limit.
      4. Policy 4-C-8 on density transfers.
      5. Policy 4-E-1 on pre-disaster buildback.
      6. Policy 7-J-2 on traffic impact analyses and potential design improvements that could offset traffic impacts.

(3) If the local planning agency determines that a proposed condition is insufficient, it may recommend an alternate condition for consideration by the town council.

(4) If the application includes a schedule of deviations pursuant to §§ 34-212(3) and 34-932(b), the local planning agency's recommendation must approve, approve with modification, or reject each requested deviation based upon a finding that:
   a. Each item enhances the achievement of the objectives of the planned development; and
   b. The general intent of this chapter to protect the public health, safety, and welfare will be preserved and promoted; and
   c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
   d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

   If the local planning agency concludes that the application omits necessary deviations, it may include the necessary deviations in its recommendation without an additional hearing.

(b) ***Hearing before the town council.***

(1) After the local planning agency's hearing, an application for a planned development, together with all attendant information, staff reports, and the local planning agency's minutes and resolution of recommendation, shall be forwarded to the town council, which shall consider the application in public hearing per article II of this chapter. After reviewing all information, including staff reports and local planning agency recommendations, the town council may either:
   a. Continue further consideration until additional information is provided by applicant or the director or until the applicant makes changes in the application, subject to re-review by the director and the local planning agency as required; or

b. Formally approve, approve with modification, or deny the application.

Should the town council deny without prejudice, it may remand the proposal to the director with directions to bring the application back to the local planning agency once the application is amended. If new or additional information, not previously provided to either the director or the local planning agency, is supplied by the applicant after the local planning agency hearing, the town council may remand the application to the local planning agency for rehearing.

(2) The decision of the town council shall be supported by a formal finding, that, in addition to the appropriate guidelines set forth in article II of this chapter, the criteria set forth in subsection (a)(2) of this section have or have not been satisfied.

(3) In addition to adopting a master concept plan for the planned development, the town council may adopt such special conditions as are necessary to address unique aspects of the subject property in the interest of protecting the public health, safety, and welfare. Should any recommended special condition be found to be insufficient, the town council may substitute its own language for such special condition in the final resolution.

(4) Should a schedule of deviations from other provisions of this chapter (see §§ 34-212(6) and 34-932(b)) be a part of the planned development application, the town council may approve, approve with modification, or reject the entire schedule or specific items based upon their finding that for each item:
   a. Each item enhances the achievement of the objectives of the planned development; and
   b. The general intent of this chapter to protect the public health, safety, and welfare will be preserved and promoted;
   c. Each deviation operates to the benefit, or at least not to the detriment, of the public interest; and
   d. Each deviation is consistent with the Fort Myers Beach Comprehensive Plan.

(5) If the town council denies or modifies any requested use(s), deviations(s), or other information shown on the master concept plan, a revised master concept plan must be submitted to the director reflecting the substance of the approved resolution prior to execution of the resolution. Legible copies of the revised master concept plan must be provided in two sizes, 24 inches by 36 inches and 11 inches by 17 inches in size.

(6) No development orders may be issued until the approved resolution has been signed by proper town officials.

Sec. 34-217. Effect of planned development zoning.

(a) ***Compliance with applicable regulations.*** After the adoption of the master concept plan and the conditions and auxiliary documentation that govern it, any and all development and subsequent use of land, water, and structures within any planned development shall be in compliance with the following, in order of precedence:

(1) The Fort Myers Beach Comprehensive Plan.
(2) This subdivision of the land development code.
(3) The master concept plan and attendant conditions and auxiliary documentation.
(4) Any applicable town development regulations in force at the time of submission of the application for a development order.
(5) The general provisions of this chapter, unless otherwise excepted by an approved schedule of deviations.

(b) ***Applicability of development regulations.*** The master concept plan (see § 34-212(4)) is conceptual only, and development pursuant to the master concept plan is subject to all development regulations established to protect health, safety, and welfare in force at the time of submission of the application for a development order, except where deviations have been formally granted in accordance with § 34-932(b).

(c) The terms and conditions of the planned development zoning approval (other than the master concept plan as set forth in § 34-220) run with the land and remain effective in perpetuity or until a new zoning action is approved by the town council. All developments must remain in compliance with the terms and conditions of the zoning approval.

(d) If the town discovers noncompliance with the regulations or the master concept plan and its attachments, the town may withhold any permit, certificate, or license to construct, occupy, or use any part of the planned development. This will not

be construed to injure the rights of tenants of previously completed and properly occupied phases.

Sec. 34-218. Binding nature of approval of master concept plan.

All terms, conditions, safeguards, and stipulations made at the time of the approval of a master concept plan shall be binding upon the applicant or any successor in title or interest to all or part of the planned development. Departure from the approved plans or failure to comply with any requirement, condition, or safeguard shall constitute a violation of this chapter.

Sec. 34-219. Administrative amendments to approved master concept plan.

(a) Amendments to an approved master concept plan or its attendant documentation may be requested at any time during the development of or useful life of a planned development.

(b) Amendments that may be approved by the director include, in general, any change which does not increase height, density, or intensity (i.e., number of dwelling units, hotel units, or floor area), decrease buffers or open space, or add additional land uses. The director shall not approve any change which results in a reduction of total open space, buffering, landscaping, and preservation areas or which adversely impacts on surrounding land uses.

(1) This authority is granted to the director to eliminate unnecessary processing delays for proposed changes that are:
   a. substantially similar to the prior approval; and
   b. in conformance with all town regulations and plans.
(2) Decisions by the director pursuant to this subsection may be appealed only as follows:
   a. Appeals will not be considered for any of the following requests:
      1. an increase in height, density, or intensity (i.e., number of dwelling units, guest units, or floor area), or
      2. an additional land use, or
      3. a variance or deviation from this code, or
      4. a substantial change from previously approved architectural drawings or master concept plan.
   b. The appeal must be filed and processed in accordance with § 34-86. In addition, the appellant must provide a list and map of surrounding property owners and one set of mailing labels in accordance with § 34-202(6) and (7), and shall pay a fee established in accordance with the provisions of § 34-53.
   c. The director shall provide notice of the public hearing where this appeal will be considered using the procedures in § 34-236.
   d. Upon considering an appeal, the town council may uphold or repeal the director's decision, or may modify that decision by removing, adding, or modifying any conditions of approval.

(c) All other requests for amendments to a master concept plan or its auxiliary documentation shall be treated procedurally as an amendment to the planned development, with application information specified by § 34-214 and public hearings in accordance with § 34-216.

Sec. 34-220. Duration of rights conferred by adopted master concept plan.

Master concept plans are subject to the following:

(1) An approved master concept plan and its attendant documentation shall be deemed to be vacated unless the property owner obtains a development order for the first phase of the project within three years of the date of the original approval by the town council, consisting of no less than 20 percent of the lots, dwelling units, square footage, or other applicable measurements of intensity for the development in question unless a lesser percentage is approved by the town council.
(2) Timeframes for approval of subsequent portions of the development may be governed by a phasing plan, which shall be included in the resolution rezoning the subject parcel. Phases may be defined by geographical areas, units of intensity, or any other units of measurement deemed appropriate by the town council. In the absence of a specific phasing plan in the resolution, subsequent phases must proceed as follows:
   a. Within five years of the date of approval by the town council, the first phase must

have been completed and a development order must have been obtained for the second phase, consisting of 50% of the project.

b. Within eight years of the date of approval by the town council, the second phase must have been completed and a development order must have been obtained for the entire project.

(3) Any phase for which a development order has not been obtained or for which development has not been completed by the time specified in the resolution shall be deemed vacated, along with all subsequent phases.

(4) When any portion of a master concept plan is vacated pursuant to subsection (1), the vacated area will remain zoned planned development, but no additional development can occur or be approved until a new master concept plan is approved or the original master concept plan is extended, or until the property is rezoned by the town council.

(5) Extensions of master concept plans may be granted as follows:

a. An approved master concept plan for a phase of or an entire planned development which has been or may be vacated due to a failure to proceed on the applicant's part may be extended by the town council for a period of no more than two years from the date of the extension based on the following findings of fact:

1. The master concept plan is consistent with this code and the current Fort Myers Beach Comprehensive Plan, including, but not limited to, density, intensity, and concurrency requirements;
2. The development shown by the master concept plan has not become incompatible with existing and proposed uses in the surrounding area as the result of development approvals issued after the original approval of the master concept plan; and
3. The development shown by the master concept plan will not, by itself or in conjunction with other development, place an unreasonable burden on essential public facilities.

b. An application for an extension may be filed at any time up to one year after the vacation of the master concept plan and must consist of the following:

1. A completed application form provided by the director;
2. The approved master concept plan;
3. The applicable zoning resolution;
4. A written statement describing how the criteria listed in subsection (4)a. above have been met; and
5. A fee, in accordance with an adopted administrative code.

c. No more than two extensions may be granted for any development or phase thereof.

(6) Phasing plans may be amended in accordance with § 34-214.

Secs. 34-221--34-230. Reserved.

DIVISION 5. PUBLIC HEARINGS AND REVIEW

Sec. 34-231. Definitions.

For purposes of this division only, certain terms are defined as follows:

Continuance means an action initiated by the applicant, staff, local planning agency, or the town council to postpone, to a later time or date, a public hearing after the notice of the public hearing has been submitted to the newspaper for publication as required in § 34-236.

Deferral means an action initiated by the applicant or staff to postpone, to a later time or date, a public hearing prior to the notice of the public hearing being submitted to the newspaper for publication.

Sec. 34-232. Required hearings.

(a) ***Amendment or adoption of land use ordinances.***

(1) Any proposed amendment to this chapter or to any land use ordinance, or adoption of any new land use ordinance, shall be enacted pursuant to the requirements set forth in F.S. § 166.041.

(2) Prior to a final required hearing by the town council, the local planning agency shall review the amendment at a public hearing.

(b) ***Owner-initiated requests.*** Owner-initiated requests for rezonings, variances, special exceptions, and developments of regional impact require one public hearing before the local planning agency and one public hearing before the town council.

(c) ***Town-initiated requests.*** Town-initiated requests for rezonings, variances, special exceptions, and developments of regional impact require one public hearing before the local planning agency and:

(1) Applications covering less than 10 abutting acres of land will require a single public hearing before the town council.
(2) Applications covering more than 10 abutting acres of land will require two public hearings before the town council in accordance with F.S. § 166.041.

Sec. 34-233. Preliminary review and notice certification.

(a) ***Staff review.*** The director will produce a written (staff) report summarizing each application and making a formal recommendation to the local planning agency and town council to be available about 7 days before the public hearing.

(b) ***LPA review.*** No application required under the provisions of this chapter to be reviewed by the local planning agency prior to review by the town council shall be heard for final consideration by the town council prior to receiving a substantive recommendation of the local planning agency. As used in this subsection, a motion to continue a matter by the local planning agency shall not be considered a substantive recommendation.

Sec. 34-234. Public participation.

(a) ***Participation at public hearings.*** At a public hearing before the local planning agency or town council, all persons shall be heard. However, the local planning agency and town council shall have the right to refuse to hear testimony which is irrelevant, repetitive, defamatory, or spurious, and may establish reasonable time limits on testimony.

(b) ***Participation prior to public hearings.*** When any person discusses a matter that is the subject of a pending quasi-judicial hearing with a member of the local planning agency or the town council, such member shall disclose the discussion at the public hearing in accordance with § 34-52(b)(2).

Sec. 34-235. Deferral or continuance of public hearing.

The following procedures and regulations for deferring or continuing a public hearing apply for the local planning agency and town council:

(1) ***Deferral.*** A scheduled but not yet advertised public hearing may be deferred by the director or by the applicant as follows:
   a. *Town-initiated deferral.* The director may defer a scheduled public hearing prior to advertising, if additional or corrected information is required to permit staff to properly or adequately review a requested application, provided that notice is mailed to the applicant, or his authorized representative, stating the reason for the deferral and what additional information is required to complete staff review.
   b. *Applicant-initiated deferral.* An applicant may request a deferral of the public hearing if the request is in writing and received by the director prior to submitting notice of the hearing to the newspaper for publication.
   c. *Fee.* There shall be no additional fee for either a town-initiated or applicant-initiated deferral. However, the applicant must obtain corrected zoning notice posters and post the signs on-site.
(2) ***Continuance.*** A scheduled, advertised public hearing may be continued by the town or by the applicant as follows:
   a. *Town-initiated continuance.*
      1. The local planning agency or town council, upon staff request or upon its own initiative, may continue a public hearing when it is necessary to require additional information, public testimony, or time to render an appropriate recommendation.
      2. The hearing shall be continued to a date certain, and the local planning agency or town council shall continue its consideration on the hearing matter on that date certain. Any hearing not

continued to a date certain is deemed to be denied without prejudice.

3. There shall be no limitations on the number of town-initiated continuances.
4. The town shall bear all renotification costs of any town-initiated continuance.

b. *Applicant-initiated continuance.*

1. The applicant, or his duly authorized agent, shall submit the request in writing to, and the request shall be received by, the town manager at least one day prior to the advertised hearing date, or the applicant or his duly authorized agent shall appear before the local planning agency or town council at the beginning of its scheduled agenda and orally request the continuance.
2. The local planning agency or town council may either deny or grant the request for continuance.
   i. If the request for continuance is denied, the hearing shall proceed in accordance with the published agenda.
   ii. If the request for continuance is approved, the local planning agency or town council may set a date certain for hearing the application. Any hearing not continued to a date certain is deemed to be denied without prejudice.
3. The applicant shall be entitled to one continuance before the local planning agency and one continuance before the town council as a matter of right. Each body shall have the authority to grant additional continuances upon a showing of good cause.
4. A fee, in accordance with a fee schedule, shall be charged for any applicant-initiated continuance to cover the costs of renotification. The applicant must bear all renotification costs of an applicant-initiated continuance.

c. *Unknown hearing dates.* Continuances may also be granted to unknown dates at the discretion of the local planning agency or town council. Such continuances shall be rescheduled by the director and shall be readvertised in the same manner as the originally scheduled hearing. If such a continuance was requested by an applicant, the director may charge the applicant for additional costs of renotification.

Sec. 34-236. Notices.

(a) ***Minimum required information.*** A notice of public hearing under this chapter shall contain the following minimum required information:

(1) *Action proposed.*
   a. *Rezoning and developments of regional impact.* All required notices shall indicate the existing zoning of the property, the proposed zoning, and the general location of the property by reference to common street names and addresses, with sufficient clarity so as to advise the public, but need not describe the proposed plans or details thereof, or the specific legal description of the property.
   b. *Special exceptions and variances.* All required notices shall indicate the existing zoning of the property; the proposed use by special exception, or the requirement from which the variance is being requested and the actual degree of variance being requested; and the location of the property by reference to common street names and addresses, with sufficient clarity so as to advise the public, but need not describe the proposed plans or details thereof or the specific legal description of the property.
   c. *Appeals.* The notice shall summarize the decision or action upon which the appeal is based with sufficient clarity so as to advise the public of the subject matter.

(2) *Time and place of hearing.* The notice shall specify the date, time and place that the public hearing will be held by the local planning agency or the town council.

(3) *Public availability of information.* The notice shall indicate where copies of the proposed amendment may be obtained or reviewed, or where the application for public hearing may be reviewed.

(4) *Location of record of notice.* A copy of such notice shall be kept available for public inspection during the regular business hours at town hall and at the director's office.

(b) ***Method of providing notice.*** Notices of hearings before the local planning agency and the town council shall be provided in accordance with applicable statutes and subsection (a) of this section.

(c) ***Mailed notices.*** The list and map of surrounding property owners required by § 34-202(a)(6) and (a)(7) is for the purpose of mailing notice to property owners within 500 feet of the property described. The notice is a courtesy only and is not jurisdictional. Accordingly, the failure to mail or to timely mail such notice, or failure of any affected property owners to receive mailed notice, will not constitute a defect in notice or bar the public hearing as scheduled.

Secs. 34-237--34-264 Reserved.

DIVISION 6. INTERPRETATIONS, ENFORCEMENT, AND SPECIAL ADMINISTRATIVE ACTIONS

Sec. 34-265. Requests for interpretation of this code.

Where a question arises as to the meaning or intent of a section or subsection of this code, a written request stating the area of concern and the explicit interpretation requested shall be submitted on forms provided by the director.

(1) The director may render decisions of an administrative nature, such as but not limited to:
   a. Proper zoning classification for a use not specifically addressed; and
   b. Procedures to follow in unusual circumstances.
(2) Interpretations which, in the opinion of the director, involve policy or legislative intent issues shall be placed on the agenda of the town council for its consideration (see § 34-90).

Sec. 34-266. Enforcement.

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 chapter.

Sec. 34-267. Forced relocation of businesses.

(a) The director is authorized to permit proposed uses that are not permitted on a subject parcel for a period of not more than 180 days under the following circumstances:

(1) The property owner, contract purchaser, or other authorized person has filed an application for a rezoning or a special exception for the subject parcel that would, if approved, make the requested use a permitted use;
(2) The requested rezoning or special exception, in the opinion of the director, is clearly compatible with the neighboring uses and zoning and is consistent with the Fort Myers Beach Comprehensive Plan;
(3) The proposed use of the property is a business that is being relocated due to the town's economic development or redevelopment efforts or as the result of threatened or ongoing condemnation proceedings;
(4) No new principal structures are to be constructed on the subject property; and
(5) The applicant agrees in writing that the proposed use will cease within 180 days of the date of the administrative approval unless the town council has rendered a final decision approving the requested rezoning or special exception. Upon execution, the agreement shall be recorded in the public records of the county.

(b) Decisions by the director pursuant to this section are discretionary and may not be appealed pursuant to § 34-86.

(c) The director may extend the effective date of the approval up to an additional 90 days upon good cause shown.

(d) No approval issued pursuant to this section shall excuse any property owner from compliance with any town regulation except the list of permitted uses in the zoning district in question.

Sec. 34-268. Administrative setback variances.

(a) Upon written request using a form prepared by the director, the director is authorized to modify the setbacks in §§ 34-638, 34-1174–34-1176, and 34-1744 of this chapter under the following circumstances:

(1) Street, rear, side, or waterbody setbacks may be modified to permit the remodeling of or additions to existing structures that are nonconforming with regard to a specific

setback so long as the remodeling or addition will not result in:

a. An increase in the height of the structure; or

b. A further diminution of the setback. The director may approve bay windows, chimneys, and similar architectural features that may encroach further into the setback provided the encroachment does not protrude beyond the existing overhang of the building.

(2) Street, rear, side, or waterbody setbacks may be modified to permit the construction of a handicapped access appurtenant to any existing structure.

(3) Street, rear, side, or waterbody setbacks may be modified to allow the replacement of stairs or decking that provides access into an existing dwelling unit.

(4) Street, rear, side, or waterbody setbacks may be modified to legitimize minor errors in setbacks at the time of construction.

(5) Street, rear, or side setbacks may be modified for a residential lot with an unusual shape or orientation where, for instance, side and rear setbacks should be reversed.

(6) Buildings or structures that are not in compliance with current setback regulations and which can be proven to have been permitted may also be reviewed by the director for consideration under this section.

(7) Requirements for large satellite dishes may be modified as provided in § 34-1175(a)(6).

(b) The director, prior to approving the modifications, must make the following findings of fact:

(1) There are no apparent deleterious effects upon the adjoining property owners;

(2) The modifications will not have an adverse impact on the public health, safety, and welfare; and

(3) The modifications will be the minimum required.

(c) Decisions by the director pursuant to this section are discretionary and may not be appealed in accordance with § 34-86.

Secs. 34-269--34-610. Reserved.

ARTICLE III. ZONING DISTRICT REGULATIONS

DIVISION 1. MAPPING OF ZONING DISTRICTS

Sec. 34-611. Zoning districts established.

Land and water within Town of Fort Myers Beach is divided into zoning districts as set forth in this article in order to classify, regulate, and restrict the location of buildings erected or structurally altered for specific uses, to regulate the use of land, to regulate and limit the height and bulk of buildings hereafter erected or structurally altered, to regulate and determine the area of yards and other open space about buildings, to regulate the intensity of land use, and to promote the orderly growth of the town, in compliance with the goals, objectives and policies set forth in the Fort Myers Beach Comprehensive Plan.

Sec. 34-612. Types and general purpose of districts.

There are three basic types of zoning districts provided for in this article: conventional zoning districts, redevelopment districts, and planned development (PD) districts. The general purpose of each type of zoning district is to implement the goals, objectives, and policies of the Fort Myers Beach Comprehensive Plan, as well as to provide protection to the public health, safety, and welfare through the regulation of land use.

(1) ***Conventional districts.*** Conventional zoning districts are districts within which land use is controlled primarily through the regulation of the height and bulk of buildings and structures, the minimum area and dimensions of lots, and setback requirements. Use regulations for the conventional districts are provided in Table 34-2 and other regulations are provided in Table 34-3 and division 4 of this article.

(2) ***Redevelopment districts.*** Redevelopment districts differ from conventional zoning districts in that they implement specific redevelopment concepts established in the Fort Myers Beach Comprehensive Plan. For each of the five redevelopment districts, use regulations are provided in Table 34-2 and the more specific property development regulations are provided in division 5 of this article.

(3) ***PD, planned development districts.*** In certain circumstances, landowners may choose or be required to rezone their land to a planned development (PD) district. The purpose of the two planned development districts is to provide a degree of flexibility for a landowner to propose the development of land in a manner that differs from the specific provisions of this code. A planned development, once approved through the rezoning process, can only be developed in accordance with the master concept plan and special conditions that are contained in the resolution approving the planned development. Use and property development regulations for planned development districts are provided in division 6 of this article.

Sec. 34-613. Designation of district boundaries.

(a) Major revisions to this chapter were approved by the Town of Fort Myers Beach in 2003, including the establishment of new zoning districts and the assignment of all land in the town to one of these zoning districts.

(1) The new zoning district assignments were shown on the interim zoning map contained in Exhibit A of Ordinance 03-03. The new zoning district assignments took effect on March 3, 2003, the date that Ordinance 03-03 was adopted. Previous approvals of variances, special exceptions, special permits, and other zoning actions that did not change zoning district boundaries were not shown on the interim zoning map due to its scale but were not affected by the adoption of the interim zoning map. These approvals were still indicated on the current zoning maps that were being maintained for the town by Lee County.

(2) On May 17, 2004, the town council approved Resolution 04-16 adopting a new official zoning map of the town as described in

§ 34-614 that reflected these new zoning districts and other zoning approvals that remained in effect, such as variances, special exceptions, and special permits.

(3) Also on May 17, 2004, the town council approved Resolution 04-17 adopting a historic zoning map of the town as described in § 34-616.

(b) The boundaries of each zoning district as shown on the interim zoning map, the official zoning map as described in § 34-614, the current zoning map as described in § 34-615, and the historic zoning map as described in § 34-616 shall be as much a part of this chapter as if fully described in this chapter.

(c) There is no right to rely solely on the interim, official, current, or historic zoning maps to vest development or private rights. In addition to the zoning districts shown on these maps, development rights may be limited by other factors such as the Fort Myers Beach Comprehensive Plan; conditions on zoning resolutions for planned development districts, special exceptions, special permits, or variances; and the precise terms of prior administrative approvals.

Sec. 34-614. Official zoning map.

(a) ***Generally.*** The official zoning map of the town consists of computer-generated maps which are adopted by the town council by resolution. The first official zoning map was adopted by the town council on May 17, 2004 through Resolution 04-16.

(1) The first official zoning map reflected the new zoning district boundaries adopted in 2003 through the interim zoning map (see § 34-613) plus two additional zoning district boundary changes adopted by separate resolutions through April 1, 2004.

(2) The first official zoning map also reflected approvals of variances, special exceptions, special permits, and similar approvals from the previous zoning map, which had been approved by Lee County Resolution 94-03-27 on March 16, 1994 and subsequently amended by incremental decisions by officials of Lee County and the Town of Fort Myers Beach through April ;1, 2004.

(3) When adopting official zoning maps, the town council may delete from the previous maps references to past approvals that are believed to have expired or which have become obsolete due to changed regulations or conditions. However, the deletion of such approvals from the official zoning map does not affect any rights that landowners may have under explicit terms of this code (see § 34-616).

(b) ***District boundaries.*** The boundaries of each district shall be shown on the official zoning map, and the district symbols shall be used to designate each district.

(c) ***Other boundaries.*** The perimeter of legal descriptions affected by variances, special exceptions, planned developments, and similar approvals shall be noted with a symbol or key number referencing additional zoning information, which may include the nature of the action, the hearing date, and any special conditions that were imposed.

(d) ***Mapping conventions.*** For mapping purposes only, a boundary line may be drawn to the centerline of a street or body of water.

(e) ***Errors.*** If it is determined that an error exists in the official zoning map, the town council may adopt a correction to the error by resolution at an advertised public hearing.

(f) ***Public availability.*** The official zoning map shall be part of the public records of the town.

(g) ***Records management.*** The director shall retain a copy of the official zoning maps adopted under § 34-614 consistent with statutory record-keeping requirements.

Mapping of Zoning Districts

Sec. 34-615. Current zoning map.

(a) ***Description.*** The current zoning map of the town consists of computer-generated maps depicting the same information on the official zoning map as it has been subsequently modified by rezonings, zoning amendments, special exceptions, variances, administrative decisions, mapping corrections, etc. that have been entered into the computer data base since the most recent adoption of the official zoning maps. For purposes of this section, the term "mapping corrections" means corrections applied to the current zoning map to provide an accurate reflection of the legal description affected by a duly adopted zoning resolution.

(b) ***Printed copies.*** Printed copies of the current zoning map should contain the following statement: "This current zoning map represents the official zoning map plus all rezonings, special exceptions, variances, and administrative amendments approved as of (date)."

(c) ***Public availability.*** The current zoning map shall be part of the public records of the town and may be inspected at town hall or purchased from the Lee County Property Appraiser in downtown Fort Myers.

(d) ***Changes.***

(1) No changes or amendments to the official or current zoning maps shall be made except in compliance and conformity with all the procedures of this chapter, including the correction of errors resulting from clerical or drafting mistakes. Changes in district boundaries or other subject matter portrayed on the official zoning map shall be made promptly on copies of the current zoning map after official adoption of the amendment. All amendments and changes approved by the town council or other authorized bodies shall become effective at the end of the appeal period specified in article II of this chapter. The filing of an appeal stays the effectiveness of the change. If no appeal is filed the director shall forthwith authorize the approved changes to be made on copies of the current zoning map.

(2) Changes to the current zoning map authorized by the town will be entered into the computer data base and then reflected on the current zoning map in the following manner:

a. The property affected by a zoning district change, special exception, variance, or other approval shall be noted with a symbol or key number referencing additional zoning information.

b. The additional zoning information may include the resolution number, any change of zoning district, the nature of any other action, the hearing date, and any special conditions that were imposed.

Sec. 34-616. Historic zoning map.

A historic zoning map was approved by the town council through Resolution 04-17 on May 17, 2004. This historic zoning map reflects the zoning districts that applied to all properties immediately prior to the adoption of Ordinance 03-03 and all variances, special exceptions, special permits, and similar approvals that had been approved by Lee County or the Town of Fort Myers Beach prior to the adoption of Ordinance 03-03. This map provides a historic record of past zoning actions and prior zoning status that may affect the nonconforming status of certain properties within the town. This map also includes key numbers that are explained by detailed notes that provide a history of prior rezonings, variances, special exceptions, special permits, and similar approvals that had been approved before Ordinance 03-03 was adopted on March 3, 2003.

Sec. 34-617. Rules for interpretation of district boundaries.

(a) When uncertainty exists as to the boundaries of districts of the official or current zoning map, the following rules shall apply:

(1) *Boundaries following centerlines.* Boundaries indicated as approximately following the centerlines of streets or bodies of water shall be construed to follow such centerlines.

(2) *Boundaries following lot or tract lines.* Boundaries indicated as approximately following lot lines or tract lines shall be construed as following such lines.

(3) *Boundaries following shorelines.* Boundaries indicated as approximately following the centerlines of water bodies shall be construed to follow such centerlines. In the event of change in the shoreline due to natural causes, land created through accretion shall automatically be classified as EC until and unless a zoning district change is applied for and approved in accordance with procedures set forth in this chapter.

(4) *Vacated lands.* here a public road, street, alley, or other form of right-of-way is officially vacated, the regulations applicable to the property to which the vacated lands attach shall also apply to such vacated lands.

(5) *Accreted lands.* Where land accretes through natural or artificial processes, except for incidental fill behind a seawall authorized by ch. 26 of this code, the accreted land shall be classified as EC unless reclassified by public hearing in accordance with this chapter.

(6) *Uncertainties.* Where physical or cultural features existing on the ground are at variance with those shown on the official or current zoning map, or in case any other uncertainty exists as to the proper location of district boundaries, the director shall interpret the intent of the official or current zoning map as to the proper location of the district boundaries.

(b) When a parcel is split by two or more zoning districts, the property development regulations for the largest proportional district prevail. However, each portion of the parcel is limited to only the permitted uses allowed on that portion, plus their allowable accessory uses. Accessory uses including parking lots may not be placed on portions of parcels that do not contain the principal use to which they are incidental and subordinate. Docks, however, are governed by the regulations for the upland property to which they are attached. See also § 34-1174.

Sec. 34-618. Reserved.

DIVISION 2. ALLOWABLE LAND USES IN EACH ZONING DISTRICT

Sec. 34-619. The Fort Myers Beach Comprehensive Plan.

(a) The Fort Myers Beach Comprehensive Plan is the document adopted by the town council in accordance with F.S. ch. 163 to guide and regulate all land development activities within the town (see § 1-11). All development orders (including rezonings), as defined in F.S. § 163.3164(7) shall be consistent with the goals, objectives, polices, and standards in this plan. Where there are apparent conflicts between this plan and any regulations in this code, this plan will prevail.

(b) The Fort Myers Beach Comprehensive Plan contains a future land use map which divides the town into eight distinct categories:

(1) Low Density
(2) Mixed Residential
(3) Boulevard
(4) Pedestrian Commercial
(5) Marina
(6) Recreation
(7) Wetlands
(8) Tidal Water

The future land use map also contains a Platted Overlay which is applied in certain locations in addition to one of these eight categories. All development must be consistent with the future land use map, the definitions of the land use categories in the text of the plan, and the remainder of the text of the Fort Myers Beach Comprehensive Plan.

(c) Some of the zoning districts in this article may describe uses, densities, or intensities that are not permitted in particular future land use map categories. Property may not be rezoned to a district that is inconsistent with the applicable future land use map category or with the remainder of the text of the Fort Myers Beach Comprehensive Plan.

Sec. 34-620. Allowable uses of land generally.

(a) This division describes allowable land uses in the Town of Fort Myers Beach, most of which are defined in § 34-2, and then groups these uses with compatible uses having similar impacts. These "use groups and sub-groups" (see Table 34-1) are the basis for defining the allowable uses in the various zoning districts (see Table 34-2). Other regulations for individual zoning districts are contained in divisions 4, 5, and 6 of this article.

(b) The director is authorized to determine that some land uses that are not specifically described in this division are permitted in a particular zoning district based upon the expected impacts of the most similar uses described in this division and their assignment to the various districts.

(c) The director may determine that the expected impacts of a land use that is not specifically described in this division cannot safely be assumed to match another use described in this division. In such a case, the director shall require that a property be rezoned into a planned development zoning district (see division 6 of this article) before that land use may be permitted.

(d) In every case, the following land uses can only be permitted through approval of a suitable planned development zoning district:

(1) *Boat dealers* (except as a marina accessory use)
(2) *Building material sales*
(3) *Continuing care facility* (see § 34-1414)
(4) *Contractor's shop*
(5) *Contractor's storage yard*
(6) *Hospital*
(7) *Parking garage* (see § 34-2015(2)c.)
(8) *Storage, open* (except as a marina accessory use)
(9) *Vehicle and equipment dealers*

(e) Planned development zoning districts are also required by the Fort Myers Beach Comprehensive Plan in the following situations:

(1) For new or expanded commercial activities other than those permitted by the current zoning district for land in the Mixed Residential category on the future land use map (see Policies 4-B-4 and 4-C-3).
(2) For new or expanded commercial activities other than those permitted by the current zoning district for land in the Boulevard category on the future land use map (see Policies 4-B-5 and 4-C-3 and §§ 34-701–34-930).
(3) For consideration of extra building height in certain circumstances (see Policy 4-C-4 and § 34-631(b)(5)).
(4) For the transfer of residential and hotel/motel development rights from one parcel to another (see Policy 4-C-8 and § 34-632(6)).
(5) For guest units that exceed the thresholds established in § 34-1803(a).
(6) For pre-disaster buildback of buildings that exceed the current density or height limits (see Policy 4-E-1 and § 34-3237).

(f) In no case may a land use that is not permitted by the Fort Myers Beach Comprehensive Plan be approved within the town, even if requested through the planned development process. Examples of prohibited uses are:

(1) New or expanded cruise ships and similar uses that draw large amounts of vehicular traffic (see Policy 4-B-7).
(2) New or expanded industrial uses (see Policy 4-B-12.iv.), which includes boatyards, manufacturing, and processing and warehousing.
(3) Development seaward of the 1978 coastal construction control line (see Policy 5-D-1.v.), except for minor structures as provided in § 34-1575.

(g) Other uses prohibited within the town are as follows:

(1) New or expanded drive-through lanes for restaurants (as a result of town ordinance 00-13).
(2) New or expanded mobile home subdivisions and parks (see §§ 34-1921–34-1922).
(3) New or expanded recreational vehicle subdivisions and parks (see §§ 34-2351–34-2352).

Mapping of Zoning Districts

Sec. 34-621. Allowable uses of land described.

(a) ***Applicability.*** No land, body of water, or structure shall be used or permitted to be used and no structure shall hereafter be erected, constructed, moved, altered, or maintained in any conventional or redevelopment zoning district for any purpose other than as provided in Tables 34-1 and 34-2 and in accordance with the property development regulations tables set forth in this article for the zoning district in which the property is located, except as may be specifically provided for in article V of this chapter pertaining to nonconforming uses, or in § 34-620 pertaining to uses not specifically listed in Table 34-1.

(1) All uses of land, water, and structures are subject to the Fort Myers Beach Comprehensive Plan and its future land use map, and therefore may not be permitted in all land use categories.

(2) All uses of land, water, and structures are subject to the specific use and property development regulations set forth for the district in which located, as well as all general provisions and all applicable supplemental regulations set forth in this chapter. Except as may be specifically provided for elsewhere in this chapter, deviations from the property development regulations may only be granted in accordance with the procedures established in § 34-932(b) for deviations in planned development zoning districts and in § 34-87 for variances in conventional and redevelopment zoning districts.

(3) Allowable uses in planned development zoning districts shall be determined at the time of each rezoning in accordance with § 34-933.

(b) ***Use tables.*** Table 34-1 of this article lists specific uses followed by a symbol indicating whether the use is permitted by right (P), special exception (SE), administrative approval (AA), existing only (EO), or temporary use permit (TP). In all instances, unless specifically noted to the contrary, the symbols used in the use regulations tables shall have the following meaning:

AA *Administrative approval required.* The director has the authority to approve the use when in compliance with the referenced sections of this code.

EO *Existing only.* The use is permitted only if it that use lawfully existed on the same property on August 1, 1986. Such lawfully existing use shall have the same rights as a permitted use and may be expanded or reconstructed on the same parcel in accordance with all applicable regulations.

P *Permitted.* The use is permitted by right when in compliance with all applicable regulations.

SE *Special exception required.* The town council may approve the use after public hearing upon a finding that the use is consistent with the standards set forth in § 34-88, as well as all other applicable regulations. The town council may place restrictions on the use as a condition of approval.

TP *Temporary use permit.* The use may be granted a temporary use permit in accordance with §§ 34-3041 and 34-3050.

AA/SE The use is permissible either through administrative approval or special exception, subject to the regulations set forth in the specified section (for example, in § 34-1264(a)).

EO/SE Lawfully existing uses are permitted, but new uses are permissible only by special exception.

(1) Parenthesized number. The use is limited as set forth in the referenced footnote.

Sec. 34-622. Uses groups and sub-groups.

(a) Allowable land uses are assigned by Table 34-1 to one of six use groups:

(1) **Residential**
(2) **Lodging**
(3) **Office**
(4) **Retail**
(5) **Marine**
(6) **Civic**

(b) Within each use group, Table 34-1 also assigns each allowable land use to one of three sub-groups:

(1) **R** -Restricted
(2) **L** -Limited (which includes all R uses)
(3) **O** -Open (which includes all R and L uses)

(c) Within each use sub-group, uses are divided into two categories:

(1) ***Principal uses*** are the primary purposes for which land is being used. Allowable principal uses are listed first.
(2) ***Accessory uses*** are allowable only in conjunction with an allowable principal use, and only when the accessory use is incidental and subordinate to the principal use.

(d) Table 34-2 assigns these use sub-groups to the zoning districts provided by this code. However, uses in planned development zoning districts are further restricted in accordance with § 34-933.

(e) To determine the allowable land uses on a particular lot:

(1) First, consult the zoning map to determine the lot's current zoning district (see division 1 of this article).
(2) Consult Table 34-2 to determine which use sub-groups are allowable in that zoning district.
(3) Consult Table 34-1 to determine which individual land uses can be placed in each allowable sub-group. Note that the sub-groups are cumulative, with all Restricted uses incorporated into Limited, and all Restricted and Limited uses incorporated into Open.
(4) See § 34-2 for definitions of the individual land uses.

(f) To determine which zoning districts will permit a specific land use:

(1) First, consult the definitions in § 34-2 to determine the appropriate terminology to describe the specific land use.
(2) Consult Table 34-1 to determine which use sub-group (or sub-groups) include the desired land use.
(3) Consult Table 34-2 to determine which zoning districts allow that use sub-group.
(4) Consult the zoning map to determine which land has been assigned to those zoning districts.

Sec. 34-623–34-630. Reserved.

Table 34-1, Land Uses Assigned to Use Groups and Sub-Groups (p.1 of 2)

	Residential		*Lodging*		*Office*		
Restricted Ⓡ	Community residential home	P	Rental of any permitted dwelling unit to a single family during any one-month period, with a minimum stay of one week (see §§ 34-2391–2410 for rules and exceptions)	P			***Restricted*** Ⓡ
	Dwelling unit, single-family	P					
	Home care facility	P					
	AS ACCESSORY USES:		AS ACCESSORY USES:		AS ACCESSORY USES:		
	Accessory apartment ***(1)*** (see § 34-1177)	SE			Home occupation (no outside help)	P	
	Accessory apartment (see § 34-1178)	EO			Home occupation (with outside help)	A	
	Residential accessory uses	P					
	Temporary mobile home (§ 34-3046)	TP					
Limited *(plus R uses)* Ⓛ	Dwelling unit: two-family ***(1)***	P	Rental of any permitted dwelling unit to a single family for periods of one week or longer (see §§ 34-2391–2410 for rules)	P			***Limited*** *(plus R uses)* Ⓛ
	live/work (see § 34-1773)	SE					
	Mobile home or RV park (VILLAGE district only, as restricted in § 34-694)	EO	Bed-and-breakfast inn (see § 34-1801)	SE			
	AS ACCESSORY USES:		AS ACCESSORY USES:		AS ACCESSORY USES:		
	Accessory apartment ***(1)*** (see § 34-1177)	P	On-premises consumption of alcoholic beverages (see division 5 of article IV)	AA/ SE	Administrative office	P	
Open *(plus R & L uses)* Ⓞ	Assisted living facility (see § 34-1411)	P	Bed-and-breakfast inn (see § 34-1801)	P	Automobile rental	SE	***Open*** *(plus R & L uses)* Ⓞ
	Dwelling unit: multiple-family	P	Hotel/motel (see § 34-1801)	P	Health care facility	P	
	live/work (see § 34-1773)	P	Rental of any permitted dwelling unit for periods of one day or longer	P	Offices, general or medical	P	
	Rooming house	P			Personal services	P	
	Timeshare units (provided these units qualify as dwelling units and meet residential density levels in § 34-632)	P	Resorts	P	Wholesale establishment	SE	
			Timeshare units	P			
	AS ACCESSORY USES:		AS ACCESSORY USES:		AS ACCESSORY USES:		
	Golf course	EO	Resort accessory uses	P	Commercial accessory uses	P	
	Recreation facility: private on-site	P	Personal services	P	Drive-through, Type 1 ***(2)***	P	
	private off-site	SE	Subordinate commercial uses (see § 34-3021)	P	Subordinate commercial uses (see § 34-3021)	P	
	Subordinate commercial uses (see § 34-3021)	P					

(1)*Provided density complies with the Fort Myers Beach Comprehensive Plan (see § 34-632).*
(2)*Automobile fuel pumps and all drive-throughs (whether Type 1 or Type 2) cannot be constructed within the outer perimeter of the DOWNTOWN zoning district except as provided in § 34-676(f), whether the subject property is classified in the DOWNTOWN zone or in a Commercial Planned Development zone. See also § 34-620(g)(1) regarding the prohibition on restaurant drive-throughs.*

Table 34-1, Land Uses Assigned to Use Groups and Sub-Groups (p. 2 of 2)

	Retail		Marine		Civic		
Restricted Ⓡ					Beach or bay access	P	**Restricted** Ⓡ
					Essential services (see § 34-1612(a))	P	
					Hidden path	P	
					Park, neighborhood	P	
	AS ACCESSORY USES:		AS ACCESSORY USES:		AS ACCESSORY USES:		
	ATM	P	Dock (for sole use by occupants of principal use)	P	Family day care home	P	
Limited *(plus R uses)* Ⓛ	Dwelling unit: work/live (see § 34-1774)	SE	Dock (for use by water taxi or water shuttle)	P	Communication tower (see § 34-1441–1550)	SE	**Limited** *(plus R uses)* Ⓛ
	Membership organization	SE	Marina	EO/ SE	Day care center, adult or child	SE	
	Recreation facilities, commercial	SE	Parasailing operations office	SE	Essential service building (see § 34-1612(b))	SE	
	Parking lot, seasonal (see § 34-2022)	TP	Personal watercraft operations office	SE	Essential service equipment	P	
	Temporary uses (see §§ 34-3041–3050)	SE	Rental of beach furniture	P	Recreation facility: private off-site	SE	
					public	P	
					Transit terminal	SE	
	AS ACCESSORY USES:		AS ACCESSORY USES:		AS ACCESSORY USES:		
	On-premises consumption of alcoholic beverages (see §§ 34-1261–1290)	AA/ SE	Dwelling unit, caretaker	P	Dwelling unit, caretaker	P	
			Dock (may be leased to non-occupants of principal use)	P	Restaurant, accessory to private rec. facilities only	SE	
Open *(plus R & L uses)* Ⓞ	Automobile repair	SE	Boat dealer	P	Cultural facility	SE	**Open** *(plus R & L uses)* Ⓞ
	Bar or cocktail lounge	AA/ SE	Marina	P	Day care center, adult or child	P	
	Car wash	SE			Park, community or regional	P	
	Dwelling unit: work/live (see § 34-1774)	P			Parking lot, shared permanent	SE	
	Laundromat	P			Place of worship	P	
	Mini-warehouse	SE			Religious facility	SE	
	Parking lot, shared permanent (34-2015(2)b.)	SE			School (see § 34-2381–2383)	P	
	Personal services	P			Theater	SE	
	Restaurant ***(2)***	P					
	Retail store, small	P					
	Retail store, large	SE					
	AS ACCESSORY USES:		AS ACCESSORY USES:		AS ACCESSORY USES:		
	Commercial accessory uses	P	Marina accessory uses	P	Helistop	SE	
	Drive-through: ***(2)***				Restaurant, accessory only to public recreation facilities	P	
	Type 1	P					
	Type 2	SE			Subordinate commercial uses (see § 34-3021)	P	
	Automobile fuel pumps ***(2)***	SE					

(2) *Automobile fuel pumps and all drive-throughs (whether Type 1 or Type 2) cannot be constructed within the outer perimeter of the DOWNTOWN zoning district except as provided in § 34-676(f), whether the subject property is classified in the DOWNTOWN zone or in a Commercial Planned Development zone. See also § 34-620(g)(1) regarding the prohibition on restaurant drive-throughs.*

Table 34-2 — Use Sub-Groups Permitted in Each Zoning District [1]

	Residential	*Lodging*	*Office*	*Retail*	*Marine*	*Civic*
	Use Groups and Sub-Groups (Restricted, Limited, Open)					
RS Residential Single-family	R	R	R	—	R	R
RC Residential Conservation	L	L	R	—	R	R
RM Residential Multifamily	O	L	L	R	R	L
CR Commercial Resort	O	O	O	L	L	L
CM Commercial Marina	—	—	L	L	O	L
CO Commercial Office	O	L	O	L	L	O
SANTOS	L	L	O	L	L	L
IN Institutional	L	L	L	R	L	O
CF Community Facilities	R	R	L	R	L	O
BB Bay Beach	— see § 34-651(b) —					
EC Environmentally Critical	— see § 34-652(d) & (e) —					
DOWNTOWN	O	O	O	O	L	O
SANTINI	O	O	O	O	O	O
VILLAGE	L[2]	L[2]	L[2]	L[2]	—	L
CB Commercial Boulevard	O	L	L[3]	L[3]	L	O
RPD Residential Planned Dev. [4]	R L O	R L	R L	R L	R L	R L
CPD Commercial Planned Dev. [4]	R L O	R L O	R L O	R L O	R L O	R L O

Note 1: See Table 34-1 for a specific list of Use Groups (Residential, Lodging, Office, Retail, Marine, and Civic) and Sub-Groups of each (Restricted, Limited, and Open).

Note 2: See § 34-692(3) which provides a pre-approved redevelopment option for the VILLAGE district that can also permit residential, lodging, office, and retail uses in the Open Sub-Group under specified conditions.

Note 3: See § 34-702–703 for exceptions and limitations on new and expanded commercial uses.

Note 4: See § 34-933. The resolution approving a planned development zoning district (RPD or CPD) will specify which of the use groups or sub-groups enumerated in Table 34-1 will be permitted on that parcel. Note that some potential use sub-groups are not listed above for the RPD zoning district because they may not be approved in any RPD zoning resolution.

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

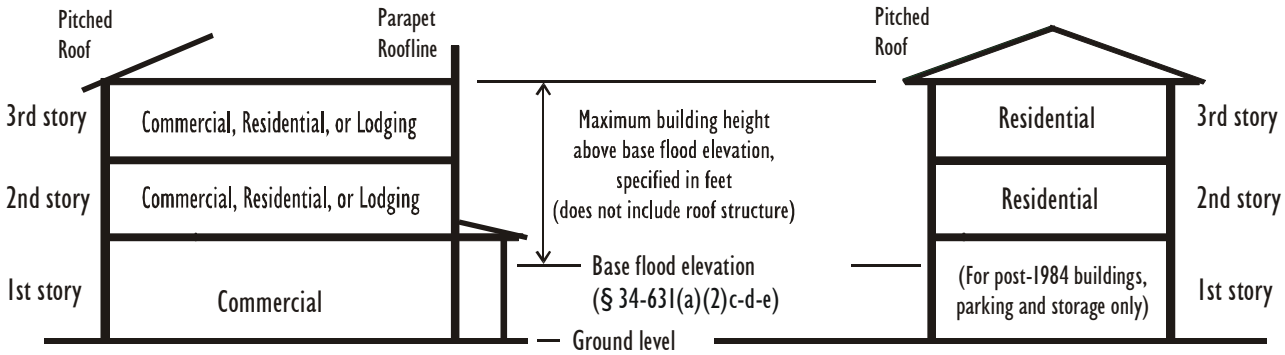
Sec. 34-631. Building heights.

(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.



COMMERCIAL/MIXED-USE BUILDING **RESIDENTIAL BUILDING**

Figure 34-1-a

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

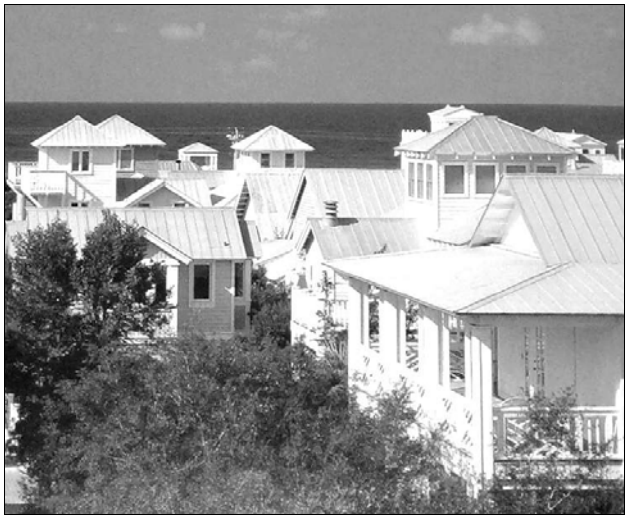
(1) Roof structures and parapet walls may exceed the height limit defined in any zoning district provided there is no habitable space inside the roof structure.

(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, 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.



Roofed towers, Figure 34-1-b

(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).

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.*** All of the following requirements must be satisfied before the required limited review development order can be issued for further parcelization or subdivision of land in the RC zoning district into separate lots and/or separating two lawfully existing dwelling units into individual parcels:

(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) Existing buildings do not need to be brought into compliance with floodplain requirements for new development, as provided in article IV of ch. 6 of this code.
(3) The entire building must meet the coastal construction requirements that apply to new development, 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 at least 1-hour fire resistance rating as defined by the Florida Building Code.
(5) The development must meet all other requirements of this code, including Table 34-2.

(b) ***Multiple-family building.*** All of the following requirements must be satisfied before the required limited review development order can be issued for further parcelization or subdivision of lawfully existing dwelling units:

(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 do not need to be brought into compliance with floodplain requirements for new development as provided in article IV of ch. 6 of this code. Owners of an existing building that cannot comply with these requirements may seek to replace the 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 development, 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 at least 1-hour fire resistance rating as defined by the Florida Building Code.
(5) The development must meet all other requirements of this code, including Table 34-2.

(c) ***Hotels/motels.*** The special parcelization requirements in this section that apply to two-family and multiple-family buildings do not apply to hotels/motels that are being parcelized.

* **EDITOR'S NOTE:** Ordinance No. 07-04, which amended § 34-636, stated the following:
SECTION 3. PARCELIZATION. Anything in Chapter 34 of the Land Development Code notwithstanding, a change in the nature or form of the ownership of any property or properties, within any zoning or land use category, shall not in and of itself constitute parcelization of such property or properties or development thereof necessitating the approval thereof pursuant to the provisions of the Land Development Code. The provisions hereof shall supersede all provisions of Charter 34 of the Land Development Code inconsistent herewith.

Property Development Regulations For All Zoning Districts

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).

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.

Property Development Regulations For All Zoning Districts

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

development regulations are contained in Table 34-3.

(c) In addition to these restrictions on allowable uses and dimensional requirements, the commercial design standards found in § 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.

Sec. 34-649. IN (Institutional) zoning district.

(a) The purpose of the IN zoning district is to provide suitable regulations for churches, civic buildings, schools, and government buildings.

(b) In the IN zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

Sec. 34-650. CF (Community Facilities) zoning district.

(a) The purpose of the CF zoning district is to provide suitable regulations for parks and nature preserves.

(b) In the CF zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

Sec. 34-651. BB (Bay Beach) zoning district.

(a) The purpose of the BB zoning district is to implement the binding agreement that settled litigation over development rights in Bay Beach and to recognize prior rights granted for the construction and use of docks.

(b) Land uses in the BB zoning district shall conform to all requirements of the stipulated settlement agreement between Stardial Investments Company and the Town of Fort Myers Beach dated February 23, 2001, a copy of which is recorded in O.R. Book 3414, Pages 4775–4786, as amended in O.R. Book 3414, Pages 4787–4789, and including any future amendments to this agreement. Land uses in the BB zoning district must also conform to DRI development order #12-9394-124 regarding dock construction that was issued by Lee County on December 5, 1994, notice of which is recorded in O.R. Book 2586, Pages 1851–1854.

(1) Allowable land uses include those uses in lawful existence as of February 23, 2001, and those additional uses as defined in the settlement agreement and in the DRI development order.
(2) Building size and placement shall be governed by the regulations in this code, including the property development regulations in the RM district, except where specifically superseded by terms of the settlement agreement.
(3) Replacement buildings cannot exceed the height, square footage of floor and parking areas, and all other measurable parameters of the original buildings. See buildback regulations in § 34-3237–3238.

Sec. 34-652. EC (Environmentally Critical) zoning district.

(a) *Purpose.* The purpose of the EC zoning district is to designate beaches and significant wetlands whose preservation is deemed critical to the Town of Fort Myers Beach through its comprehensive plan, including:

(1) Beaches that have been designated in the "Recreation" category on the future land use map, and.
(2) Wetlands that have been correctly designated in the "Wetlands" category on the future land use map.

(b) *Intent.* The application of the EC district is intended to prevent a public harm by precluding the use of land for purposes for which it is unsuited in its natural state and which injures the rights of others or otherwise adversely affects a defined public interest.

(c) *Accretion.* Accretions of beaches or wetlands, whether by natural causes or through beach renourishment or artificial filling, will automatically be assigned to the EC zoning district.

(d) *Permitted uses.* In the EC district, no land or water use shall be permitted by right except for those uses and developments permitted by the Fort Myers Beach Comprehensive Plan in wetlands, beaches, or critical wildlife habitats, as applicable, including:

(1) Boating, with no motors permitted except electric trolling motors.
(2) Fishing.
(3) Removal of intrusive exotic species or diseased or dead trees, and pest control.
(4) Hiking and nature study, including pedestrian boardwalks and dune crossovers.
(5) Outdoor education, in keeping with the intent of the district.
(6) Recreation activities, residential accessory uses, and resort accessory uses that are performed outdoors. These activities and uses include passive recreation and active recreation that requires no permanent structures or alteration of the natural landscape (except as may be permitted by special exception (see § 6-366 and subsection (e) below). Any temporary structure used in conjunction with such uses must comply with all provisions of this code (for instance, see chapters 14 and 27). Artificial lighting may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process (see §§ 6-366 and 14-76).
(7) Wildlife management, as wildlife preserves.
(8) Expansion of area designated for the consumption and service of alcoholic beverages, subject to the regulations in § 34-1264(g)(1).

(e) *Special exception uses and structures.* Upon a finding that the proposed use or structure is consistent with the standards set forth in § 34-88, as well as all other applicable town regulations, the town council may permit any specific use or structure from the following list as a special exception, subject to conditions set forth in this chapter and in the resolution of approval:

(1) Accessory structures, to include any building, structure, or impervious surface area which is accessory to a use permitted by right or by special exception in the EC district (see § 6-366).
(2) Nature study center, noncommercial, and its customary accessory uses.
(3) Single-family residence and its customary accessory uses at a maximum density of one dwelling unit per twenty acres.

(f) *Additional regulations.* See additional requirements in:

(1) Article I of ch. 14 pertaining to beach and dune management;
(2) Article IV of ch. 14 pertaining to wetlands protection); and
(3) Coastal zone regulations in § 34-1575.

Secs. 34-653--34-660. Reserved.

Table 34-3 — Dimensional Regulations in Conventional Zoning Districts

ZONING DISTRICT	Setbacks (see § 34-638 for explanation and exceptions)						Lot size (see § 34-637 for explanations and exceptions)			F.A.R. §34–633	Building Coverage § 34-634	Density § 34-632	Height (see § 34-631)	
	street	side -waterfront lot	side -non-waterfront	rear	water body (1)	Gulf of Mexico (2)	area	width	depth	ratio	percentage		feet	stories
RS Residential Single-family	25	7.5 **(8)**	7.5 **(8)**	20	25	50	7,500	75	100	–	40%	**(3), (4)**	25	3
RC Residential Conservation	25	7.5	7.5	20	25	50	4,000	45	80	–	40%	**(3), (4), (5)**	25	3
RM Residential Multifamily	25	20 **(6)**	20 **(6)**	20	25	50	7,500	75	100	1.2	–	**(3), (4), (5)**	30	3
CR Commercial Resort	10	20	15	20	25	50	20,000	100	100	1.2	–	**(3)**	30	3
CM Commercial Marina	20	20	20	20	0	50	20,000	100	100	1.0	–	**–**	35	3
CO Commercial Office	10	10	7	20	25	50	7,500	75	100	1.2	–	**(3), (4), (5)**	30	3
SANTOS	10	7	5	20	25	50	5,000	50	100	0.6	–	**(3), (4), (5)**	25	3
IN Institutional	20	10	7	20	25	50	7,500	75	100	0.8	–	**(3)**	35	3
CF Community Facilities	20	15	10	20	25	50	N/A	N/A	N/A	0.1	–	**(3)**	35	3
BB Bay Beach	— see § 34-651(b) —													
EC Environmentally Critical	20	25	–	25	20	50	**(7)**	N/A	N/A	.01	–	**(3), (7)**	25	2

Note (1): An additional wetland buffer is required for new development; see § 34-638(c).

Note (2): See § 34-638(d)(3)a.

Note (3): Maximum densities are established by the Fort Myers Beach Comprehensive Plan; see § 34-632.

Note (4): Accessory apartments are allowed in owner-occupied homes under certain conditions; see §34-1178.

Note (5): A second dwelling unit or accessory apartment may be allowed on larger lots; for details, see §§ 34-632, 34-1177, and 34-1178.

Note (6): Single-family and two-family homes on waterfront lots in the RM zoning district must maintain only a 7.5-foot side setback.

Note (7): See § 34-652(e)(3).

Note (8): For all RS lots fronting on Matanzas Street and Matanzas Court, all side setbacks shall be at least 10 feet.

DIVISION 5. REDEVELOPMENT ZONING DISTRICTS

Subdivision I. Generally

Sec. 34-661. General purpose.

The purpose of the redevelopment zoning districts is to implement specific redevelopment concepts established in the Fort Myers Beach Comprehensive Plan and for other situations where conventional or planned development zoning districts are inappropriate. These districts require more detailed regulations than provided by conventional zoning districts, and use special terms as described in the following sections. Article IV of this chapter also contains supplemental regulations that apply to multiple zoning districts.

Sec. 34-662. Build-to lines and setback lines.

(a) ***Build-to and setback lines distinguished.*** Most redevelopment districts specify build-to lines for street frontages and setback lines for side and rear property lines.

(1) A build-to line identifies the *precise* horizontal distance (or range of distances) from a street that the front of all primary structures must be built to, in order to create a fairly uniform line of buildings along streets.

(2) A setback line identifies the *minimum* horizontal distance between a property line and the nearest point of all structures, in order to ensure a minimum area *without* buildings.

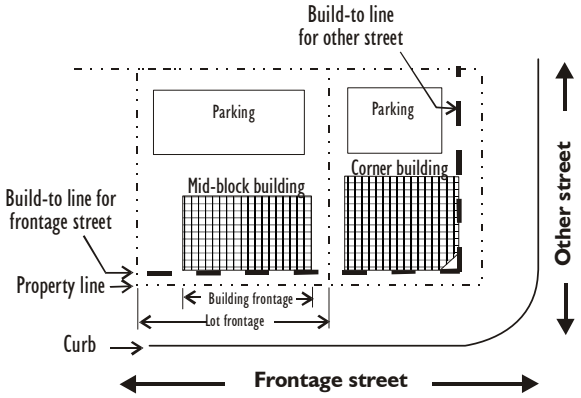


Figure 34-3

(b) ***General requirements for build-to lines.***

(1) Build-to lines are illustrated conceptually on Figure 34-2.

(2) Where a build-to line is specified as a range (for instance, 5 to 10 feet), this means that building fronts must fall within that range of distances from the front property line. Where there is a range, the front facade does not have to be parallel to the street or in a single plane, as long as the front facade remains within the range.

(3) At least 75% of the building frontage is required to align with the build-to line. The remaining 25% may be recessed up to 10 feet behind the build-to line, for instance to provide recessed pedestrian entrances or simply for architectural diversity. (See also § 34-997 regarding plazas.)

(4) Build-to lines are subject to adjustment to maintain visibility for vehicles exiting onto primary streets.

a. Visibility triangles must be maintained on both sides of intersecting streets and exiting driveways as shown in Figures 34-3 and 34-4, or to provide equivalent visibility.

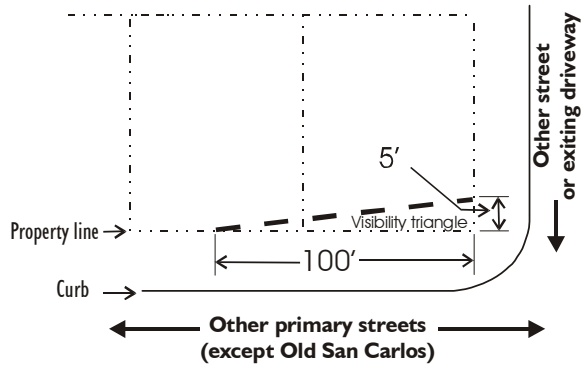


Figure 34-4

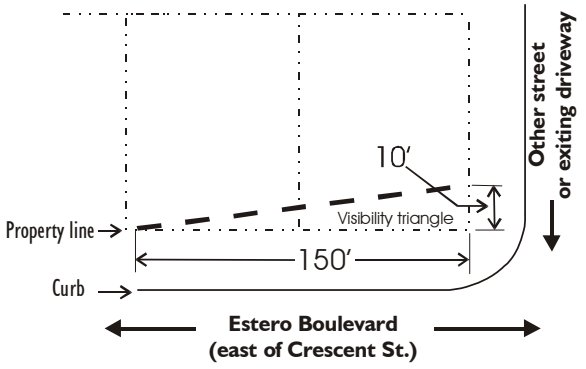


Figure 34-5

b. Within these triangles, no buildings, shrubs, or low-hanging tree limbs may obstruct visibility between the height of 2 feet and 6 feet above ground. However, visibility triangles are not required at intersections with roundabouts or all-way stop signs.

(5) Build-to line requirements may be adjusted by the director to avoid trees larger than 8 inches in diameter (measured 54 inches above grade).

(6) Upper stories are encouraged to remain in the same vertical plane as the first floor. Awnings, canopies, balconies, bay windows, porches, stoops, arcades, and colonnades are allowed on building exteriors provided that they comply with the commercial design standards (see § 34-995(e)).

(7) Build-to line requirements shall take precedence over any buffer or setback requirements imposed by other portions of this code.

(c) ***General requirements for setback lines.***

(1) *Setbacks from property lines.* Minimum setbacks from property lines are defined for each zoning district. See § 34-638 for general requirements on setbacks.

(2) *Setbacks from water bodies.* Minimum setbacks from water bodies including the Gulf of Mexico are provided in § 34-638(d)(3).

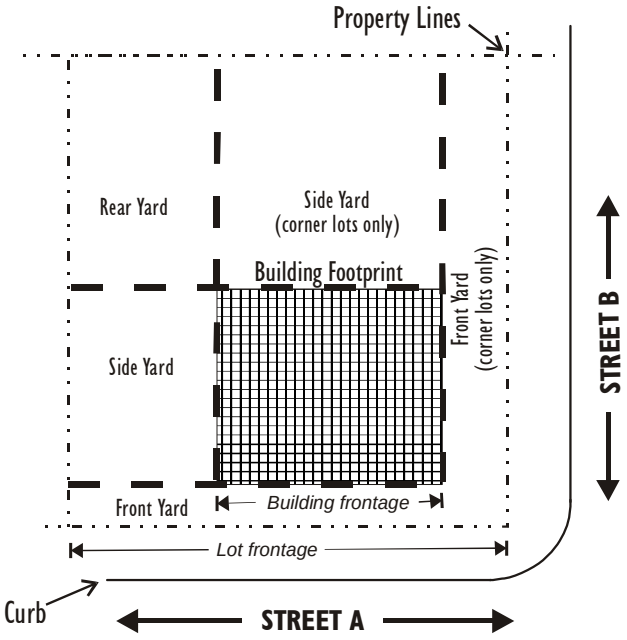


Figure 34-6

Sec. 34-663. Building frontages and lot frontages.

Building frontage is the length of a building facade that faces a street. Building frontages and lot frontages are illustrated on Figure 34-5.

Sec. 34-664. Commercial design standards.

Except where this code specifically provides otherwise, the commercial design standards (see § 34-991–1010) apply in all redevelopment zoning districts 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.

Sec. 34-665. Reserved.

Sec. 34-666. Property development regulations.

In all redevelopment zoning districts, land use is controlled through the more specific property development regulations that are provided in the remainder of this division.

Secs. 34-667--34-670. Reserved.

DOWNTOWN

Subdivision II. DOWNTOWN Zoning District

Sec. 34-671. Purpose.

The purpose of the DOWNTOWN district is create the desired quality and character for the center of pedestrian-oriented commercial activities within the town. New commercial buildings are expected to accommodate pedestrians by providing storefronts near sidewalks and by offering shade and shelter along major streets. Old San Carlos Boulevard will serve as the town's "Main Street" and will be anchored by pedestrian plazas at each end.

Sec. 34-672. District map and applicability.

(a) The area indicated on Figure 34-6 is the outer perimeter of the DOWNTOWN district. Properties that have been zoned into a planned development (PD) district are governed by the terms of the PD zoning resolution rather than the requirements of the DOWNTOWN district, even if the property is shown on Figure 34-6.

(b) Streets have been categorized into primary streets, secondary streets, and pedestrian plazas to guide the regulations for properties fronting each type of street.

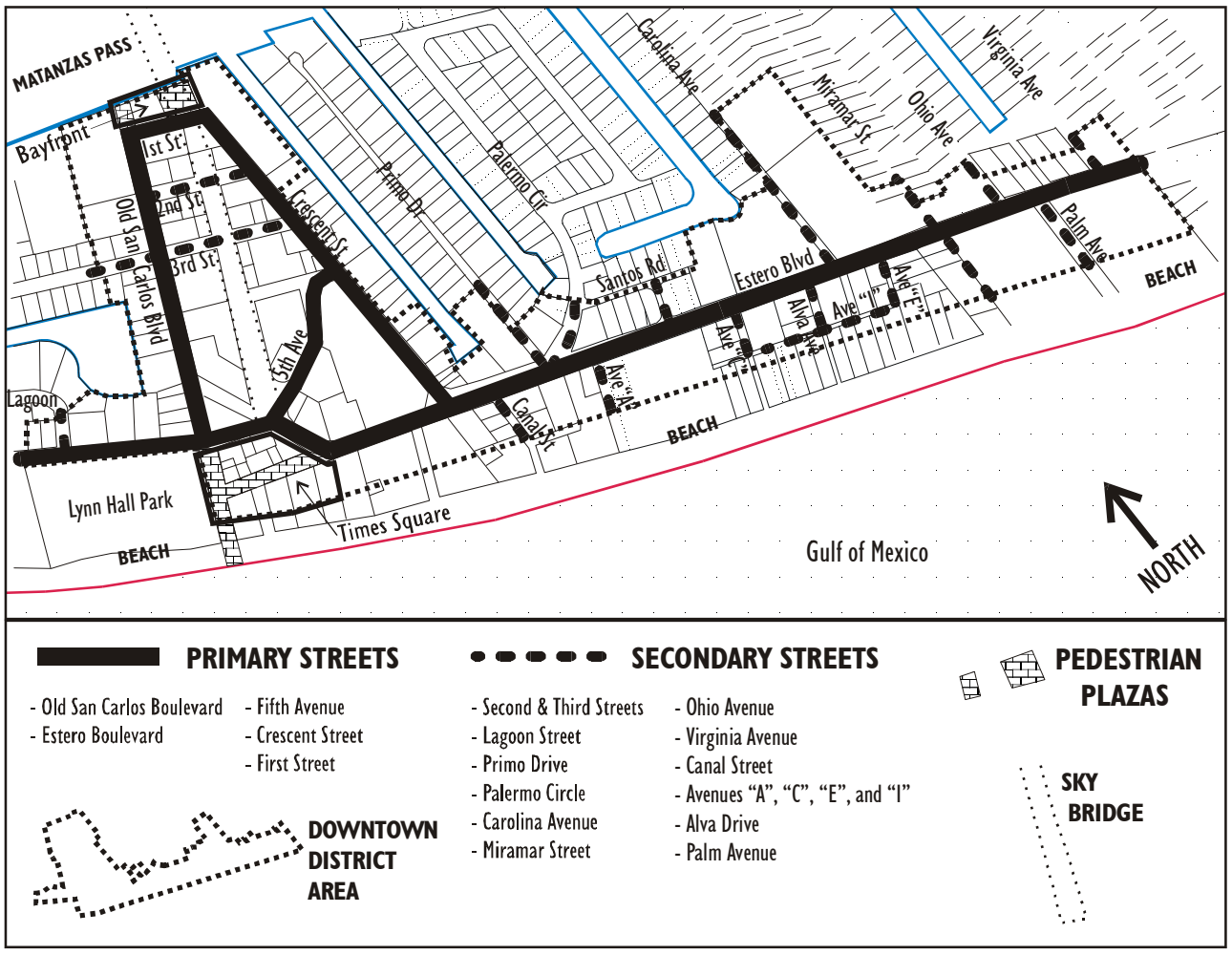


Figure 34-7

Sec. 34-673. Allowable uses.

In the DOWNTOWN district, allowable uses are defined in Table 34-2, § 34-676(f), and § 34-678.

Sec. 34-674. Building placement.

(a) ***Build-to lines established.*** Build-to lines (see § 34-662) vary according to the streets and street types designated on Figure 34-6.

(1) Build-to lines for all streets are 5 feet to 10 feet from front property lines, except:
   a. Build-to lines are 0 feet for Old San Carlos Boulevard, all properties facing the Times Square and Bayfront pedestrian plazas, and Estero Boulevard west of the Sky Bridge.
   b. Built-to lines are 0 to 5 feet for all of First, Second, Third, and Fifth, and the south side of Estero Boulevard from the Sky Bridge to Miramar Street.

(2) The adjustments to build-to lines to maintain visibility that are required by § 34-662(b)(4) do not apply:
   a. to building fronts facing the Times Square or Bayfront pedestrian plazas, or
   b. to building fronts along Old San Carlos Boulevard, where wide sidewalks and on-street parking lanes will allow the necessary visibility.

(3) Awnings, canopies, and marquees over sidewalks and pedestrian walkways are encouraged by the commercial design standards (§§ 34-991–1010) and are required along Old San Carlos Boulevard.

(4) Enclosed habitable space may also be allowed over a public right-of-way if located over an arcade or colonnade that shades a public sidewalk (see § 34-995(e)(6)), provided that specific permission is granted by the Town of Fort Myers Beach.

(b) ***Setback lines established.*** Setback lines (see § 34-662) are established as follows:

(1) For principal buildings:
   a. Minimum rear setbacks are 25 feet from rear property lines, except as follows:
      1. In Times Square, as defined on Figure 34-6, the minimum rear setback is 10 feet.
      2. In areas where parking garages could be built, as defined on Figure 34-7, buildings shall be placed so as not to preclude future parking garages from being built on the interiors of these blocks. Along Old San Carlos Boulevard blocks with potential parking garages, this requirement means that principal buildings shall not extend further to the rear of lots than 50 feet back from the right-of-way for Old San Carlos Boulevard.
   b. Minimum side setbacks are 5 feet from side property lines, except they may be 0 feet for properties fronting on Old San Carlos, Estero Boulevard, and in Times Square.
   c. Minimum setbacks from water bodies are set forth in § 34-638(d)(3).
   d. Minimum setbacks along those portions of properties abutting the town-owned parking lot between Old Carlos Boulevard and the Sky Bridge that had been platted as "Center Street" in Plat Book 9, Page 9 shall be the same as if those properties abutted any other private property.

(2) For accessory structures, minimum setbacks are set forth in § 34-1171–1176.

Sec. 34-675. Building size.

(a) ***Building frontage.*** Building frontage limits (see § 34-663) vary according to the street types designated on Figure 34-6:

(1) For pedestrian plazas and primary streets except for Crescent Street and for Fifth Avenue east of the Sky Bridge, building frontages shall be at least 70% of the lot frontage.

(2) For all other streets, building frontages shall be at least 35% of the lot frontage.

(3) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).

(4) *Exception for properties between Estero Boulevard and the Gulf:* The required building frontage percentage may be reduced to 35% for properties between Estero Boulevard and the Gulf of Mexico provided

that the open space thus created allows open views to the Gulf of Mexico.

(b) ***Building height.*** Building heights (see § 34-631) shall be limited to:

(1) For properties that front on the following streets, a maximum of 30 feet above base flood elevation and no taller than two stories:
   a. Times Square and Bayfront pedestrian plazas (see Figure 34-6)
   b. North side of First Street
   c. South side of Estero Boulevard between Old San Carlos Boulevard and the main pedestrian crossing
   d. Carolina Avenue

(2) For properties that front on the following streets, a maximum of 30 feet above base flood elevation and no taller than two stories, except that an elevated building without enclosed space on the first story may be three stories tall (but still limited to 30 feet above base flood elevation):
   a. Lagoon Street
   b. Crescent Street
   c. First, Second, Third, and Fifth (east of the Sky Bridge only)
   d. North side of Estero Boulevard west of Old San Carlos Boulevard and east of Crescent Street
   e. Primo Drive
   f. Palermo Circle
   g. Miramar Street, north of Estero
   h. Ohio Avenue
   i. Virginia Avenue

(3) For properties that front on the following streets, a maximum of 40 feet above base flood elevation and no taller than three stories:
   a. Old San Carlos Boulevard between Fifth and First Streets
   b. South side of First and both sides of Second and Third (west of the Sky Bridge only)
   c. South side of Estero Boulevard east of the main pedestrian crossing
   d. Canal Street
   e. Avenues A, C, E, and I
   f. Alva Drive
   g. Miramar Street, south of Estero
   h. Palm Avenue

(c) ***Floor area ratio (FAR).*** Floor area ratios (see § 34-633) shall not exceed:

(1) 1.8 for properties fronting on Old San Carlos between Fifth and First Streets and fronting on the Times Square pedestrian plaza (see Figure 34-6).
(2) 1.4 for properties fronting on Estero Boulevard and fronting on the Bayfront pedestrian plazas.
(3) 1.0 for all other properties in the DOWNTOWN district.

(d) ***Hotel rooms.***

(1) Along both sides of Old San Carlos Boulevard (properties between Fifth and First Streets that lie within 200 feet east and west of the centerline of Old San Carlos only), a property owner may substitute hotel rooms for allowable office space on upper floors without the limitations otherwise provided by the hotel-room equivalency factor found in § 34-1802. However, these hotel rooms must have at least 250 square feet per rentable unit.
(2) In all other properties in the DOWNTOWN district, the number of hotel rooms are limited by the hotel-room equivalency factor found in § 34-1802.

Sec. 34-676. Circulation and parking.

(a) ***Off-street parking reductions.*** The DOWNTOWN district is planned as a “park-once” district, with preference given to pedestrian movement within the district. On-street parking will be provided by the town along Old San Carlos Boulevard and other public parking is available under the Sky Bridge. For these reasons, substantial reductions are allowed to the normal off-street parking requirements found in § 34-2020. The follow percentages shall be multiplied by the number of off-street parking spaces normally required by § 34-2020 to determine the adjusted off-street parking requirements along various streets in the DOWNTOWN district:

(1) Old San Carlos Boulevard, multiply by 50%.
(2) Bayfront pedestrian plazas (see Figure 34-6), multiply by 50%. No parking spaces may be provided in the Bayfront pedestrian plaza, but the required spaces must be located within 750 feet in single-purpose, shared, or joint-

use parking lots (see division 26 of this chapter).
(3) Times Square pedestrian plaza (see Figure 34-6), multiply by 0%.
(4) All other streets in the DOWNTOWN district, and all land on Crescent Street regardless of zoning district, multiply by 67%.

(b) ***Parking lot locations.*** Off-street parking lots shall be placed in rear yards (see Figure 34-5).
(a) Off-street parking lots are not permitted in front yards or side yards, except they may be placed in the side yards of buildings on properties that front the beach side of Estero Boulevard if the unbuilt area thus created allows open views to the Gulf of Mexico.
(2) Off-street parking may be provided *under*. commercial or mixed-use buildings along Old San Carlos Boulevard provided that all under-building parking spaces are separated from sidewalks by usable commercial space at least 20 feet deep that meets all commercial building design guidelines in §§ 34-991–1010. Off-street parking may be provided under commercial or mixed-use buildings at other locations in accordance with § 34-992(c).

(c) ***Parking lot interconnections.*** Rear-yard parking lots on properties fronting along Old San Carlos Boulevard shall be interconnected to eliminate or minimize driveways to Old San Carlos Boulevard.
(1) To ensure the effective use of these connections, the first to develop shall be required to make an irrevocable offer of cross-access to the adjacent parcel (prior to issuance of a development order), and must design and build the parking lot to accommodate cross-access.
(2) When adjacent owners seek development orders, they will also be required to reciprocate with a similar cross-access agreements and then must complete the physical connection.
(3) Individual property owners shall control all rights to the use of their own parking spaces, but may choose to allow wider use of these spaces for a fee of their choosing or through reciprocal arrangements with other parties.

(d) ***Driveway connections.***
(1) *Properties fronting on Estero Boulevard.* Existing driveways and parking spaces shall be relocated from Estero Boulevard to secondary streets, and new driveways shall connect only to secondary streets, except where these requirements would prohibit all reasonable access to a property.
(2) *Properties fronting on other primary streets*.
a. For properties fronting primary streets other than Estero Boulevard, driveways should be connected to secondary streets whenever possible.
b. When a driveway onto a primary street is unavoidable, the driveway shall be shared with an adjoining property if that property also has access only to that primary street. Otherwise, the driveway shall be spaced as far as practical from other driveways or intersections.
(3) *Properties fronting only on secondary streets.* Driveways may be connected to secondary streets, existing easements, or alleys.
(4) *Properties adjoining pedestrian plazas.* Driveways and other vehicular access shall not be provided from pedestrian plazas.

(e) ***Parking garages.*** The town has identified three potential locations for mid-block parking garages through its Old San Carlos Boulevard / Crescent Street Master Plan.

(1) Each potential location is indicated in black on Figure 34-7. Construction of these parking garages is not required by this code, but the regulations for the DOWNTOWN district are designed to place new buildings on these sites so that they will not block a parking garage from being built there in the future.

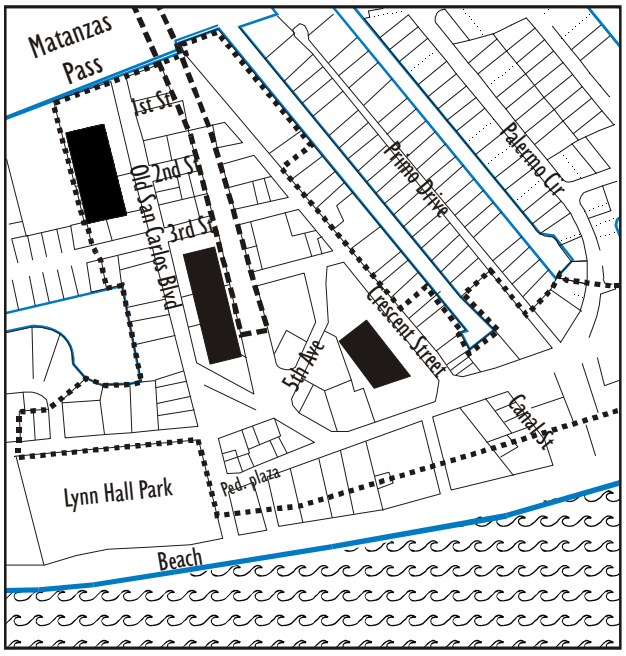


Figure 34-8

(2) All levels of parking garages must be separated from primary streets and pedestrian plazas by a liner building that provides usable building space at least 20 feet deep (see Figure 34-8).

a. Liner buildings must be two stories or more in height and must be at least as tall as the parking garage.

b. Liner buildings may be detached from or attached to the parking garage.

c. Parking garages and their liner buildings are required to meet the commercial design standards (see §§ 34-991–1010).

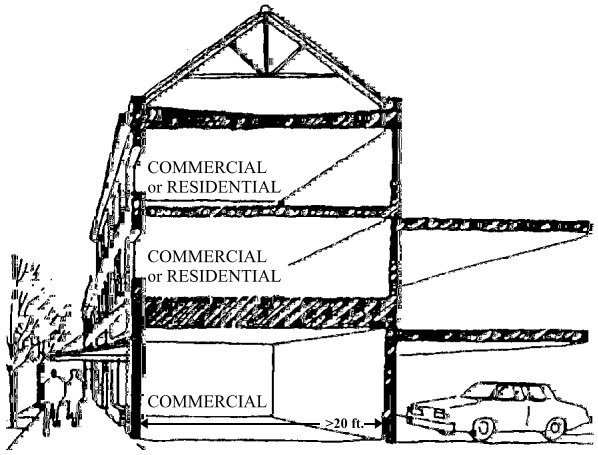


Figure 34-9

(3) Access to a parking garage may be provided as follows:

a. Access to a secondary street or road easement is preferred.

b. Access to a primary street is not permitted except in unusual circumstances where no other access is feasible and when approved as a variance or deviation to this code.

c. Access may not be provided across a pedestrian plaza.

(4) Parking garages can be approved only by rezoning to the Commercial Planned Development zoning district.

(f) ***Drive-through lanes.*** Drive-through lanes are generally not allowed in the DOWNTOWN district because traffic generated by drive-through lanes harms a pedestrian environment. The only exception to this rule is that Type 1 drive-throughs (see definition in § 34-2) may be approved by special exception on the north side of Estero Boulevard east of Palermo Circle. In this situation, the number of drive-thru lanes is limited to two lanes, and they shall not be accessed directly, for either entrance or exit, from a separate driveway on Estero Boulevard; they may be accessed from any of the secondary streets or from a shared driveway on Estero Boulevard.

Sec. 34-677. Additional requirements.

(a) ***Commercial design standards.*** The commercial design standards (§§ 34-991–1010) shall 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.

(b) ***Open space and buffers.*** There are no minimum open space and buffer requirements in the DOWNTOWN district comparable to the standards found in ch. 10, except in three instances:

(1) Portions of properties that lie east of Palermo Circle and more than 300 feet beyond the north edge of the Estero Boulevard right-of-way shall retain 50% of that portion as open space. This open space may be a stabilized sodded area useable for overflow parking.
(2) Residential buffers are required between commercial or mixed-use buildings and single-family residential lots for properties on the north side of Estero Boulevard east of Palermo Circle. These buffers shall be constructed in accordance with the buffer requirements of ch. 10 of this code.
(3) Buffers are required between any off-street parking lot and a public street in accordance with the buffer requirements of ch. 10 of this code.

(c) ***Core area overlay district.*** An optional core area overlay district was adopted by the town by Ordinance 96-20. That district was replaced with the DOWNTOWN zoning district by Ordinance 03-03. Landowners who chose to be governed by the core area overlay district agreed in writing to be bound by its provisions for ten years. Compliance with this code, including all requirements of the DOWNTOWN zoning district, is deemed by the town as satisfying those agreements. However, all provisions of those agreements relating to off-site parking remain in full effect.

Sec. 34-678. Outdoor display and sales of merchandise and food.

(a) ***Generally.*** Merchandise, food, and beverages may be displayed or sold outdoors in the DOWNTOWN zoning district only in accordance with this section.

(b) ***Purpose.*** The purpose of these regulations is to enhance the pedestrian environment of the town's business district through the creative use of outdoor spaces by providing businesses the opportunity to display a sample of their products and to sell food and beverages in a manner that enhances the public realm, creates an interesting and comfortable shopping and dining district, and maintains and improves the town's sense of place and property values.

(1) Outdoor display of merchandise allows retailers an opportunity to inform and interest the public by offering a small sample of the products that are available inside. Outdoor display can also be appropriate for small retail products that are meant to be used outside, such as garden ornaments, windsocks, and beach toys.
(2) Outdoor display of merchandise is not intended to expand retail space or to assist in liquidating clearance or discarded items. The principal purpose of outdoor display in the DOWNTOWN district is to enliven sidewalks and pedestrian plazas by promoting pedestrian-oriented businesses, not to expand businesses or provide locations for freestanding businesses or for mobile vendors (which are regulated in § 34-3002).
(3) Restaurants are encouraged by this code to provide outdoor dining. Outdoor dining between a restaurant and a street is regulated by this section. The sale of alcoholic beverages outdoors is also regulated by state liquor laws and by § 34-1264 of this code.
(4) See separate regulations for temporary outdoor displays during special events at § 34-2441 et seq.

DOWNTOWN

(c) ***Allowable locations for outdoor activities.*** Table 34-4 summarizes the allowable locations for outdoor display of merchandise and outdoor dining in the DOWNTOWN zoning district.

Table 34-4 — Outdoor Activities in the DOWNTOWN Zoning District

Location / *Display Type*	**PRIVATE PROPERTY** ***(between store & street)***		**PUBLIC PROPERTY** ***(Times Square pedestrian plaza)***
	On porch	*On patio*	*see (f)*
MERCHANDISE, as further limited by other provisions of § 34-678:			
Vending carts – see (d)(1)	no	YES	no
Clothing racks – see (d)(2)	YES	no	no
Specialized displays – see (d)(3)	YES	YES	no
Mannequins – see (d)(4)	YES	YES	no
Tables/shelves – see (d)(5)	YES	no	no
Freestanding displays – see (d)(6)	YES	YES	no
DINING:			
Vending carts – see (d)(1)	no	YES	no
Dining tables – see (d)(7)	YES	YES	YES

(d) ***Types of outdoor displays***.

(1) **Vending carts** are limited to 2 wheels, must have integral roofs or umbrellas, and may use traditional or creative designs. Vending carts that have been manufactured to be secured at night, with fitted side panels, may be left outside when a business is closed. All other vending carts must be moved indoors when the business is not open. Within 48 hours of the issuance of a hurricane watch for the town by the National Hurricane Center, all vending carts must be moved indoors, removed from the county, or placed within an approved off-island storage area. Figure 34-9 shows two suggested vending cart designs.

Figure 34-9

(2) **Clothing racks** are limited to one support rod up to 6 feet long on which clothing is hung. Similar displays whose principle function is for the display of clothing, swimwear, and other garments shall be considered a clothing rack. Clothing racks are often mounted on wheels. Figure 34-10 shows a typical clothing rack.

Figure 34-10

(3) **Specialized display racks** are unique displays for a specific type of product. An example is a rack to hold beach toys or accessory items. Specialized display racks are limited to a 2-foot by 8-foot area or a 4-foot by 4-foot area. Figure 34-11 shows a specialized display rack.

Figure 34-11

(4) **Freestanding mannequins** are used to display clothing or swimwear. Figure 34-12 shows a typical freestanding mannequin.

Figure 34-12

(5) **Tables or freestanding shelves** are limited to a 2-foot by 8-foot area or a 4-foot by 4-foot area, and may not be more than 3 feet in height. Figure 34-13 shows a typical freestanding table with merchandise.

Figure 34-13

(6) **Freestanding product displays** can be used for products such as lawn and garden accessories or windsocks that are appropriately displayed on their own. These types of products may be displayed within a 4-foot by 8-foot area or with a maximum of 7 individual products. Figure 34-14 shows typical freestanding product displays.

Figure 34-14

(7) **Dining tables** are used to serve food and beverages to the public. Figure 34-15 shows typical dining tables on the Times Square pedestrian plaza.

Figure 34-15

(e) ***PRIVATE PROPERTY: number, location, and types of outdoor displays and dining tables***. Retail businesses may sell their regular merchandise outdoors on private property between their stores and a street right-of-way only if the merchandise is placed on a raised porch or a patio, as defined in this subsection. No business may have more than two outdoor displays of merchandise, as defined in subsection (d). For example, a business may qualify for two vending carts, or one vending cart and one clothing rack, or one mannequin and one table, etc. Multiple occupancy structures with two or more businesses are limited to one outdoor display for each business up to a maximum of four outdoor displays per multiple occupancy structure.

(1) ***Porches and patios.*** Subsection (c) also indicates whether the outdoor display is permitted on a porch, patio, or either. For purposes of this section, porches and patios are defined as follows:

a. **Porch** is a wooden or concrete structure that is elevated off of the ground and has a railing at least 42 inches tall. A porch must be covered with an awning, roof, or umbrellas. Wood must be painted or stained. Businesses with existing porches are encouraged to utilize them for outdoor display. New or expanded porches must comply with all chapters of this code.

b. **Patio** is an area covered with paver bricks, concrete, wood, or similar material and located at ground level immediately adjacent to the front of the building. Asphalt or earthen spaces are not considered a patio. Patios are encouraged to be shaded with an awning or umbrella or with a roof that is an integral part of the outdoor display. Businesses without porches are encouraged to use patios. New or expanded patios must comply with all chapters of this code.

(2) ***Permitted merchandise and types of outdoor display.*** The following types of merchandise may be displayed outdoors using the display type described in subsection (d):

a. **Art** (prints, sculpture, etc.): 1, 3, 5, 6
b. **Bathing suits and swimwear**: 1, 2, 4
c. **Beach accessories** (umbrellas, chairs, etc.): 1, 6; rental of beach equipment on the beach is regulated in § 14-5 of this code.
d. **Beach towels**: 1, 2, 3, 5
e. **Beach toys, rafts, and floats**: 1, 3, 5
f. **Clothing**: 1, 2, 4, 5
g. **Clothing accessories** (jewelry, purses, etc.): 1, 3, 4, 5
h. **Kites and windsocks**: 1, 6
i. **Lawn and garden accessories**: 1, 6
j. **Small retail items** (souvenirs, suntan lotion, flowers, books, etc.): 1, 5
k. **Merchandise not specifically listed**: 1, or on permitted display type for the most similar item.
l. **Personal services** including tattoos, temporary tattoos, hair braiding, and hair wrapping are not permitted outdoors.

(3) ***Additional rules for outdoor displays of merchandise***.

a. A retail store wishing to display merchandise outdoors in the DOWNTOWN zoning district must obtain a permit for this use (see subsection (e)(5)) in addition to meeting all other requirements of this code.
b. Merchandise that is displayed outdoors must be available for sale inside the store.
c. All outdoor displays must be brought indoors during any hours that the business in not open, except as provided for vending carts in subsection (d)(1).

d. Outdoor displays may contain no business or product identification signage whatever; each display may have one 4 inch by 6 inch sign to display prices.
e. All outdoor displays must be non-motorized and movable by hand and may be no taller than 10 feet.
f. Merchandise may not be attached to the building or to a railing unless incorporated into an approved type of outdoor display, such as a specialized display rack, mannequin, or freestanding product display (see subsection (d)).

(4) ***Outdoor dining***. A restaurant wishing to provide outdoor seating between the restaurant and a street must obtain a permit for this use (see subsection (e)(5)) in addition to meeting all other requirements of this code. The seating must be located on a porch or patio as defined in this subsection. The sale of alcoholic beverages outdoors is regulated by state liquor laws and by § 34-1264 of this code.

(5) ***Permit required.*** A permit is required for each business wishing to display merchandise outdoors or to place outdoor seating in conformance with this section.
a. Permits may be issued for up to one year and shall expire each year on September 30.
b. Permit applications may be filed at any time using forms available from town hall. Applications should be accompanied by photographs or drawings that clearly indicate the type, character, number, and size of outdoor displays or dining tables that are being proposed.
c. Permits may be issued by the town manager. The town manager may also choose to refer an application to the town council for its consideration in lieu of administrative issuance or rejection.
d. Permits may include modifications to the standards in this section to better accomplish the purposes set forth in subsection (b). Other reasonable conditions may also be imposed regarding the layout and physical design of porches, patios, vending carts, specialized display racks, shelves, tables, and umbrellas.
e. Outdoor display and dining permits may be suspended by the town manager for noncompliance with the permit. Suspensions may be appealed to the town council in accordance with procedures set forth in § 34-86 for appeals of administrative decisions. Suspension of a permit does not preclude the town from pursuing any of the other enforcement mechanisms provided in this code (for example, § 1-5, or article V of ch. 2).

(f) ***PUBLIC PROPERTY:*** No merchandise may be displayed outdoors on public property. Restaurants may extend their operations onto public sidewalks and plazas only as follows:

(1) ***General location.*** These provisions are limited to the Times Square pedestrian plaza (see Figure 34-6) and other locations if explicitly approved by the town council.

(2) ***Who may operate.*** Vending rights are available only to the owner of the private property that immediately abuts the sidewalk or pedestrian plaza, or in the case of leased property, only to the primary lessee; vending rights may not be further sub-leased.

(3) ***Specific location.*** Vending rights can be used only in the area directly in front of the private property and lying between 90-degree extensions of the side property lines. Vending rights may extend onto public property only as far as specified in the annual permit and may be further modified by the town as necessary to provide adequate room for pedestrian movement and to ensure fair treatment for restaurants located on opposite sides of the Time Square pedestrian plaza.

(4) ***Outdoor dining.*** No fixed or moveable equipment may be placed on a public sidewalk or plaza to sell or serve food except that tables, umbrellas, and chairs may be placed by restaurants for the use of their customers; no signage is permitted.

(5) ***Permit required.*** Vending rights for dining on public property may be exercised only upon issuance of a permit by the town that sets forth the conditions of private use of a public sidewalk or plaza, including:

a. Additional restrictions on the degree which tables, umbrellas, chairs, and carts may interfere with pedestrian movement;
b. Restrictions on the extent to which food not available in the abutting business may be sold;
c. Requirements for keeping the area surrounding the tables or carts from debris and refuse at all times;
d. Insurance requirements;
e. Payment of fees established by the town for vending rights;
f. Limitations on leasing of vending rights, if any; and
g. Other reasonable conditions as determined by the town, including full approval rights over the design of umbrellas, carts, tables, etc.

Permitting procedures and enforcement shall be the same as provided in subsection (e)(5).

Secs. 34-679--34-680. Reserved.

Subdivision III. SANTINI Zoning District

Sec. 34-681. Purpose.

The purpose of the SANTINI district is to provide alternative futures for the Santini Marina Plaza, either a continuation of the current marina and shopping center or their transformation into a pedestrian-oriented neighborhood center.

(1) The existing stores and marina in the SANTINI district may continue in full operation and may be renovated or redeveloped in accordance with § 34-682.

(2) As an alternative, the SANTINI district provides a second set of regulations (in § 34-683) that would allow the transformation of the shopping center and marina into a pedestrian-oriented neighborhood center:

a. The SANTINI district can become a neighborhood center to serve visitors and the populous south end of the island in accordance with the design concepts in the Fort Myers Beach Comprehensive Plan (see Policies 3-C-1, 3-C-2, and 4-F-2-ii).

b. The site could support additional mixed-use buildings if provided with shared parking, a pattern of smaller blocks, and an urban plaza.

c. Full realization of this concept will require a partnership between the property owners and the town that will transform the adjoining portion of Estero Boulevard from a rural highway with deep swales into a street with shaded sidewalks and some on-street parking.

Sec. 34-682. District map and applicability.

The area indicated on Figure 34-16 is the outer boundary of the SANTINI district.

(1) Properties that are currently zoned in a planned development (PD) district are governed by the terms of the PD zoning resolution rather than the requirements of the SANTINI district, even if the property is shown on Figure 34-16.

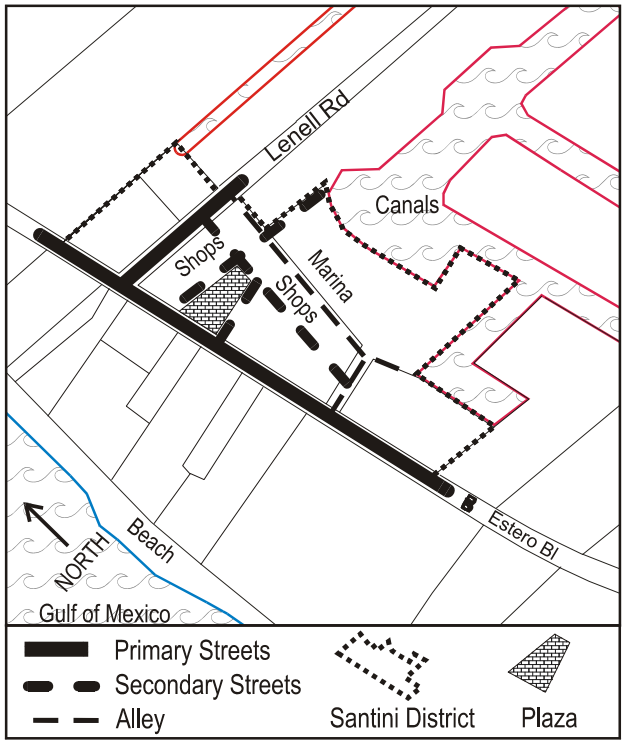


Figure 34-17

(2) For properties zoned into the SANTINI district rather than in a PD district, the applicable regulations are as follows:

a. ***Continued use of existing buildings.*** The regulations in this section apply to the continued use of existing buildings and structures for allowable uses as defined in Tables 34-1 and 34-2 for the SANTINI zoning district.

b. ***Renovating, enlarging or replacing individual buildings.***

1. Existing buildings may be renovated, enlarged, or replaced as follows:

-a- Physical enlargement of existing buildings is permitted provided that the improvements do not constitute a "substantial improvement" as that term is defined in § 6-405 of this code, and

-b- Replacements for existing buildings are permitted provided that they will not increase the existing floor area ratio, as that term is defined in § 34-633.

2. Renovations, enlargements, and replacements to existing buildings are governed by the regulations for the CM zoning district as provided in Table 34-3 and by the other limitations in this section.
3. The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings, or portions thereof, that are being newly built.
4. Any specific deviations granted by prior CPD resolutions shall remain in effect for properties that are zoned into the SANTINI district.

(3) ***Transformation of existing businesses into a neighborhood center.*** Physical enlargements of existing buildings that constitute a "substantial improvement" as that term is defined in § 6-405 must be in the form of a neighborhood center as described in § 34-683.

Sec. 34-683. Creation of neighborhood center.

(a) ***Purpose.*** This section provides detailed regulations for the transformation of existing businesses into a neighborhood center.

(1) This transformation may be required by § 34-682(3) or may be chosen by any landowner in the SANTINI district.
(2) Once this option is chosen or required, all subsections of § 34-683 become mandatory requirements, except where they are clearly inapplicable to a given portion of the property.

(b) ***Agreement for streetscape improvements.*** Landowners who choose to partially or fully develop their land in the SANTINI district into a neighborhood center may simultaneously request public streetscape improvements by entering into a development agreement with the town (see § 2-91–102).

(1) This agreement would establish a public/private partnership for the necessary improvements, identifying responsibilities, timing, approximate costs, and funding.
(2) This agreement would also contain a detailed plan for the redevelopment of the property consistent with the regulations in the remainder of this section.

(c) ***Allowable uses.*** Allowable uses for the SANTINI zoning district are defined in Tables 34-1 and 34-2.

(d) ***Streets.*** Secondary streets and alleys shall be laid out and dedicated to the public generally in accordance with Figure 34-16 to improve circulation for vehicles and pedestrians.

(e) ***Plazas.*** An urban plaza at least ½ acre in size shall be provided along Estero Boulevard as a focal point for mixed-use buildings and as a public gathering place. This plaza may also be used for overflow parking.

(f) ***Build-to lines established.*** Build-to lines (see § 34-662) vary according to the streets and street types designated on Figure 34-16.

(1) Build-to lines for all primary streets and streets surrounding the plaza are 0 feet to 5 feet.
(2) Build-to lines for all secondary streets are 0 feet to 10 feet.
(3) Awnings, canopies, and marquees over sidewalks and pedestrian walkways are encouraged by the commercial design standards (§ 34-991–1010), especially along Estero Boulevard.
(4) Compliance with build-to lines is not required for buildings that are used for the storage of boats or for marina accessory uses, or for any buildings extend closer than 40 feet to the waterfront.
(5) Buildings used for the storage of boats or cars must be separated from Estero Boulevard by a liner building that provides usable building space at least 20 feet deep (see example in Figure 34-8).
   a. This requirement applies to all buildings that extend closer than 75 feet to Estero Boulevard.
   b. Liner buildings must be two stories or more in height.
   c. Liner buildings may be detached from or attached to building space used for the storage of boats or cars.

d. Liner buildings must be constructed simultaneously with those portions of buildings that are subject to this requirement.
e. Liner buildings and any visible portions of the principal facade of buildings that are used for the storage of boats or cars must meet the commercial design standards (see §§ 34-991–1010).

(g) ***Setback lines.*** No minimum setbacks are required (see § 34-662).

(h) ***Building frontage.*** Building frontage limits (see § 34-663) vary according to the street types designated on Figure 34-16:

(1) For primary streets and streets surrounding the plaza, building frontages shall be at least 70% of the lot frontage.
(2) For secondary streets, building frontages shall be at least 35% of the lot frontage.
(3) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).
(4) Phased redevelopment is permitted provided that a site plan is provided showing how the building frontage percentages will be met upon completion of the redevelopment

(i) ***Building height.*** Building heights (see § 34-631) shall be limited to:

(1) For parcels immediately abutting a plaza of at least ½ acre in size and for parcels immediately abutting canals, a maximum of 40 feet above base flood elevation and no taller than three stories.
(2) For all other parcels, a maximum of 30 feet above base flood elevation and no taller than two stories.

(j) ***Floor area ratio (FAR).*** Floor area ratios shall not exceed 1.0 (see § 34-633).

(k) ***Residential density.*** Residential units can be constructed in the SANTINI district up to the maximum density allowed by the Fort Myers Beach Comprehensive Plan.

(l) ***Guest units.*** Guest units may be substituted for dwelling units in accordance with the equivalency factors found in § 34-1802.

(m) ***Reductions to minimum parking requirements.*** Neighborhood centers are "park-once" districts with preference given to pedestrian movement. The number of parking spaces normally required by § 34-2020 shall be multiplied by 67% to determine the adjusted parking requirement for the SANTINI district. Adjoining on-street parking spaces may be counted toward this parking requirement.

(n) ***Parking location.*** Off-street parking may be provided *under* commercial or mixed-use buildings provided that:

(1) All under-building parking spaces must be separated from primary streets and the plaza by usable commercial space at least 20 feet deep that meets all commercial design guidelines; and
(2) Driveways leading to under-building parking spaces must connect to a driveway, secondary street, or alley, and may not be accessed from a primary street or pedestrian plaza.

(o) ***Commercial design standards.*** The commercial design standards (§§ 34-991–1010) shall 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.

Secs. 34-684--34-690. Reserved.

Subdivision IV. VILLAGE Zoning District

Sec. 34-691. Purpose.

The purpose of the VILLAGE district is to provide alternative futures for the Red Coconut and/or Gulf View Colony, either a continuation of the current land uses or their transformation into a traditional neighborhood pattern.

(1) The existing residences and businesses in the VILLAGE district may continue in full operation and may be renovated in accordance with §§ 34-692 and 34-694.

(2) As an alternative, the VILLAGE district provides a second set of regulations that would allow the transformation of either of the existing mobile home and recreational vehicle parks into more permanent and durable housing types in a traditional neighborhood pattern, in accordance with the design concepts in the Fort Myers Beach Comprehensive Plan.

Sec. 34-692. District map and applicability.

The area indicated on Figure 34-17 is the outer boundary of the VILLAGE district.

(1) Properties that have been zoned into a planned development (PD) district are governed by the terms of the PD zoning resolution rather than the requirements of the VILLAGE district, even if the property is shown on Figure 34-17.

(2) For properties zoned into the VILLAGE district rather than in a PD district, existing residences and businesses may continue in full operation and may be modified in accordance with the following regulations:

a. ***Continued use of existing mobile homes and recreational vehicles.*** The continued use of existing mobile homes and recreational vehicles is permitted in accordance with § 34-694 below.

b. ***Continued use of and renovations, enlargements, or replacement of existing permanent buildings.***

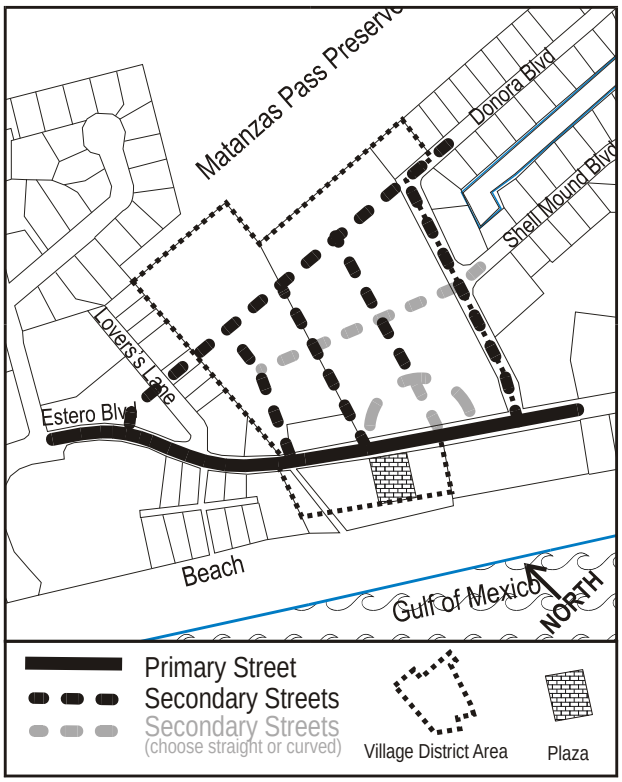


Figure 34-18

c. Existing permanent buildings may be renovated, enlarged, or replaced as follows:

1. Renovations and/or physical enlargement are permitted provided the improvements do not constitute a "substantial improvement" as that term is defined in § 6-405 of this code; or

-a- Replacement buildings are permitted provided that they do not increase the existing floor area ratio, as that term is defined in § 34-633; or

-b- Other renovations, enlargements, and/or replacements are permitted provided they comply with those regulations for the CB zoning district that are found in §§ 34-704–34-706.

2. Allowable uses in these buildings are the same as provided in § 34-703(a) for the CB zoning district.

3. The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings that are visible from Estero Boulevard, or portions thereof, that are being newly built, and to "substantial improvements" to such buildings as defined in § 6-405.

(3) ***Transformation of existing mobile home and recreational vehicle parks.*** Policies 3-A-5, 3-A-6, and 4-F-2-iii of the Fort Myers Beach Comprehensive Plan have authorized a pre-approved redevelopment option for land in the VILLAGE district.

a. The following concepts are expected in this redevelopment process:
   1. traditional neighborhood design emphasizing streets that are interconnected and dwellings with porches or balconies on the front, primary entrances visible from the street, and cars to the rear (except for on-street parking);
   2. detached houses or cottages (with optional accessory apartments) abutting existing single-family homes;
   3. low-rise townhouses or apartments allowed elsewhere on the site;
   4. walkable narrow streets with shade trees that double as view corridors to the Preserve and Gulf;
   5. open space that allows views to be maintained from Estero Boulevard to the Gulf;
   6. mixed commercial and residential uses along the Bay side of Estero Boulevard;
   7. quiet internal street connections to the north and south;
   8. significantly reduced density from the existing level of 27 RV/mobile homes per acre at the Red Coconut to a maximum level of 15 dwelling units per acre; and
   9. a site design that accommodates a publicly acquired access point to the Matanzas Pass Preserve.

b. At the option of landowners in the VILLAGE district, a development order may be obtained to redevelop all or part of this property in accordance with the option described in more detail in § 34-693 and generally in accordance with either of the conceptual site plans found in the Community Design Element of the Fort Myers Beach Comprehensive Plan. Until such time as this development order is obtained, the regulations in § 34-693 shall have no effect.

Sec. 34-693. Regulations to obtain development order for pre-approved redevelopment option.

(a) ***Purpose.*** his section provides detailed regulations for the pre-approved redevelopment option if that option is chosen by landowners, as described in § 34-692(3).

(b) ***Allowable uses.*** Allowable uses in the VILLAGE district are defined in Tables 34-1 and 34-2. If a development order is issued pursuant to § 34-692(3), the additional uses in the "Open" sub-group of Table 34-1 for the residential, lodging, office, and retail groups will be permitted on property that is subject to the development order.

(c) ***Streets.*** Secondary streets shall be laid out and dedicated to the public generally in accordance with Figure 34-17 to improve circulation for vehicles and pedestrians.

(1) Figure 34-17 provides two acceptable options for the new network of secondary streets.
(2) Under either option, the street design must incorporate the extension of a through street from Donora Boulevard to Lovers Lane that will be permanently accessible by the public.

(d) ***View corridor.*** A view corridor at least 50 feet wide shall be provided between Estero Boulevard and the Gulf as a focal point for abutting buildings and as part of a prominent visual corridor to the water. This view corridor need not be available for public use.

(e) ***Build-to lines established.*** Build-to lines (see § 34-662) for all streets shall be 0 feet to 10 feet.

(f) ***Setback lines established.*** Setback lines (see § 34-662) are established as follows:

(1) For principal buildings, minimum setbacks are as follows:
   a. Rear setbacks: 20 feet
   b. Water body setbacks: see § 34-638(d)(3).
(2) For accessory structures, minimum setbacks are set forth in § 34-1171–1176.

(g) ***Building frontage.*** Building frontage limits (see § 34-663) vary according to the street types designated on Figure 34-17:

(1) For primary streets, building frontages shall be at least 50% of the lot frontage. This

percentage may be reduced to 35% for properties between Estero Boulevard and the Gulf of Mexico provided that the open space thus created allows open views to the Gulf.

(2) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).

(h) ***Building height.*** Building heights (see § 34-631) shall be limited to:

(1) For properties that front on the bay side of Estero Boulevard and all streets other than Estero Boulevard, a maximum of 30 feet above base flood elevation and no taller than two stories. However, for mixed-use buildings and for elevated buildings without enclosed space on the first story, the maximum height is three stories (but still limited to 30 feet above base flood elevation).

(2) For properties that front on the beach side of Estero Boulevard, a maximum of 40 feet above base flood elevation and no taller than three stories.

(i) ***Floor area ratio (FAR).*** Floor area ratios shall not exceed 1.2.

(j) ***Residential density.*** Policy 4-F-2-iii of the Fort Myers Beach Comprehensive Plan allows up to 15 dwelling units per acre for redevelopment in accordance with this section. Any land used for roadway or access purposes may be included in this density computation.

(k) ***Guest units.*** Guest units may be substituted for dwelling units in accordance with the equivalency factors found in § 34-1802.

(l) ***Circulation and parking.*** Off-street parking may be provided *under* commercial or mixed-use buildings provided that:

(1) All under-building parking spaces must be separated from primary streets and the plaza by usable commercial space at least 20 feet deep that meets all commercial building design guidelines; and

(2) Driveways leading to under-building parking spaces must connect to a secondary street or an alley and may not be accessed from a primary street or pedestrian plaza.

(m) ***Commercial design standards.*** The commercial design standards (§§ 34-991–1010) shall apply to all commercial and mixed-use buildings that are visible from Estero Boulevard, or portions thereof, that are being newly built, and to "substantial improvements" to such buildings as defined in § 6-405.

Sec. 34-694. Regulations for existing mobile homes and recreational vehicles.

(a) ***Definitions.*** These phrases, when used in this subdivision, shall have the following meanings:

Park trailer means a transportable recreational vehicle which has a body width not exceeding 14 feet and which is built on a single chassis and is designed to provide seasonal or temporary living quarters when connected to utilities necessary for operation of installed fixtures and appliances. "Park trailers" have a statutory definition in F.S. § 320.01(b) which may change; the use of the term "park trailer" in this subdivision is intended to change with any such statutory changes so as to be consistent with state law.

Transient RV park means a recreational vehicle development designed, intended for, or used by relatively short-stay visitors (transient guests) who bring their transient recreational vehicle with them and remove it at the end of their visit. The individual recreational vehicle site is then ready for another visitor.

Transient recreational vehicle means a camping trailer, truck camper, motor home, travel trailer, motor home, or van conversion (as those terms are defined by F.S. § 320.01(b)) which is brought to the transient recreational vehicle park by the user and is removed from the park at the end of the user's visit. Park trailers are not considered to be transient recreational vehicles.

(b) ***1987 site plan approvals.*** Lee County approved site plans for Gulf View Colony and Red Coconut in 1987 to formally acknowledge the right to replace mobile homes and non-transient recreational vehicles in portions of each park in accordance with previous regulations. These site plans were approved in accordance with Lee County

Ordinance 86-36. The Town of Fort Myers Beach will continue to recognize those rights, which are incorporated into the regulations set forth in this section.

(1) Sites in Gulf View Colony and Red Coconut shall not be reconfigured or reduced in dimension so as to increase the density.
(2) Contiguous sites may be combined and redivided to create larger dimension sites as long as such recombination includes all parts of all sites, and allowable density is not increased, and all setback requirements are met.
(3) The use of a recreational vehicle or park trailer by a permanent resident as a permanent residence, as the terms are defined in F.S. ch. 196, has been expressly prohibited since September 16, 1985. Persons who have established permanent residency within a recreational vehicle park as of September 16, 1985, are exempt from the residency provisions of this section, provided that the proof of residency was established by an affidavit filed with Lee County prior to October 31, 1985.
(4) Permits shall also be issued for reroofing and roof repairs for any existing mobile home, park trailer, or recreational vehicle, regardless of lot size.

(c) ***Gulf View Colony:*** A site plan for Gulf View Colony was approved by Lee County on February 11, 1987, which showed 59 mobile homes sites plus common recreational features. This plan was drawn by G. H. Taylor and was dated January 10, 1987.

(1) Lee County approved the replacement of a mobile home or park trailer on all 59 sites. These sites were determined to have been in compliance with regulations that were in effect at the time of their creation.
(2) Replacement of mobile homes or park trailers on these sites must meet the following regulations:
    a. All units shall have a minimum separation of ten feet between units (body to body) and appurtenances thereto. Each unit shall be permitted to have eaves which encroach not more than one foot into the ten-foot separation.
    b. Replacement mobile homes, park trailers, and additions must meet the floodplain elevation requirements of § 6-472(2), including the limitations on replacements where past flooding has caused "substantial damage" on specific sites.
    c. A move-on permit must be obtained in accordance with § 34-1923 and the mobile home or park trailer must comply with the tie-down and skirting requirements of that section.
    d. One freestanding storage shed or utility room, not exceeding 120 feet in floor area and ten feet in height, may be permitted provided that:
        1. No storage shed or utility room shall be located closer than five feet to any side or rear lot line or closer than ten feet to any mobile home or park trailer under separate ownership; and
        2. The shed or room is properly tied down and complies with all building code requirements.
    e. Additions to mobile homes or park trailers may be permitted provided that:
        1. The addition shall not be located closer than five feet to any side or rear lot line or closer than ten feet to any mobile home, park trailer, or addition thereto under separate ownership.
        2. The total floor area of any additions, excluding open decks and stair landings, shall not exceed the total floor area of the mobile home or park trailer.
        3. The maximum height of additions shall not exceed the height of the mobile home or park trailer.
        4. Open decks, up to 120 square feet in area, may be permitted provided all setback requirements are met. Stair landings that are incorporated into a deck shall be calculated in the square footage of the deck.
        5. Stairs or stair landings, which are attached to an addition, and which are not incorporated into an open deck, may be permitted to encroach three feet into the side and rear setbacks. No stair landing shall exceed 12 square feet in area.

(d) ***Red Coconut:*** Parts of a site plan for the Red Coconut were approved by Lee County on June 2, 1987. This plan was drawn by David Depew and was dated May 20, 1987.

(1) ***Sites approved in 1987.*** Lee County approved the replacement and potential enlargement of a mobile home or park trailer on each of the following sites: A7-A9, A12-A15, B12, B14-B16, C1, C7, D1, D2, D6, D8-D17, E1-E16, E18-E20, F1-F9, and G2-G12.

a. These sites were determined to have been in compliance with regulations that were in effect at the time of their creation.

b. Replacement mobile homes or park trailers on these sites must follow the same regulations as provided in § 34-694(c)(2); however, if a mobile home or park trailer incurs "substantial damage" as that term is defined in § 6-405, the landowner also has the option to merge that site into the transient RV park and use the site in accordance with § 34-694(d)(3).

c. Replacement mobile home or park trailers on these sites, including lawful additions, storage sheds, and utility rooms, cannot be placed closer than 20 feet to any publicly maintained street.

(2) ***Sites not approved in 1987.*** Some smaller sites that also contained a mobile home or non-transient recreational vehicle were not approved for larger units in 1987: AA, A1-A6, A10-A11, A16-A17, B1-B11, B13, C2-C6a, C8-C10, D3-D5, D7-D7A, E17, K2, P2-P3, Z2-Z3, and 1-6 on the bay side of Estero Boulevard. Units on these sites may be replaced only by a unit of equal or smaller size, in accordance with the following regulations:

a. Any mobile home or non-transient recreational vehicle which has been lawfully placed on these sites may be replaced by a mobile home or park trailer of equal or smaller size. The director may use historical aerial photographs, or previous county or town permits if available, to verify that a replacement unit is not larger than a previous lawful unit. No additions which would cause the total size to exceed the size of the previous lawful unit will be permitted.

b. Replacement mobile homes and park trailers must meet the floodplain elevation requirements of § 34-694(c)(2)b; however, if a mobile home or park trailer incurs "substantial damage" as that term is defined in § 6-405, the landowner also has the option to merge that site into the transient RV park and use the site in accordance with § 34-694(d)(3).

c. A move-on permit must be obtained in accordance with § 34-1923 and the mobile home or park trailer must comply with the tie-down and skirting requirements of that section.

d. One storage shed or utility room may be permitted if in compliance with § 34-694(c)(2)d.

e. Replacement mobile home or park trailers on these sites, including lawful additions, storage sheds. and utility rooms, cannot be placed closer than 20 feet to any publicly maintained street.

(3) ***Transient RV park.*** The remainder of the sites shown on this plan may continue in operation as a transient RV park. These sites can be identified on the 1987 site plan as follows: on the Gulf of Mexico, sites 1-53; on the bay side of Estero Boulevard, sites CE1-CE7, CWOO-CW6, CRD, H1-H10, J1-J10, K1, K3-K18, L1-L4, M1-M4, N1-N14, P1, R1-R3, Y-Y-Y-Y, and Z1. The following regulations apply to these 147 sites:

a. Transient recreational vehicles must comply with the floodplain regulations found in § 6-472(3).

b. Additions may not be constructed onto transient recreational vehicles.

c. Storage sheds and other accessory structures may not be placed on individual sites.

d. All travel trailers, motor homes, or camping trailers may not be left unattended for more than two weeks during the months of June through December. For purposes of this section only, the term "unattended"' shall be interpreted to mean that the owner of the unit has not provided for a person to be responsible for the unit in the event of a hurricane watch alert as set forth in the following subsection.

e. All travel trailers, motor homes, or camping trailers shall be tied down within 48 hours of the issuance of a hurricane watch for the town by the National Hurricane Center. Travel trailers, motor homes, or camping trailers not tied down shall be removed from the county within 48 hours of such a hurricane watch, or placed within an approved off-lot storage area.
f. Transient recreational vehicles cannot be placed closer than 20 feet to any publicly maintained street.

Secs. 34-695--34-700. Reserved.

CB (Commercial Boulevard)

Subdivision V. CB Zoning District

Sec. 34-701. Purpose.

The purpose of the CB (Commercial Boulevard) district is provide standards for existing commercial uses and certain other uses along those portions of Estero Boulevard where the "Boulevard" classification of the Fort Myers Beach Comprehensive Plan promotes a mixed-use development pattern.

Sec. 34-702. Applicability.

(a) ***Continued use.*** The regulations in this subdivision apply to the continued use of existing buildings and structures for allowable uses as defined in § 34-703 on all properties zoned CB.

(b) ***Enlarging or replacing buildings for existing commercial uses***. The regulations in this subdivision also apply to the following activities:

(1) Physical enlargement of buildings or structures containing existing commercial uses, provided that the improvements do not constitute a "substantial improvement" as that term is defined in § 6-405 of this code, and
(2) Replacement buildings for existing commercial uses that will not increase the existing floor area ratio, as that term is defined in § 34-633.

(c) ***Enlarging or replacing buildings for all other allowable uses.*** The regulations in this subdivision also apply to the physical enlargement of and replacement buildings for all allowable uses other than existing commercial uses (which are governed by subsection (b)) or new or expanded commercial uses (which are governed by subsection (d)).

(d) ***New or expanded commercial uses.*** In accordance with Policies 4-B-5 and 4-C-3-iv of the Fort Myers Beach Comprehensive Plan:

(1) New or expanded commercial uses in the "Boulevard" category of the Fort Myers Beach Comprehensive Plan require rezoning as a Commercial Planned Development (see § 34-951).
(2) Physical enlargements of existing commercial buildings that constitute a "substantial improvement" as that term is defined in § 6-405 also require rezoning as a Commercial Planned Development.
(3) For purposes of this section only, the following types of re-use of existing floor area shall be deemed a continuation of an existing commercial use rather than a new or expanded commercial use:
    a. an existing office use converted to another office use;
    b. an existing retail use converted to another retail use or to an office use;
    c. an existing restaurant converted to another restaurant or to a retail or office use;
    d. an existing bar or cocktail lounge converted to another bar or cocktail lounge or to a restaurant, retail, or office use.

Sec. 34-703. Allowable uses.

(a) In the CB district, allowable uses are defined as any of the following:

(1) Those uses defined in Table 34-2 for the CB district;
(2) Continuation of commercial uses that were lawfully existing on March 3, 2003; and
(3) Those additional commercial uses of existing floor space as provided by § 34-702(d)(3).

(b) Any landowner wishing to place other new or expanded commercial uses on property that is zoned CB must rezone the property to Commercial Planned Development.

(c) Any landowner wishing to subdivide land that is zoned CB into residential homesites must comply with all of the setback, lot size, intensity, and density regulations for the RC zoning district as described in Table 34-3. Compliance with these regulations shall substitute for the building placement standards that are found in § 34-704 and for the intensity standard found in§ 34-705(c).

CB (Commercial Boulevard)

Sec. 34-704. Building placement.

(a) ***Build-to lines established.*** Build-to lines (see § 34-662) for Estero Boulevard are established at 5 to 10 feet from front property lines. Awnings, canopies, and marquees over sidewalks and pedestrian walkways are encouraged by the commercial design standards (§§ 34-991–1010).

(b) ***Setback lines established.*** Setback lines (see § 34-662) are established as follows:

(1) For principal buildings:
   a. Minimum street setbacks for all streets other than Estero Boulevard are 10 feet.
   b. Minimum rear setbacks are 20 feet from rear property lines.
   c. Minimum side setbacks are 5 feet from side property lines.
   d. Minimum setbacks from water bodies are set forth in § 34-638(d)(3).

(2) For accessory structures, minimum setbacks are set forth in § 34-1171–1176.

Sec. 34-705. Building size.

(a) ***Building frontage.*** Building frontage limits (see § 34-663) are established as follows:

(1) For Estero Boulevard, building frontages shall be at least 50% of the lot frontage. This percentage may be reduced to 35% for properties between Estero Boulevard and the Gulf of Mexico provided that the open space thus created allows open views to the Gulf of Mexico.

(2) For multiple adjoining lots under single control, or for a single lot with multiple buildings, the percentages above apply to the combination of lot(s) and building(s).

(b) ***Building height.*** Building heights (see § 34-631) shall be limited to:

(1) For properties that front on the bay side of Estero Boulevard and all streets other than Estero Boulevard, a maximum of 30 feet above base flood elevation and no taller than two stories, except that an elevated building without enclosed space on the first story may be three stories tall (but still limited to 30 feet above base flood elevation).

(2) For properties that front on the beach side of Estero Boulevard, a maximum of 40 feet above base flood elevation and no taller than three stories.

(c) ***Floor area ratio (FAR).*** Floor area ratios (see § 34-633) shall not exceed 1.0.

Sec. 34-706. Circulation and parking.

(a) ***Parking lot locations.*** Off-street parking lots shall be placed in side or rear yards (see Figure 34-5). Off-street parking lots are not permitted in front yards.

(b) ***Under-building parking.*** Off-street parking may be provided *under* commercial or mixed-use buildings provided that all under-building parking spaces are screened in accordance with § 34-992(a)(2).

(c) ***Parking lot interconnections.*** Wherever physically possible, parking lots for abutting properties fronting along Estero Boulevard shall be interconnected to eliminate or minimize driveways to Estero Boulevard.

(1) To ensure the effective use of these connections, the first to develop shall be required to make an irrevocable offer of cross-access to the adjacent parcel (prior to issuance of a development order), and must design and build the parking lot to accommodate cross-access.

(2) When adjacent owners seek development orders, they will also be required to reciprocate with a similar cross-access agreements and then must complete the physical connection.

(3) Individual property owners shall control all rights to the use of their own parking spaces, but may choose to allow wider use of these spaces for a fee of their choosing or through reciprocal arrangements with other parties.

(d) ***Driveway connections for properties fronting on Estero Boulevard.*** Existing driveways and parking spaces shall be relocated from Estero Boulevard to other streets and new driveways shall connect only to other streets, except where these

requirements would prohibit all reasonable access to a property. When a driveway onto Estero Boulevard is unavoidable, the driveway shall be shared with an adjoining property if that property also has access only to Estero Boulevard. Otherwise, the driveway shall be spaced as far as practical from other driveways or intersections.

Sec. 34-707. Commercial design standards.

The commercial design standards (§§ 34-991–1010) shall 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.

Secs. 34-708--34-930. Reserved.

DIVISION 6. PLANNED DEVELOPMENT ZONING DISTRICTS

Subdivision I. Generally

Sec. 34-931. Purpose and effect.

(a) ***Purpose.*** The general purpose of planned development zoning districts is to provide a degree of flexibility for a landowner to propose the development of land in a manner that differs from the specific provisions of this code, and to allow the town council the ability to evaluate such a proposal relative to specific conditions on and around the site and as to its compliance with the Fort Myers Beach Comprehensive Plan.

(b) ***Effect.*** A planned development, once approved through the rezoning process, can only be developed in accordance with the specific master concept plan and special conditions that are contained in the zoning resolution approving the planned development. See §§ 34-217–220 for details on the effect of planned development zoning.

Sec. 34-932. Regulation of land use in planned developments.

(a) ***General requirements and special conditions.*** All uses of land, water, and structures permitted in a planned development shall be subject to:

(1) the general requirements for planned developments,
(2) all applicable regulations in this code, except where approval is granted to deviate from one or more of those regulations,
(3) an adopted master concept plan, and
(4) various special conditions which may be formulated and applied to address unique aspects of the parcel in the protection of a bona fide public interest:
   a. The source of such conditions may include good planning practice as well as those specifications set forth in the application documents, plus policies and standards set forth in the Fort Myers Beach Comprehensive Plan.
   b. All special conditions shall be reasonably related to the proposed development and to any reasonably expected impacts on public services and facilities and the public safety, health, and general welfare.
   c. Special conditions shall be adopted as part of the zoning resolution approving the planned development.

(b) ***Deviations.*** To allow design flexibility in developing land, deviations from specific provisions of this code may be permitted where it can be demonstrated that the planned development will be enhanced and that the intent of such regulations to protect health, safety, and welfare will be served. Other portions of this code may provide additional criteria for certain deviations (for example, see § 34-992(e) regarding deviations from commercial design standards). No deviation may be granted that is inconsistent with the comprehensive plan.

(1) Requested deviations shall be set forth on the master concept plan or in the application and shall be accompanied by documentation including sample detail drawings.
(2) Approved deviations shall be adopted as part of the zoning resolution approving the planned development.

(c) ***Density or intensity of use.*** Density or intensity of use permitted in any planned development shall be determined by the town council in the zoning resolution in accordance with the following:

(1) The density or intensity of the uses permitted or encouraged under the Fort Myers Beach Comprehensive Plan at that location, and
(2) The nature of and the density and intensity of existing or proposed development surrounding the project.

(d) ***Phasing.*** The town council may specify a phasing plan in the resolution in accordance with § 34-220.

(e) ***Other requirements for planned developments.***

(1) Specific application requirements for planned development zoning districts are set forth in § 34-212–215.

(2) Procedures to amend a planned development zoning district are set forth in § 34-214 and 34-219.
(3) Other requirements for planned developments are found in §§ 34-211–410.

Sec. 34-933. Allowable uses of land.

(a) Proposed principal and accessory land uses must be listed on the proposed master concept plan, identifying such uses by citing the same uses allowed by a specific zoning district, or by citing the enumerated uses of one or more use groups or sub-groups as found in Tables 34-1 and 34-2 of this article. Approved planned developments that used a different method for enumerating uses shall be interpreted in accordance with the use regulations in effect at the time of that approval.

(b) Approved uses shall be adopted as part of the zoning resolution approving the planned development. Uses that are not specifically listed may also be permitted if, in the opinion of the director, the uses and their expected impacts are substantially similar to an approved use.

Secs. 34-934--34-940. Reserved.

Subdivision II. RPD (Residential Planned Development) Zoning District

Sec. 34-941. Intent of RPD (Residential Planned Development) zoning district.

The intent of the RPD district is to allow a landowner the ability to submit a specific proposal for a land development that is primarily residential in character and that complies with the Fort Myers Beach comprehensive plan, but which does not meet the specific requirements of a conventional or redevelopment zoning district.

Sec. 34-942. Allowable uses of land.

Allowable principal and accessory land uses in an RPD zoning district shall be established in each zoning resolution in accordance with § 34-933. Certain of the use sub-groups enumerated in Table 34-1 are not available in RPD zoning districts; see footnotes under Table 34-2.

Sec. 34-943. Building placement, size, design, and other property development regulations.

Building placement, size, design, and all other property development regulations in an RPD zoning district shall be the same as for the RM zoning district, unless the zoning resolution specifies otherwise. Exceptions are as follows:
(1) Compliance with the master concept plan and any special conditions may provide additional restrictions.
(2) Approved deviations may modify or eliminate restrictions that would otherwise apply.

Sec. 34-944–34-950. Reserved.

Subdivision III. CPD (Commercial Planned Development) Zoning District

Sec. 34-951. Intent of CPD (Commercial Planned Development) zoning district.

The intent of the CPD district is to allow a landowner the ability to submit a specific proposal for a land development that is primarily non-residential or mixed-use in character and that complies with the Fort Myers Beach comprehensive plan, but which does not meet all of the specific requirements of a conventional or redevelopment zoning district.

Sec. 34-952. Allowable uses of land.

Allowable principal and accessory land uses in a CPD zoning district shall be established in each zoning resolution in accordance with § 34-933.

Sec. 34-953. Building placement, size, design, and other property development regulations.

Building placement, size, design, and all other property development regulations in a CPD zoning district shall be the same as for the CR zoning district for CPDs that are primarily lodging, or for

the CB zoning district for all other CPDs, unless the zoning resolution specifies otherwise. Exceptions are as follows:

(1) Compliance with the master concept plan and any special conditions may provide additional restrictions.
(2) Approved deviations may modify or eliminate restrictions that would otherwise apply.

Sec. 34-954. Commercial design standards.

The commercial design standards (§§ 34-991–1010) shall 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 CPD (commercial planned development).

Secs. 34-955–34-960. Reserved.

Subdivision IV. Former MPD (Mixed-Use Planned Development) Zoning District

Sec. 34-961. Former MPD zoning district.

The MPD (mixed-use planned development) zoning district had been assigned to certain developments which had received zoning approval prior to major amendments to this code. MPD zoning was automatically converted to CPD zoning through revisions to this chapter which became effective on March 3, 2003. All rights and restrictions previously authorized by MPD zoning resolutions remain in full force and effect after the conversion to CPD zoning.

Sec. 34-962. Former PUD zoning district.

The PUD (planned unit development) zoning district had been assigned to certain developments which had received preliminary or final approval as a planned unit development prior to 1985. PUD zoning was automatically converted to CPD zoning through revisions to this chapter which became effective on March 3, 2003. All rights and restrictions previously authorized by PUD zoning resolutions remain in full force and effect after the conversion to CPD zoning.

Secs. 34-963–34-990. Reserved.

DIVISION 7. COMMERCIAL DESIGN STANDARDS

Sec. 34-991. Purpose and intent.

The purposes of design regulations for commercial buildings include:

(1) Encouraging traditional building forms that reinforce the pedestrian orientation and desired visual quality of the Town of Fort Myers Beach.
(2) Creating usable outdoor space through the arrangement of compatible commercial buildings along street frontages.
(3) Encouraging buildings of compatible type and scale to have creative ornamentation using varied architectural styles.
(4) Enhancing the town's business districts as attractive destinations for recreation, entertainment, and shopping.
(5) Maintaining and enhancing the town's sense of place and its property values.
(6) Implementing the design concepts in the Fort Myers Beach Comprehensive Plan.

Sec. 34-992. Applicability and compliance.

(a) ***Applicability.*** Except where this code specifically provides otherwise, these commercial design standards 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).

(b) Commercial buildings on properties with a zoning resolution that incorporated specific architectural elevations shall be required to comply with these standards to the extent that the standards are not inconsistent with the approved elevations.

(c) Commercial buildings such as hotels that will not contain commercial uses below base flood elevation shall not be required to comply with the ground-floor window and retail standards except along Old San Carlos Boulevard (see § 34-676(b)(2). However, the principal facades of these buildings must screen underbuilding parking areas in a manner acceptable to the town manager or designee.

(d) ***Compliance determinations.*** Compliance with these standards shall be determined as follows:

(1) An applicant may seek conceptual or final approval of a specific building and site design during the commercial planned development rezoning process (see § 34-931). The resolution approving a commercial planned development may include specific site plans and building elevations and shall specify the extent to which these plans and elevations have or have not been determined to meet these commercial design standards and whether any deviations to these standards have been granted.
(2) Unless final approval has been granted pursuant to subsection (1), the town manager shall make a determination of substantial compliance with these standards before a development order can be issued pursuant to ch. 10 of this code, or before a building permit can be issued if a development order is not applicable.
   a. Compliance determinations of the town manager are administrative decisions which may be appealed in accordance with article II of this chapter.
   b. The town manager shall provide written notice of each compliance determination to the town council within five calendar days. The town council, by majority vote at a public meeting within 30 days of the compliance determination, may file an appeal that will be heard by the town council in conformance with the procedures and standards in § 34-86.
   c. Compliance determinations made by the town manager shall not become effective until the 30-day appeal period has passed without an appeal having been filed.

(e) ***Variances and deviations.*** Requests to vary from a substantive provision of these standards may be filed using the variance procedures and evaluated using the findings in § 34-87, or may be requested during planned development rezonings as a deviation as described in § 34-932(b). The following are acceptable justifications for deviations from these commercial design standards (in addition to the general requirements of § 34-932(b)):

(1) The proposed substitution of materials or function accomplishes substantially the same goals as the required provisions in these standards and would make an equal or greater contribution to the public realm of the Town of Fort Myers Beach; or

(2) The proposed building is a civic building, which is expected to be more visually prominent than a typical commercial building.

Sec. 34-993. Definitions.

Arcade means a series of columns topped by arches that support a permanent roof over a sidewalk.

Awning means a flexible roof-like cover that extends out from an exterior wall and shields a window, doorway, sidewalk, or other space below from the elements.

Balcony means an open portion of an upper floor extending beyond (or indented into) a building's exterior wall.

Bay window means a series of windows which project beyond the wall of a building to form an alcove within.

Canopy means an awning-like projection from a wall that is made of rigid materials and is permanently attached to the principal facade of a building.

Civic building means a building that is allowed greater design flexibility due the prominence of its function and often its location. For purposes of these standards, civic buildings include buildings operated by governmental entities and certain privately owned buildings that serve religious, charitable, cultural, educational, or other public purposes.

Colonnade is similar to an arcade except that it is supported by vertical columns without arches.

Commercial building means, for purposes of these standards, any building used in whole or in part for any of the following uses: retail, office, hotel or motel rooms, institutional uses, commercial storage, restaurants, bars, and similar uses.

Cornice means a decorative horizontal feature that projects outward near the top of an exterior wall.

Courtyard means an unroofed area surrounded by buildings.

Expression line means a decorative horizontal feature that projects outward from an exterior wall to delineate the top of the first story of a building.

Facade, principal means the exterior wall of a building that is roughly parallel to a right-of-way or which faces a plaza or public park, and also that portion of a building's side wall that faces a pedestrian way or parking lot. Along the east side of Old San Carlos Boulevard only, the rear wall of buildings shall also be considered a principal facade whenever it is visible from the Matanzas Pass sky bridge.

Lintel means a structural or merely decorative horizontal member spanning a window opening.

Plaza means an unroofed public open space designed for pedestrians that is open to public sidewalks on at least one side.

Porch means a covered entrance to a building.

Sill means is a piece of wood, stone, concrete, or similar material protruding from the bottom of a window frame.

Stoop means a small elevated entrance platform or staircase leading to the entrance of a building.

Sec. 34-994. Exterior walls.

(a) ***Generally.*** These standards require commercial buildings to have traditional pedestrian-oriented exteriors and to be clad with typical Florida building materials that are durable and appropriate to the visual environment and climate. Design flexibility and creativity is encouraged using ornamentation from a wide variety of architectural styles.

(b) ***Finish materials for walls.*** Exterior walls are the most visible part of most buildings. Their exterior finishes shall be as follows:

(1) Any of the following materials may be used for exterior walls and for columns, arches, and piers:
   a. Concrete block with stucco (CBS)
   b. Reinforced concrete (with smooth finish or with stucco)
   c. Natural stone or brick
   d. Wood, pressure-treated or naturally decay-resistant species

(2) Exterior walls may also be covered with fiber-reinforced cement panels or boards, or with cast (simulated) stone or brick.

(3) Synthetic stucco (an exterior cladding system with a stucco-like outer finish applied over insulating boards) may be used as an exterior wall covering except on principal facades.

(4) Other materials for exterior walls may be used only if approved as a deviation from this section through the planned development rezoning process or when explicit approval has been granted to vary from these regulations (see § 34-992).

(5) Fastenings that are required to dry-floodproof the first story of commercial buildings shall be integrated into the design of principal facades or be visually unobtrusive.

(c) ***Types of exterior walls.*** Principal facades are defined in § 34-993 and their requirements are described in § 34-995. Exterior walls that are *not* defined as principal facades require a lesser degree of finish and transparency, but must meet the following requirements:

(1) Transparent windows must cover at least 30% of the wall area below the expression line and at least 10% of the wall area between the expression line and the cornice. These requirements shall not apply to walls facing and roughly parallel to rear lot lines, or to side walls being built closer than 5 feet to a side lot line if the adjoining lot also has a building with a side wall closer than 5 feet to the same side lot line. However, some rear and side walls qualify as principal facades in accordance with § 34-993 and must meet the more stringent requirements of § 34-995.

(2) All windows must have their glazing set back at least 3 inches from the surface plane of the wall, or set back at least 2 inches when wood frame construction is used.

(3) Rectangular window openings shall be oriented vertically (except for transom windows).

Sec. 34-995. Principal facade walls.

(a) ***Facade elements.*** Principal facades are the primary faces of buildings. Being in full public view, they shall be given special architectural treatment.

(1) All principal facades shall have a prominent cornice and expression line, a working entrance, and windows (except for side-wall facades where entrances are not required).

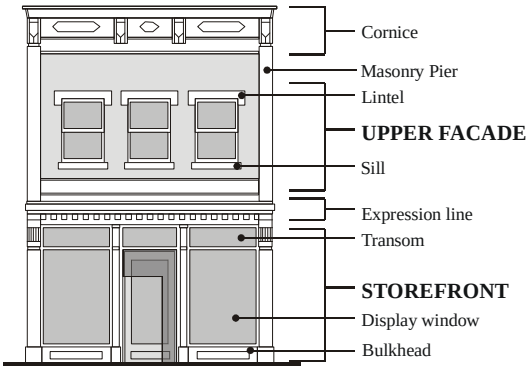


Figure 34-19

(2) Buildings wider than 75 feet shall incorporate vertical elements in the principal facade to mimic smaller-scale development.

(3) Principal facades facing a primary street, plaza, or public park may not have blank walls (without doors or windows) greater than 10 feet in length.

(4) Expression lines and cornices shall be a decorative molding or jog in the surface plane of the building that extend at least 3 inches out from the principal facade, or a permanent canopy may serve as an expression line.

(5) Awnings may not hide or substitute for required features such as expression lines and cornices.
(6) Entrances and windows are addressed in subsections (b) and (c) below.

(b) ***Entrances.*** A primary entrance and views into the first floor of commercial buildings are fundamental to creating an interesting and safe pedestrian environment.

(1) The primary entrance to all buildings shall face the street.
(2) Corner buildings shall have their primary entrance face either the intersection or the street of greater importance.
(3) Additional ground floor retail spaces within the same building shall all have their respective primary entrances face streets unless the retail spaces do not adjoin an exterior wall along a street.
(4) Where building frontages exceed 50 feet, operable doors or entrances with public access shall be provided along streets at intervals averaging no greater than 50 feet.

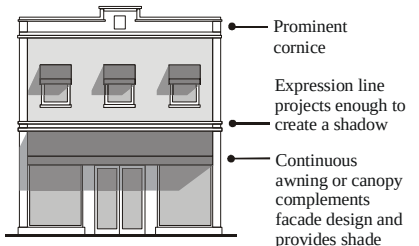


Figure 34-20

(c) ***Windows.*** Every principal facade must contain transparent windows on each story.

(1) ***All windows.***
a. Rectangular window openings on principal facades shall be oriented vertically (except for transom windows).
b. All windows must:
1. contain visible sills and lintels on the exterior of the wall, and
2. have their glazing set back at least 3 inches from the surface plane of the wall, or set back at least 2 inches when wood frame construction is used.
c. Glass in windows and doors, whether integrally tinted or with applied film, must transmit at least 50% of visible daylight.
d. See § 34-995(e)(1) regarding awnings.

(2) ***First-story windows.*** In order to provide clear views inward and to provide natural surveillance of exterior spaces, the first story of every commercial building's principal facade shall have transparent windows meeting the following requirements:
a. Window openings shall cover at least 60% of the wall area below the expression line;
b. The bottoms of the window opening can be no higher than 30 inches from sidewalk level; and
c. These windows shall be maintained so that they provide continuous view of interior spaces lit from within. Private interior spaces such as offices may use operable interior blinds for privacy.

(3) ***Upper-story windows.***
a. All stories above the first story of every commercial building's principal facade shall contain between 15% and 75% of the wall area with transparent windows.
b. No single pane of glass may exceed 36 square feet in area.

(d) ***Corner buildings.*** For buildings located at the intersection of two streets, the corner of the building at the intersection may be angled, curved, or chamfered. The distance from the corner shall not exceed 20 feet measured from the intersection of the right-of-way lines to the end of the angled or curved wall segment, unless a greater amount is required by the visibility triangles in § 34-662(b)(4).

(e) ***Facade projections.*** Facade projections add visual interest to buildings. Some projections also provide protection from sun and rain for those passing by, others provide additional floor space for the building. The following types of facade projections are permitted as indicated below. At least one of these facade projections is required on each principal facade of all commercial buildings. Along both sides of Old San Carlos Boulevard, a continuous awning or canopy is required over the sidewalk except where the sidewalk is being shaded by an arcade or colonnade.

(1) Awnings and canopies:

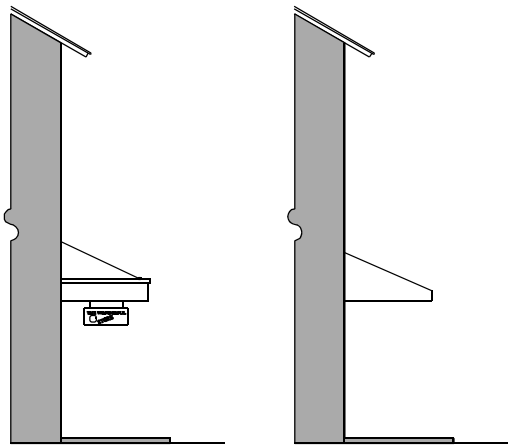


Figure 34-21

a. Awnings and canopies may extend forward of the build-to line (see § 34-662) and may encroach into a street right-of-way.
b. Awning or canopies extending from the first story cannot exceed the following dimensions:
   1. Depth: 5 feet (minimum) and strongly overlapping the sidewalk, but no closer than 2 feet to an existing or planned curb (see § 34-995(e) regarding Old San Carlos Boulevard)
   2. Height: the lowest point on an awning or canopy shall be between 9 feet and 12 feet above sidewalk level
   3. Length: 25% to 100% of the front of the building
c. There are no minimum or maximum dimensions for awnings or canopies extending from a second story or higher.
d. Awnings shall be covered with fabric. High-gloss or plasticized fabrics are prohibited. Backlighting of awnings is prohibited.

(2) Balconies:

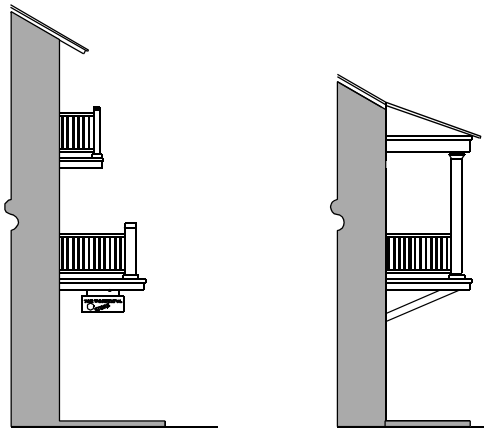


Figure 34-22

a. Balconies may extend forward of the build-to line (see § 34-662) and may encroach into a street right-of-way.
b. Balconies cannot exceed the following dimensions:
   1. Depth: 6 feet minimum for second story balconies; and no closer than 2 feet to the existing or planned curb
   2. Height: 10 feet minimum if overhanging a sidewalk
   3. Length: 25% to 100% of the front of the building
   4. Top of railing: 2-3/4" minimum
c. Balconies may have roofs, but are required to be open, un-airconditioned parts of the buildings.
d. On corners, balconies may wrap around to the side of the building.

(3) Bay windows:

a. Bay windows may extend forward of the build-to line (see § 34-662) but may not encroach into a street right-of-way.
b. Awning or canopies extending from the first story cannot exceed the following dimensions:
   1. Depth: 3 feet (minimum)
   2. Height: 10 feet minimum above sidewalk
   3. Length: 6 feet minimum
c. Bay windows shall have the same details required for principal facades: sills, lintels, cornices, and expression lines.

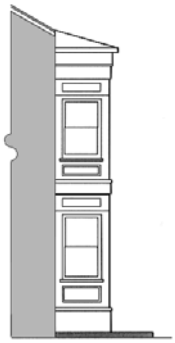


Figure 34-23

(4) Porches:

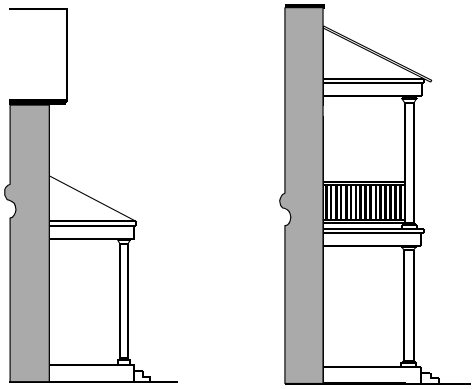


Figure 34-24

a. Front porches may extend forward of the build-to line (see § 34-662) but may not encroach into a street right-of-way.
b. Front porches cannot exceed the following dimensions:
   1. Depth: 8 feet (minimum)
   2. Length: 25% to 90% of the front of the building; however, no more than 25% of the floor area of a porch shall be screened if the porch extends forward of the build-to line.
   3. Top of railing: 2-3/4" minimum
c. Front porches may have multi-story verandas and/or balconies above.
d. Front porches are required to be open, un-airconditioned parts of a building.

(5) Stoops:

a. Stoops may extend forward of the build-to line (see § 34-662) but may not encroach into a street right-of-way or sidewalk without specific approval by the town.
b. Stoops cannot exceed the following dimensions:
   1. Depth: 6 feet (minimum)
   2. Length: 5 feet (minimum)
c. Stoops may be roofed or unroofed but may not be screened or otherwise enclosed.

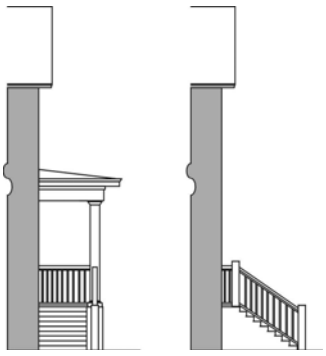


Figure 34-26

(6) Arcades and colonnades:

a. Arcades and colonnades may extend

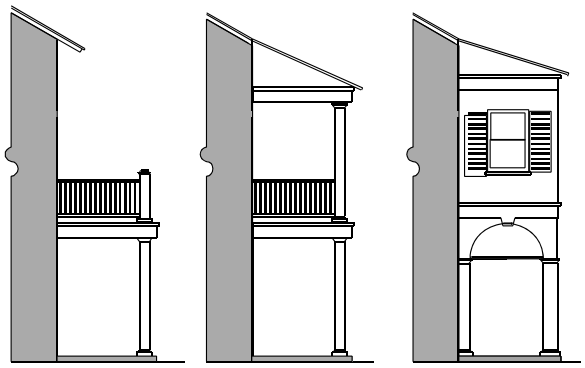


Figure 34-27

forward of the build-to line (see § 34-662) and may encroach into a street right-of-way if explicit permission is granted by the town.
b. Arcades and colonnades cannot exceed the following dimensions:
   1. Depth: 7 feet minimum from the building front to the inside face of the column
   2. No part of the column shall be closer than 2 feet to the existing or planned curb
   3. Height: 10 feet minimum above sidewalk
   4. Length: 75% to 100% of the front of the building
   5. Top of porch railing: 2-3/4" minimum
c. Open multi-story verandas, awnings, balconies, and enclosed useable space can be constructed above the colonnade.
d. Arcades and colonnades shall only be constructed where the minimum depth can be obtained.
e. On corners, arcades and colonnades may wrap around to the side of the building.
f. Columns shall be spaced no farther apart than they are tall.
g. Minimum column dimensions with enclosed space above shall be 8 inches.
h. Minimum column dimension without enclosed space above:
   1. Rectangular columns: 6 inches
   2. Round columns: 6 inches in diameter

Sec. 34-996. Roofs.

(a) ***Definitions.***

Dormer means a projection from a sloping roof that contains a window and its own roof.

Gable roof means a ridged roof forming a gable at both ends.

Hip roof means a roof with pitched ends and sides.

Mansard roof means a roof having two slopes with the lower slope steeper than the upper, or a single steep slope topped with a flat roof, enclosing the building's top floor. A modern variant is a partial sloped roof that is attached near the top of an exterior wall in place of a traditional cornice or parapet, creating the visual effect of a sloped roof on a flat-roofed building but without enclosing any floor space.

Parapet means a short vertical extension of a wall that rises above roof level, hiding the roof's edge and any roof-mounted mechanical equipment.

Shed roof means a pitched roof that has only one slope.

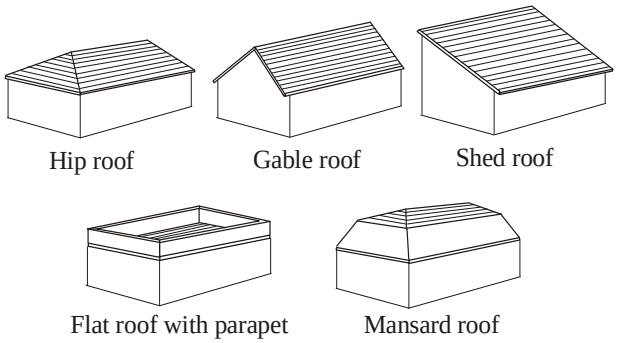


Figure 34-28

(b) ***Roof types permitted.*** Commercial buildings may have any of the following roof types: hip roofs, gable roofs, shed roofs, flat roofs with parapets, or mansard roofs.

(1) All flat roofs, and any shed roof with a slope of less than 2 inches vertical per 12 inches horizontal, must have their edges along all streets concealed with parapets.

(2) All hip roofs and gable roofs, and any shed roof with a slope of more than 2 inches vertical per 12 inches horizontal, must have overhangs of at least 18 inches.
   a. Exposed rafter ends (or tabs) are encouraged.
   b. Wide overhangs are encouraged and can be supported with decorative brackets.

(3) Mansard roofs are permitted only when the lowest sloped surface begins above a cornice line and then slopes upward and inward.

(4) Small towers, cupolas, and widow's walks are encouraged (see § 34-631 for maximum dimensions).

(5) Dormers are permitted and encouraged on sloped roofs.

(6) Skylight glazing must be flat to the pitch of the roof if the skylight is visible from a primary street, plaza, or public park.

(c) ***Roofing materials permitted.*** Commercial building roofs may be constructed with one or more of the following roofing materials:

(1) METAL:
   a. Steel (galvanized, enameled, or terne-coated)
   b. Stainless steel
   c. Copper
   d. Aluminum

(2) SHINGLES:
   a. Asphalt (laminated dimensional shingles only)
   b. Fiber-reinforced cement
   c. Metal (same as (a)(1))

(3) TILES:
   a. Clay or terra cotta
   b. Concrete

(4) FLAT ROOFS:
   a. Any materials allowed by applicable building codes

(5) GUTTERS AND DOWNSPOUTS:
   a. Metal (same as (c)(1))

(d) ***Other roof types and materials.*** Other types of roofs and roofing materials are prohibited unless explicitly approved in accordance with § 34-992.

Sec. 34-997. Plazas and courtyards.

(a) ***Generally.*** New commercial buildings are generally oriented to public sidewalks. This section addresses other public open spaces that also can affect the orientation of commercial buildings.

(b) ***Plazas.*** This code contains "build-to lines" (see § 34-662) that require new commercial buildings to be placed near public sidewalks. These build-to regulations allow up to 25% of a building's frontage to be recessed 10 feet. Plazas meeting the following requirements are permitted to be recessed further than the standard 10 feet:

(1) The plaza cannot exceed 25% of a building's frontage.
(2) The plaza is strictly for pedestrian usage and cannot be used to park vehicles.
(3) All building walls that surround the plaza must meet the design criteria for principal facades.

(c) ***Courtyards.*** New commercial buildings that are on larger lots may include interior courtyards designed for public or private usage.

(1) If vehicular circulation is allowed through a courtyard, the only parking permitted will be in parallel spaces.
(2) Courtyards intended for public use are encouraged to have clear visual linkages between the courtyard and public sidewalks.

(d) ***Pedestrian passages.*** Pedestrian passages, with or without a lane for vehicles, can be provided on private property to connect a courtyard to the sidewalk system, to provide walkways to parking lots behind buildings, or to provide additional retail frontages.

Secs. 34-998–1168. Reserved.

ARTICLE IV. SUPPLEMENTAL REGULATIONS

DIVISION 1. GENERALLY

Sec. 34-1169. Purpose and applicability of article.

The purpose of this article is to provide rules and regulations which supplement, modify, or further explain rules and regulations found elsewhere in this chapter, and, unless specifically noted to the contrary, the provisions of this article apply to all zoning districts.

Sec. 34-1170. Purpose of supplemental regulations.

(a) Regulations over and above those imposed by other sections of this chapter are necessary for certain uses which, because of their uniqueness or potential for substantial impact on surrounding land uses, warrant minimum standards which cannot properly be addressed in general provisions or property development regulations set forth in specific districts. The purpose of the supplemental regulations set forth in this article is to set forth the detailed regulations, including but not limited to the bulk, layout, yard size, and lot area, that apply to these uses.

(b) The supplemental regulations set out in this article shall apply to the specified use regardless of whether it is a use permitted by right, special exception, planned development rezoning, or temporary use permit, as specified in the district use regulations in division 2 of article III of this chapter.

DIVISION 2. ACCESSORY USES, BUILDINGS, AND STRUCTURES

Sec. 34-1171. Applicability of division.

This division provides minimum regulations for those accessory uses, buildings, and structures customarily incidental and subordinate to the principal use or building, which are not specifically regulated elsewhere in this code.

Sec. 34-1172. Definitions.

For purposes of this division only, certain words or terms shall mean the following:

Accessory use means a use of a structure or premises which is customarily incidental and subordinate to the principal use of the structure or premises.

Commercial accessory use means the use of a structure or premises that is customarily incidental and subordinate to the principal use of a commercial structure or premises. See *Use, principal*. Typical commercial accessory uses are: *Parking lots, accessory*; *Storage, indoor*; and *Telephone booth or pay telephone station*. Various divisions of article IV of this chapter describe permitted commercial accessory uses. Uses that are listed separately on Table 34-1 of this code, such as drive-throughs and automobile fuel pumps, are not commercial accessory uses and are permitted only in zoning districts where they are explicitly identified in Tables 34-1 and 34-2.

Open-mesh screen means meshed wire or cloth fabric to prevent insects from entering the facility, including the structural members framing the screening material.

Residential accessory use means the use of a structure or premises that is customarily incidental and subordinate to the principal use of a residential structure. See *Use, principal*. Typical residential accessory uses are: carports and garages; decks, gazebos, patios, and screen enclosures; dock, personal (§ 34-1863); fences and walls (division 17 in article IV); garage sales or yard sales (§ 34-2); recreation facilities, personal; seawalls (ch. 26); and storage sheds. Division 2 and other portions of

article IV provide regulations for many residential accessory uses.

Resort accessory use means the use of a structure or premises that is customarily incidental and subordinate to a resort. See *Use, principal*. Typical resort accessory uses are: *Amusement devices* (§§ 34-2141–2145 and 34-3042); *Golf courses*; *Parasailing operations office* (ch. 27); *Personal watercraft operations office* (ch. 27); and *Rental of beach furniture* (ch. 14).

Roofed means any structure or building with a roof which is intended to be impervious to weather.

Sec. 34-1173. Development regulations.

(a) Unless specifically indicated to the contrary, accessory uses and related buildings and structures that are customarily recognized as clearly incidental and subordinate to the principal use of the property are permitted by right when located on the same lot or parcel and in the same zoning category as the principal use, provided that:

(1) Uses that are listed separately on Table 34-1 of this code, such as drive-throughs and automobile fuel pumps, are not accessory uses and are permitted only in zoning districts where they are explicitly identified in Tables 34-1 and 34-2. However, this limitation does not apply to uses that are explicitly listed in the definitions of residential, commercial, or resort accessory uses.

(2) All uses, buildings, and structures must comply with all applicable development regulations and building codes.

(3) Accessory buildings or structures may be built concurrently with a principal building or structure but, except as provided herein, no accessory use, building, or structure shall be commenced, erected, placed, or moved onto a lot or parcel prior to the principal use, building, or structure. Exceptions are as follows:

a. Fences or walls when in compliance with division 17 of this article.

b. Seawalls or retaining walls (see § 26-43(a)).

c. Docks accessory to residential uses (see § 26-43(a)). Only permitted if the lot meets the minimum lot size and dimensions required for a principal use.

(b) ***Attachment to principal building.*** Authorized accessory buildings or structures may be erected as part of the principal building or may be connected to it by a roofed porch, patio, or breezeway, or similar structure, or they may be completely detached, provided that:

(1) Any accessory building or structure which is structurally a part of the principal building shall comply in all respects with the regulations for a principal building.

(2) Any accessory building or structure not structurally made a part of the principal building shall comply with the location requirements set forth in § 34-1174.

Sec. 34-1174. Location and setbacks generally.

(a) ***Permitted locations.*** Except as may be provided elsewhere in this chapter, all accessory uses, buildings, and structures must be located on the same premises and must have the same zoning district or zoning classification as the principal use (see also § 34-616(b)). For purposes of this section, a zoning classification contains the following groups of zoning districts:

(1) Residential districts – RS, RC, RM, and SANTOS – described in article III of this chapter: and

(2) Commercial districts – CR, CM, CO, and CB – described in article III of this chapter.

(b) ***Setback from streets.*** No accessory use, building, or structure shall be located closer to a street right-of-way line or street easement than the principal building, except for:

(1) fences and walls as provided for in division 17,

(2) signs, where permitted by ch. 30 and placed in accordance with §§ 30-93 and 30-153,

(3) outdoor display of merchandise, subject to the provisions of division 36 of this article,

(4) garbage enclosures as provided for in § 6-11,

(5) a single flagpole on a lot,

(6) swimming pools, tennis courts, shuffleboard courts, and other similar recreation facilities

that are accessory to a multiple-family development, or a hotel/motel, provided that they are part of a planned development or a site plan approved in accordance with ch. 10 and provided they comply with the minimum setbacks for streets,

(7) as provided for in the exceptions to setbacks in § 34-638(d), or

(8) on through lots, accessory uses, buildings, and structures may be placed closer to the street opposite the street that provides principal vehicular access than the principal building as long as the minimum setbacks for streets as set forth in § 34-638 are maintained.

(c) ***Setback from bodies of water.*** No building or structure (except marine structures, which are subject to the setback requirements as set forth in ch. 26, article II) may be located closer to a bay, canal, or other body of water than the minimum setbacks required in § 34-638(d)(3).

(d) ***Setbacks from side and rear property lines.*** Unless the side or rear property line abuts a body of water (see § 34-638(d)), the following setbacks shall apply:

(1) ***Residential accessory buildings and structures.*** Except as provided in §§ 34-1175 and 34-1176, all accessory residential buildings and structures shall be set back a minimum of:

a. Five feet from any rear property line that does not have access to an alley.

b. Zero feet from any rear property line that is served by an alley.

b. For non-waterfront lots, five feet from any side property line.

c. For waterfront lots, the same distance as is required from any side property line for principal buildings in that zoning district (see § 34-638).

(2) ***Commercial and resort accessory buildings and structures.*** All accessory buildings and structures for a principal commercial or resort use shall be set back:

a. In accordance with the side and rear setback requirements for a principal building in that zoning district or the minimum buffering requirements as set forth in ch. 10, whichever is greater, when abutting any district other than commercial or resort.

b. When abutting another commercial or resort zoning district:

1. Rear setbacks are not required.
2. For non-waterfront lots, side setbacks are not required.
3. For waterfront lots, the same distance as is required from any side property line for principal buildings in that zoning district (see § 34-638).

(e) ***Administrative setback variances.*** Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268.

(f) ***Prohibited locations.*** Nothing contained in this chapter shall be construed as permitting placement of any accessory building or structure within a utility or other easement prohibiting such building or structure, or closer to adjacent property than permitted by the minimum buffer requirements set forth in ch. 10, or closer to any other building than permitted by the town building code.

(g) ***Fences.*** Fences are subject to the setback requirements in division 17 of this chapter.

Sec. 34-1175. Satellite dishes and amateur radio antenna/towers.

(a) ***Satellite dishes.*** The following restrictions apply to satellite dishes that are installed as accessory structures if the dishes exceed two meters (78.74 inches) in diameter in zoning districts that allow Retail/Open or Lodging/Open land use sub-groups (see Table 34-2) or if the dishes exceed one meter (39.97 inches) in diameter in all other zoning districts.

(1) **Setbacks.** Satellite dishes must meet the minimum requirements for accessory structures in § 34-1174(b)–(d).

(2) **Allowable size.** No satellite dish may exceed ten feet in diameter.

(3) **Location and placement.**
   a. Except as provided below, satellite dishes may not be mounted on a roof or on any other building surface.
   b. *Exception*. Satellite dishes may be mounted on buildings that exceed 35 feet in height (as measured in accordance with § 34-631(b)), provided the satellite dish is not visible at ground level from any abutting right-of-way, street easement, or any property under separate ownership and zoned or used for residential purposes.

(4) **Height.** Ground-mounted satellite dishes may not exceed ten feet in height.

(5) **Landscaping.** Ground-mounted satellite dishes exceeding two meters (78.74 inches) in diameter must include a landscaped buffer of at least three feet in width between the facility and any right-of-way or ingress/egress or access easement. The buffer must be at least four feet in height at installation and be maintained at a minimum of five feet in height within one year after time of planting.

(6) **Administrative variances.** The director may modify requirements of subsection (a) where an applicant can demonstrate in writing that full compliance with these provisions will materially limit transmission or reception with the proposed satellite dish. See § 34-268. The director may not modify any requirement to a greater extent than is required to ensure that transmission or reception is not materially limited.

(b) ***Amateur radio antenna/towers.***

(1) Amateur radio antenna/towers up to 50 feet in height are permitted in all zoning districts provided that antenna/tower supports and peripheral anchors are located entirely within the boundaries of the property and in the rear or side yard.

(2) Amateur radio antenna/towers over 50 feet in height may be permitted by special exception in any zoning district.

Sec. 34-1176. Swimming pools, tennis courts, porches, decks, and similar recreation facilities.

(a) ***Applicability.*** The regulations set out in this section apply to all swimming pools, tennis courts, shuffleboard courts, porches, decks, and other similar recreation facilities which are accessory to a permitted use, and which are not specifically regulated elsewhere in this chapter.

(b) ***Location and setbacks.***

(1) ***Personal, private, and limited facilities.***
   a. *Nonroofed facilities.* All swimming pools, tennis courts, decks, and other similar nonroofed accessory facilities shall comply with the following setback requirements:
      1. Street setbacks as set forth in §§ 34-1174(b) and 34-638.
      2. Water setbacks as set forth in § 34-638(d)(3).
      3. Rear lot line setback as set forth in § 34-1174(d).
      4. Side lot line setbacks as set forth in § 34-1174(d).
   b. *Open-mesh screen enclosures.* Swimming pools, patios, decks, and other similar recreation facilities may be enclosed with an open-mesh screen enclosure provided that the enclosure complies with the setback requirements set forth in § 34-1174, and provided further that:
      1. At least three sides of the enclosure are open-mesh screening from a height of 3½ feet above grade to the top of the enclosure.
      2. Enclosures with any two or more sides enclosed by opaque material shall be required to comply with all setbacks required for a principal building.

      It shall be the responsibility of the applicant to increase all required setbacks sufficient to provide maintenance access around the pool whenever the pool is proposed to be enclosed with open-mesh screening or fencing. A minimum increase in setbacks of three feet is recommended.
   c. *Roofed open-mesh enclosures.* Open-mesh screen enclosures may be covered by a solid roof (impervious to weather) provided that:

1. If structurally part of the principal building, the enclosure shall comply with all setback requirements for the principal building.
2. Except when in compliance with the setback requirements for principal buildings, a solid roof over a screen enclosure shall be constructed as a flat roof with the pitch no greater than the minimum required for rain runoff.

(2) ***Commercial and public facilities.*** All pools, tennis courts, and other similar recreation facilities owned or operated as a commercial or public establishment shall comply with the setback regulations for the zoning district in which located.

(c) ***Fencing.***

(1) *In-ground swimming pools, hot tubs, and spas.* Every swimming pool, hot tub, spa, or similar facility shall be enclosed by a fence, wall, screen enclosure or other structure, not less than four feet in height, constructed or installed so as to prevent unauthorized access to the pool by persons not residing on the property. For purposes of this subsection, the height of the structure shall be measured from the ground level outside of the area so enclosed. The enclosure may be permitted to contain gates, provided they are self-closing and self-latching.

(2) *Aboveground swimming pools, hot tubs, and spas.* Aboveground pools, hot tubs, spas, and similar facilities shall fulfill either the enclosure requirements for in-ground pools or shall be so constructed that the lowest entry point (other than a ladder or ramp) is a minimum of four feet above ground level. A ladder or ramp providing access shall be constructed or installed so as to prevent unauthorized use.

(3) *Exception.* A spa, hot tub, or other similar facility which has a solid cover (not a floating blanket) which prevents access to the facility when not in use shall be permitted in lieu of fencing or enclosure requirements.

(4) *Tennis courts.* Fences used to enclose tennis courts shall not exceed 12 feet in height above the playing surface.

(d) ***Lighting.*** Lighting used to illuminate a swimming pool, tennis court, or other recreation facility shall be directed away from adjacent properties and streets, and shall shine only on the subject site.

(e) ***Commercial use.*** No swimming pool, tennis court, or other recreation facility permitted as a residential accessory use shall be operated as a business.

Accessory Uses

Sec. 34-1177. Accessory apartments not requiring owner-occupancy on the premises.

(a) ***Applicability.*** This section sets forth the requirements for accessory apartments on larger lots, when subordinate to a single-family detached dwelling unit, with no requirement that the property owner live on the premises. If a property owner lives on the premises, an existing accessory apartment that does not meet the requirements of this section may be legal under the provisions of § 34-1178. The requirements of this section apply to accessory apartments whether they are listed as a permitted use or a use by special exception.

(b) ***Definition.*** For purposes of this section, the term "accessory apartment" means a dwelling unit, with or without cooking facilities, constructed subordinate to a single-family dwelling unit that could be made available for rent or lease.

(c) ***Off-street parking.*** In addition to the requirements of § 34-2020(d)(1), one additional space shall be required for the accessory apartment.

(d) ***Maximum floor area; use; floodplain regulations.***

(1) *Attached apartments.* If the accessory apartment is constructed as part of the principal building, the maximum floor area of the accessory apartment shall not exceed 50 percent of the floor area of the main dwelling unit.

(2) *Detached apartments.* If the accessory apartment is not constructed as part of the main dwelling unit, the maximum floor area shall be 850 square feet or 50 percent of the floor area of the main dwelling unit, whichever is less.

(3) *Use.* The accessory apartment shall be limited to one family, as defined in this chapter.

(4) *Floodplain and other regulations.* Nothing in this section shall be construed to waive the floodplain regulations in ch. 6, article IV or other regulations in this code, except as explicitly set forth.

(e) ***Minimum lot size.*** An accessory apartment may be permitted on a lawfully existing lot which conforms to the minimum lot size of the district in which it is located. However, in no case shall the lot area be less than 6,000 square feet.

(f) ***Appearance.*** The entrance to the accessory apartment, when constructed as part of the principal residence, should be designed in such a manner as to retain the appearance of a single-family residence.

(g) ***Density.*** An accessory apartment, for the purposes of this section, is termed a dwelling unit and the resulting density must comply with the Fort Myers Beach Comprehensive Plan.

Sec. 34-1178. Accessory apartments in owner-occupied homes.

(a) ***Purpose.*** The purpose of this section is to recognize and legalize certain existing accessory apartments where the immediate presence of a property owner is presumed to mitigate any negative effects that might result from the use or rental of such apartments.

(b) ***Applicability.*** This section sets forth special requirements for a single accessory apartment in an owner-occupied home. Nothing in this section authorizes or legalizes any construction that is not allowed by the flood-hazard regulations found in §§ 6-401 through 6-475 of this code.

(c) ***Definition***. For purposes of this section, the term "accessory apartment" means a single living unit no larger than 850 square feet, with or without cooking facilities, that was in existence as of December 15, 1997. For such an accessory apartment to remain lawful under this section, the property owner or an immediate family member must be in residence on the premises, or on an immediately adjoining lot, during any period when the apartment is not vacant.

(d) ***Density.*** An accessory apartment that meets the requirements of this section is a living unit but not a dwelling unit as defined by the Fort Myers Beach Comprehensive Plan and is not counted in residential density computations (see § 34-632(5)b.).

Sec. 34-1179. Trucks and commercial vehicles in residentially zoned districts.

Except for daytime deliveries or service calls, the following types of trucks or commercial vehicles may not be parked or stored on any lot in a conventional or redevelopment zoning district. Planned development zoning districts may allow the parking of these trucks if explicitly permitted by its zoning resolution:

(1) A tractor-trailer or semi-trailer truck; or
(2) A truck with two or more rear axles; or
(3) A truck with a gross vehicle weight rating (GVWR) in excess of 12,000 pounds; or
(4) Any truck and trailer combination resulting in a combined gross vehicle weight rating (GVWR) in excess of 12,000 pounds.

Secs. 34-1180--34-1200. Reserved.

DIVISION 3. SEXUALLY-ORIENTED BUSINESSES

Sec. 34-1201. Applicability of division.

This division shall apply to all sexually-oriented businesses (as defined in the Fort Myers Beach Sexually Oriented Businesses Regulation Ordinance, Ord. 96-04).

Sec. 34-1202. Definitions.

Sexually-oriented business means a sexually-oriented business as defined in the Fort Myers Beach Sexually Oriented Businesses Regulation Ordinance, Ord. 96-04.

Sec. 34-1203. Purpose of division.

The purpose of this division is to provide reasonable regulations to alleviate the adverse effects of sexually-oriented businesses on adjacent and nearby uses of land.

Sec. 34-1204. Prohibited locations.

No use of land for purposes governed by this division shall be located closer than 1,000 feet, measured on a straight line, from:

(1) The closest wall of any building containing a similar use; or
(2) Any district which allows residential uses; or
(3) Any hotel, motel, restaurant, school (noncommercial), day care center (child), park, playground, place of worship, religious facility, public recreation facility, or cultural facility.

Secs. 34-1205--34-1230. Reserved.

DIVISION 4. AIRCRAFT

Sec. 34-1231. Use of engine-propelled aircraft.

(a) No person shall take off or land any aircraft that is propelled by an engine within the limits of the Town of Fort Myers Beach unless the aircraft is registered with the Federal Aviation Administration or an aircraft owned by a governmental agency.

(b) In accordance with FAA requirements, no aircraft, as defined in subsection (a), shall fly over the land of the Town of Fort Myers Beach.

Secs. 34-1232--34-1260. Reserved.

DIVISION 5. ALCOHOLIC BEVERAGES

Sec. 34-1261. Definitions.

For purposes of this division and when referred to elsewhere in this chapter, certain terms or phrases shall have the following meaning:

Alcoholic beverage means distilled spirits and all beverages, other than medicine, intended for human consumption and containing one-half of one percent or more alcohol by volume.

Beach means an area of sand along the Gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.

Beer, *wine*, and *liquor* have the same meanings as provided in F.S. chs. 563, 564, and 565, respectively.

EC (Environmentally Critical) zoning district. When used in this division, EC zoning district only refers to beach areas located in the Recreation category on the future land use map.

Erosion control line means the line established by the Board of Trustees of the Internal Improvement Trust Fund prior to the commencement of a beach erosion control project in accordance with the provisions of F.S. § 161.141-161.211. Pursuant to F.S. § 161.191, title to all lands seaward of the erosion control line shall be deemed to be vested in the state by right of its sovereignty, and title to all lands landward of the erosion control line shall be vested in the riparian upland owners whose lands either abut the erosion control line or would have abutted the line if it had been located directly on the line of mean high water on the date the board of trustees' survey was recorded.

Full course meals means items on a menu at a restaurant which include soups and salads, main dishes with side orders, and desserts.

Kitchen, commercial means a facility used for the preparation of food which is sold to the public and that is subject to state and local health department inspections.

Licensed premise means the geographic area approved by either administrative approval, special exception, or other approval, for the retail sale, service, and consumption on-site of alcoholic beverages.

Liquor license means a license issued by the state for the retail sale, service, and consumption of liquor.

Mean high water line means the intersection of the tidal plane of mean high water with the shore. Mean high water is the average height of high waters over a 19-year period. See F.S. § 177.27(14-15).

Park, only when used in this division, means a park facility which is owned, leased, or operated by a governmental agency. It does not include beach access strips.

Public beach means any beach which is below mean high water lines; is owned by the town or county; has arisen upon it a right of customary use by the public; has arisen upon it a public easement, prescriptive or otherwise; or is the fore shore of tidal navigable waters, that is the land between the high water mark and the low water mark, and is owned by the state.

Sale of, only when used in this division, includes the term "or service."

Sunset means the daily disappearance of the sun below the horizon to the west, due to the earth's rotation.

Sec. 34-1262. Compliance with applicable regulations.

No structure, building, establishment, or premises shall be occupied, used, or maintained for the purpose of the retail sale, service, or consumption of alcoholic beverages except in conformity with all applicable town regulations, including this chapter, and with the applicable state regulations.

Sec. 34-1263. Sale for *off-premises* consumption.

(a) ***Where permitted***. The sale of alcoholic beverages for consumption off the premises shall be allowed in any zoning district where retail stores are a permitted use, provided that package stores must meet the additional regulations set forth in subsection (d) of this section.

(b) ***Sealed containers only***. Only alcoholic beverages in original factory-sealed containers shall be permitted to be sold for off-premises consumption.

(c) ***State liquor laws***. Any establishment engaged in the sale of alcoholic beverages for consumption off-site shall be required to comply with all applicable state liquor laws.

(d) ***Location of package stores***. No package store or other establishment *primarily* engaged in the retail sale of liquor for consumption off-site shall be permitted closer than 500 feet to any place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit, or 500 feet from any other establishment primarily engaged in the sale of alcoholic beverages.

(1) For purposes of this subsection, the distance shall be measured in a straight line from any public entrance or exit of the establishment to the nearest property line of the place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit, or any public entrance or exit of any other establishment primarily engaged in the sale of alcoholic beverages.

(2) Where an establishment for the sale of alcoholic beverages is located in conformity with the provisions of this subsection, and a place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit is subsequently established in the proximity of such existing establishment, then the separation requirements shall not apply.

(3) Notwithstanding subsection (d) (1) of this section, where a package store is located in a multiple-occupancy complex which is 25,000 square feet or greater in size, or in a retail sales establishment wherein the sale of alcoholic beverages for consumption off-site is clearly incidental to other retail sales commodities, such as in a grocery store, supermarket, or drugstore, the separation requirements from any dwelling unit shall not apply.

(4) In any planned development zoning district where the applicant is contemplating the sale of alcoholic beverages for consumption off the premises in an establishment which cannot meet the distance requirements set forth in subsection (d) of this section, the applicant shall request a deviation from the requirements of subsection (d).

Sec. 34-1264. Sale or service for *on-premises* consumption.

(a) ***Approval required.*** The sale or service of alcoholic beverages for consumption on the premises shall not be permitted until such location has been approved by the town as follows:

(1) ***Administrative approval***. The director may administratively approve the sale or service of alcoholic beverages for consumption on the premises when in conjunction with the following uses if the proposed use satisfies the requirements set forth in this division. When circumstances so warrant the director may determine that administrative approval is not the appropriate action and that the applicant must instead apply for approval as a special exception. Such circumstances may include the previous denial of a similar use at that location, the record of public opposition to a similar use at that location, and similar circumstances. When the director has approved a request for consumption on the premises at a location where the actual building has not been constructed, the director shall not approve another request for consumption on the premises which could potentially violate the distance requirements. If the first building is completed within less than one year, and it can be shown the second use would not violate the prescribed distance requirements, the director may approve the second location subject to all other requirements contained in this division.

a. *Bars or cocktail lounges* located in commercial zoning districts which permit bars or cocktail lounges, provided the

standards set forth in subsections (b)(1) and (3) of this section are met;

b. *Charter, party fishing boat, or cruise ship,* provided the standards of section (b)(3) are met. The COP approval is specific to the charter, party fishing boat, or cruise ship operating from a specific location and does not run with the land nor is it transferable.

c. *Clubs and membership organizations* located in commercial zoning districts, where permitted, provided the standards set forth in subsections (b)(2)d and (b)(3) of this section are met;

d. *Cocktail lounges in golf course clubs,* provided the standards set forth in subsections (b)(2)c and (b)(3) of this section are met;

e. *Hotels/motels,* provided the standards set forth in subsections (b)(2)b and (b)(3) of this section are met; and

f. *Restaurants,* provided the standards set forth in subsections (b)(2)a and (b)(3) of this section are met.

(2) ***Special exception.***

a. A special exception for consumption on the premises shall be required for:

1. Any establishment not covered by subsection (a)(1) of this section; or
2. Any establishment which provides outdoor seating areas for its patrons consuming alcoholic beverages, except that a restaurant may have outdoor seating approved administratively provided the outdoor seating area is not within 500 feet of a place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit under separate ownership.

b. The burden of proof that the grant of the special exception will not have an adverse effect on surrounding properties lies with the applicant.

c. A single special exception for consumption on the premises for a multiple-occupancy complex in a conventional zoning district shall be sufficient to permit consumption on the premises in every restaurant which exists or may be established within the multiple-occupancy complex.

(3) ***Planned developments.***

a. No administrative approval is necessary where an individual establishment or other facility proposing consumption on the premises is explicitly designated on the master concept plan and is included on the approved schedule of uses.

b. If consumption on the premises is shown as a permitted use on the approved schedule of uses for a multiple-occupancy complex, no administrative approval for consumption on the premises shall be required for restaurants within the multiple-occupancy complex.

c. Consumption on the premises for other uses within planned developments require administrative approval or a special exception.

(b) ***Location; parking.***

(1) ***Prohibited locations.***

a. Except as may be exempted in subsections (a)(1) or (b)(2) of this section, no establishment for the sale or service of alcoholic beverages for consumption on the premises shall be located within 500 feet of:

1. A place of worship, religious facility, school (noncommercial), day care center (child), or park;
2. A dwelling unit under separate ownership, except when approved as part of a planned development; or
3. Another establishment primarily engaged in the sale of alcoholic beverages for consumption on the premises, excluding those uses listed under subsection (b)(2) of this section.

Distance shall be measured from any public entrance or exit of the establishment in a straight line to the nearest property line of the place of worship, religious facility, school (noncommercial), day care center (child), dwelling unit, or park, or to the closest public entrance or exit of any other establishment primarily engaged in the sale of alcoholic beverages.

b. Where an establishment for the sale of alcoholic beverages is located in conformity with the provisions of this subsection, and a place of worship,

religious facility, school (noncommercial), day care center (child), park or dwelling unit is subsequently established in the proximity of such existing establishment, then the separation requirements shall not apply.

(2) ***Exceptions to location standards.*** Exceptions to location standards are as follows:

a. *Restaurants*, provided:

1. The restaurant is in full compliance with state requirements;
2. The restaurant serves cooked, full-course meals, prepared daily on the premises; and
3. Only a service bar is used and the sale or service of alcoholic beverages is only to patrons ordering meals, or, if the restaurant contains a cocktail lounge for patrons waiting to be seated at dining tables, the lounge shall be located so that there is no indication from the outside of the structure that the cocktail lounge is within the building.
4. The other requirements of § 34-1264(k) shall be met.

b. *Hotels/motels*:

1. The hotel/motel contains at least 100 guest rooms under the same roof and that bars or cocktail lounges are located within the hotel or motel and under the same roof; and
2. The exterior of the building must not have storefronts or give the appearance of commercial or mercantile activity visible from the street.

If the use contains windows visible from the street, the windows shall be of fixed, obscure glass. Access to the cocktail lounge or bar must be through the lobby. Additional entrances are not permitted unless the additional entrance or door opens into an enclosed courtyard or patio The additional entrance may not be visible from the street. A fire door or exit shall be permitted, provided that the door or exit is equipped with panic type hardware and is maintained in a locked position except in an emergency.

c. *Golf course clubhouses*, provided that:

1. The golf course consists of at least nine holes a clubhouse, locker rooms, and attendant golf facilities, and comprises in all at least 35 acres of land.
2. Failure of such club to maintain the golf course, clubhouse, and golf facilities shall automatically terminate the privilege of the cocktail lounge and sale of beer from the refreshment stands.

d. *Membership organizations*, provided that:

1. such club or organization conforms to all the requirements of F.S. ch. 561 and other applicable state laws, and
2. there are no signs or other indications visible from the exterior of the clubhouse, building, or structure that alcoholic beverages are served.

(3) ***Parking.*** Restaurants providing alcoholic beverages for consumption on the premises must comply with the parking requirements set forth in § 34-2020(d)(2). Any bar or cocktail lounge must provide parking in accordance with § 34-2020(d)(2). All other uses must meet the parking requirements of the principal use.

(c) ***Procedure for approval.***

(1) ***Administrative approval.***

a. *Application.* An applicant for a consumption on the premises permit shall submit the following information on a form provided by the town:

1. The name, address, and telephone number of the applicant.
2. The name, address, and telephone number of the owner of the premises, if not the applicant.
3. A notarized authorization from the property owner to apply for the permit.
4. Location by STRAP and street address.
5. Type of state liquor license being requested.
6. A site plan, drawn to scale, showing:
   i. The property in question, including all buildings on the property and adjacent property;
   ii. Entrances to and exits from the building to be used by the public;

iii. A parking plan, including entrances and exits;
iv. The floor area of the building and proposed seating capacity. If a restaurant is proposing a bar or lounge for patrons waiting to be seated in the restaurant, the floor area and seating area of the lounge shall be shown in addition to the restaurant seating area.

7. A town map marked to indicate all of the property within 500 feet of the building to be used for consumption on the premises.
8. An notarized affidavit executed by the applicant indicating that no place of worship, religious facilities, day care centers (child), noncommercial schools, dwelling units or parks are located within 500 feet of the building to be used.

b. *Findings by director.* Prior to permit approval, the director shall conclude that all applicable standards have been met. In addition, the director shall make the following findings of fact:
1. There will be no apparent deleterious effect upon surrounding properties and the immediate neighborhood as represented by property owners within 500 feet of the premises.
2. The premises are suitable in regard to their location, site characteristics, and intended purpose. Lighting must be shuttered and shielded from surrounding properties.

(2) ***Special exception.***
a. Applications for special exceptions shall be submitted on forms supplied by the town and shall contain the same information as required for administrative approval.
b. Advertisements and public hearings shall be conducted in accordance with the requirements set forth in article II of this chapter.

(d) ***Temporary one-day permit.***
(1) *Intent; applicability.* It is the intent of this subsection to require that nonprofit and for-profit organizations and establishments in the town obtain a one-day temporary alcoholic beverage permit for the sale of alcoholic beverages at the specific location where an event is held. This subsection will pertain to but not necessarily be limited to the following uses:
a. Grand openings or open houses at residential or commercial developments;
b. Special outdoor holiday or celebration events at bars and restaurants;
c. Weddings and other special occasions at clubhouses;
d. Political rallies or events;
e. Block parties; and
f. Carnivals.

(2) Only twelve temporary alcoholic beverage permits may be issued per year to a specific location. If more than twelve permits are sought per year for a specific location, then the location must obtain a permanent alcoholic beverage special exception. If the event for which the temporary alcoholic beverage permit is sought continues for longer than one day, the applicant may petition the director for an extended permit. A temporary alcoholic beverage permit may not be issued for more than three days.
(3) *Procedure for approval.*
a. Any owner, lessee, or tenant seeking approval for consumption on the premises for a temporary alcoholic beverage permit, must submit a written request to the director. The written request must include:
1. The name and address of the applicant;
2. A general description of the exact site where alcoholic beverages are to be sold and consumed;
3. The type of alcoholic beverages to be sold and consumed; and
4. A fee in accordance with the adopted fee schedule.

b. The director will make a final decision within ten working days. The decision will be in the form of approval, approval with conditions or denial. The director may forward the request to other appropriate agencies for comment.
c. The town council will review all requests for temporary alcoholic beverage permits where an event will run longer than three days. Under no circumstances will a

temporary alcoholic beverage permit be issued for more than ten days.

(e) ***Expiration of approval.*** After the following time periods, the administrative or special exception approval of a location for the sale and consumption of alcoholic beverages on the premises granted in accordance with this section shall expire, and become null and void:

(1) In the case of an existing structure, the approval shall expire six months from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. For purposes of this subsection, the term "operation" shall be defined as the sale of alcoholic beverages in the normal course of business.

(2) In the case of a new structure, the approval shall expire one year from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. The director may grant one extension of up to six months if construction is substantially complete.

(f) ***Transfer of permit.*** Alcoholic beverage permits, as noted in subsection 34-1264(i), issued by virtue of this section are a privilege running with the land. Sale of the real property shall automatically vest the purchaser with all rights and obligations originally granted to or imposed on the applicant. Such privilege may not be separated from the fee simple interest in the realty.

(g) ***Expansion of area designated for permit.*** The area designated for an alcoholic beverage permit cannot be expanded without filing a new application for an alcoholic beverage permit in accordance with the requirements contained in this chapter. The new application must cover both the existing designated area as well as the proposed expanded area. All areas approved must be under the same alcoholic beverage permit and subject to uniform rules and regulations.

(1) **Regulations applicable to expansion into EC zoning district.** A lawfully permitted establishment may expand the area where service of alcoholic beverages is permitted into an adjacent EC zoning district, subject to the following conditions and subject to the procedures established in § 34-1264(g)(2):

a. *Area of expansion.* The beach ecosystem is dynamic in nature and the physical characteristics of the EC zoning district are subject to change. Since the public has a right of access to the public beach area, pedestrian access to the shoreline must be a paramount consideration when determining the area where COP is permitted, understanding that the shoreline's location can vary greatly during extreme weather and tidal events, as well as due to erosion of the beach. The town manager shall therefore have the authority to temporarily enforce reductions in the area of expansion for the licensed premise into the EC zoning district when necessary to protect natural systems from the encroachment permitted by this subsection.

b. *Defined area.* The area of expansion of a COP licensed premises extending seaward into the EC zoning district, shall be limited to no more than 33% of the land area between the landward EC zoning district boundary and the mean high water line (up to a maximum of 100 feet), provided, however, that the erosion control line shall be used in place of the mean high water line in those areas where the beach has been nourished and provided further that at least fifty feet (50') remains for the public's right of passage along the beach. The side setbacks for the area of COP expansion shall be the same as the principal structure side yard setback in the adjacent upland zoning district. In instances where an existing licensed establishment has an existing deck and/or building that is seaward of the EC zoning line, the measurement of the allowable area of expansion shall commence from the most seaward point of the rear deck or building. Dominion and control of the area of the licensed premise that extends into the EC zoning district shall be established by rope and post. Required dune plantings may either be relocated to the area of the beach that is immediately seaward of the area of COP expansion, or the area of COP expansion may be shifted seaward to accommodate the existing required dune planting area. The rope and post shall

extend from the rear of the upland licensed premise in the adjacent zoning district and shall define the area in the EC zoning district where COP is permitted. Specific requirements for the rope and post method of dominion and control are established in subsection 34-1264(g)(1)b.4 below.

1. *Standard conditions of approval.* The following requirements shall be applicable to all premises that are approved for COP in the EC zoning district. Violation of any of the following provisions may be grounds for revocation in accordance with § 34-1264(i):
   - -a- The area of expansion of licensed premises in the EC zoning district must be under the same ownership as the principal upland licensed premise (as licensed by the State of Florida Division of Alcoholic Beverages and Tobacco) and the upland licensed premise must be located immediately adjacent to and contiguous with the EC zoning district.
   - -b- Patrons of the permitted establishments may not bring any alcoholic beverages or coolers into the licensed premise in the EC zoning district, nor may they consume any alcohol that has not been purchased from the permitted establishment.
   - -c- Alcohol served in the EC zoning district may not be dispensed in glass or aluminum containers of any type.
   - -d- The permit holder shall be responsible for ensuring that the licensed premises in the EC zoning district is free of litter and debris. Refuse containers that meet the requirements of § 34-1264(g)(1)b.4.d must be provided.
   - -e- Hours of service and consumption for the area of the licensed premises that is located in the EC zoning district shall be limited to between the hours of 11:00 AM and 1 hour after sunset or 9:00 PM, whichever is earlier, except for any additional hours that may have been granted by a special events permit. Hours granted by a previously granted special exception shall prevail.
   - -f- Entertainment within the area of the licensed premises that is located in the EC zoning district may only be accomplished by special exception or special events permit, unless previously granted by special exception.
   - -g- Applicant shall maintain a valid certificate of insurance that covers the area of the licensed premises that is located in the EC zoning district.
   - -h- The maximum area of expansion for the first 100 linear feet (or portion thereof) of property fronting the Gulf shall be 2,500 square feet. An additional ten (10) square feet may be added to the area of expansion for each additional foot of frontage on the Gulf.
   - -i- The property shall comply with all sea turtle protection requirements contained in Chapter 14 of this code.
2. All conditions applicable to the upland area, as previously approved, shall likewise apply within the expanded area. In the event of any conflict with conditions for the expanded area of licensed premises in the EC zoning district established herein, the provisions herein shall prevail within the expanded area.
3. No additional parking shall be required for the area of expansion in the EC zoning district.
4. *Rope and post requirements:*
   - -a- The permit holder shall establish dominion and control of the area of expansion in the EC zoning district with rope and post.
   - -b- Rope and post shall have the same side yard setback as the principal structure in the adjacent upland zoning district. New dune vegetation may be planted on the outer side of the rope and post.
   - -c- A maximum of one six-foot-wide pedestrian access opening is allowed

per one hundred feet of the rope and post along the side parallel to the waterline.

-d- The permit holder must provide refuse containers at each pedestrian access point onto the beach to ensure that no outside alcoholic beverage containers are brought onto the licensed premise, and that no alcoholic beverage cups are taken off of the licensed premise onto the beach.

-e- Each access point in the rope and post to the beach shall contain a sign, at each entrance, stating on both sides, "NO ALCOHOL ALLOWED BEYOND THIS POINT." The sign shall have maximum dimensions of two (2) feet by one (1) foot.

(2) **Procedure for approval of COP in the EC zoning district.** The following procedures are applicable to premises seeking expansion of COP into the EC zoning district:

a. *Administrative approval:* An establishment that has been approved for COP in the DOWNTOWN zoning district prior to September 4, 2012, may expand the area where COP is permitted into an adjacent EC zoning district by administrative approval, subject to all conditions contained in § 34-1264(g)(1). Existing establishments with prior approval for COP in the EC zoning district must come into compliance with the conditions set forth in § 34-1264(g)(1) through the administrative approval process prior to March 4, 2013, or such use will become non-conforming and any future expansion will require special exception approval. The community development director, in his/her sole discretion, may require any administrative approval application to undergo special exception approval.

b. *Special exception:*

1. Any establishment in the DOWNTOWN zoning district that has not been approved for COP prior to September 4, 2012, may seek approval for expansion of COP into the EC zoning district, provided it is requested at the time the COP in the DOWNTOWN zoning district is sought and provided further that all conditions identified in § 34-1264 (g)(1) are met.
2. No establishments located outside the DOWNTOWN zoning district shall be approved for COP in EC unless such establishment was approved for COP prior to September 4, 2012.

c. *Commercial Planned Development:*

1. No establishments located outside the DOWNTOWN zoning district shall be approved for COP in EC unless such establishment was approved for COP prior to September 4, 2012.
2. Existing establishments located outside the DOWNTOWN zoning district with COP permitted in EC through either CPD zoning or a special permit previously approved by Lee County will be considered nonconforming and may only expand the area for COP by bringing their property into compliance with current regulations by incorporating the conditions of § 34-1264(g)(1) through the administrative approval process.

(h) ***Nonconforming establishments.***

(1) *Expansion.* A legally existing establishment engaged in the sale or service of alcoholic beverages which is made nonconforming by reason of new regulations contained in this chapter shall not be expanded without a special exception. The term "expansion," as used in this subsection, shall include the enlargement of space for such use and uses incidental thereto, the expansion of a beer and wine bar to include intoxicating liquor, as that term is defined by the Florida Statutes, and the expansion of a bar use to a nightclub use. Nothing in this subsection may be construed as an attempt to modify any prohibition or diminish any requirement of the state.

(2) *Abandonment.* An establishment engaged in the sale or service of alcoholic beverages may thereafter become a nonconforming use due

to a change in regulations, as provided in division 3 of article V of this chapter. Nonconforming uses may continue until there is an abandonment of the permitted location for a continuous nine-month period. For purposes of this subsection, the term "abandonment" shall mean failure to use the location for consumption on the premises purposes as authorized by the special exception, administrative approval, or other approval. Once a nonconforming use is abandoned, it cannot be reestablished unless it conforms to the requirements of this chapter and new permits are issued.

(i) ***Revocation of permit or approval.***

(1) The town council has the authority to revoke an alcoholic beverage special exception, administrative approval, or other approval upon any of the following grounds:
   a. A determination that an application for special exception or administrative approval contains knowingly false or misleading information.
   b. Violation by the permit holder of any provision of this chapter, or violation of any state statute which results in the revocation of the permit holder's state alcoholic beverage license by the state alcoholic beverage license board or any successor regulatory authority.
   c. Repeated violation of any town ordinance at the location within the 12-month period preceding the revocation hearing.
   d. Failure to renew a state liquor license, or written declaration of abandonment by the tenant and owner of the premises if under lease, or by the owner himself if not under lease.
   e. Abandonment of the premises. An establishment which continually maintains (renews) its state liquor license, even though it has suspended active business with the public, shall not be deemed to have been abandoned for purposes of this subsection.
   f. Violation by the permit holder of any condition imposed upon the issuance of the special exception or administrative approval.
   g. Violation of any of the minimum standards of the special exception.

(2) Prior to revoking an administrative approval, special exception, or other approval for alcoholic beverages, the town council shall conduct a public hearing at which the permit holder may appear and present evidence and testimony concerning the proposed revocation. At the hearing, the town council may revoke the permit if a violation described in this subsection is established by a preponderance of the evidence. The permit holder shall be notified of the grounds upon which revocation is sought prior to any hearing, and shall be given notice of the time and place of the hearing in the same manner as set forth in article II of this chapter.

(3) When an alcoholic beverage permit is revoked in accordance with the terms of this subsection, the town may not consider a petition requesting an alcoholic beverage permit on the property for a period of 12 months from the date of final action on the revocation.

(4) Upon written demand of the town council, any owner or operator of an establishment with a COP license, must make, under oath, a statement itemizing the percentage of gross receipts that are from the sale of alcoholic beverages. Failure to comply with such demand within 60 days of the date of demand shall be grounds for revocation of the special exception, administrative approval, or other approval.

(j) ***Appeals.*** All appeals of decisions by the director shall be in accordance with procedures set forth in § 34-86 for appeals of administrative decisions.

(k) ***Alcoholic beverages in restaurants.*** The sale of alcoholic beverages for on-premises consumption in restaurants (see § 34-1264(b)(2)) must conform to the following regulations:

(1) The sale of alcoholic beverages must be incidental to the sale of food, and restaurants permitted to serve alcohol shall provide that food service facilities will remain open serving appropriate food items on the menu at all times coincident with the sale of alcoholic beverages.

(2) The sale of alcoholic beverages shall be permitted only when it accounts for no more than 49% of the combined gross sales attributable to the sale of food and all beverages during any continuous twelve-month period.
(3) Restaurants selling alcoholic beverages shall keep separate books and records reflecting the gross sales of food and nonalcoholic beverages and the gross sales of alcoholic beverages for each month. The failure to keep the books and records required herein shall be a violation of this code.
(4) The town manager or designee may, during normal working hours, request to inspect and audit the books and records of the business from which alcoholic beverages sales are made wholly for the purpose of verifying that the gross sales of alcoholic beverages are no more than 49% of the gross sales of food and all beverages during any continuous twelve-month period. Refusal of an owner or operator of such business to allow said inspection shall be a violation of this code. Should the audit reveal that this requirement is not being met, the town manager shall initiate enforcement proceedings for a violation of this code.
(5) For any restaurant which has been selling alcoholic beverages for less than twelve months, the provisions of this section shall be interpreted and applied with respect to said lesser period of time.
(6) These regulations may be enforced through the normal code enforcement procedures of this code (for example, § 1-5, or article V of ch.2). In addition to these procedures, violations of these regulations may be restricted by injunction initiated by the Town of Fort Myers Beach, by any citizen thereof, or by any person affected by the violation of such regulations.

Secs. 34-1265--34-1290. Reserved.

DIVISION 6. ANIMALS

Sec. 34-1291. Keeping of animals.

The keeping, raising, or breeding of any livestock, including poultry, usually and customarily considered as farm animals, and the keeping, raising, or breeding of reptiles, marine life, or animals not indigenous to the state, shall not be permitted. This shall not be interpreted as applying to pet stores or hobbyists keeping aquariums or domestic tropical birds in their own homes.

Secs. 34-1292--34-1320. Reserved.

DIVISION 7. ANIMAL CLINICS AND KENNELS

Sec. 34-1321. Permitted activities.

(a) Kennels, animal clinics, and boarding facilities are limited to the raising, breeding, treating, boarding, training, grooming, and sale of domestic animals.

(b) Kennels, animal clinics, and boarding facilities are permitted in any zoning district where *Offices, general or medical* are a permitted use.

Sec. 34-1322. Enclosure of facilities.

All animal clinics, animal kennels, and boarding facilities shall be completely enclosed within an air conditioned, soundproof building and shall have no outdoor cages, pens, runs, or exercise facilities.

Secs. 34-1323--34-1350. Reserved.

DIVISION 8. AUTOMOTIVE BUSINESSES

Sec. 34-1351. Automobile repair

(a) All services performed by an automobile repair establishment, including repair, painting, and body work activities, shall be performed within a completely enclosed building.

(b) Whenever an automotive repair establishment is within 75 feet of a residential use, all refuse and vehicle parts shall be stored within a completely enclosed area.

(c) New or expanded automobile repair establishments can be permitted only through approval of a suitable planned development zoning district (see § 34-620(d)) or as a special exception where allowed by Tables 34-1 and 34-2 in § 34-622.

Sec. 34-1352. Display, sale, or storage facilities for vehicles.

(a) *Applicability.* This section applies to all establishments engaged in the outdoor display, sale, or storage of motor vehicles, recreational vehicles, trailers, construction equipment, and similar vehicles and equipment.

(b) *New or expanded uses.* New or expanded establishments can be permitted only through approval of a suitable planned development zoning district (see § 34-620(d)).

(c) *Setbacks.*
(1) All buildings and structures shall comply with the setback requirements for the zoning district in which the use is located.
(2) All items covered by this section which are displayed or offered for sale shall be set back a minimum of ten feet from any property line, unless ch. 10 sets forth a different setback, in which case the greater setback will apply.

(d) *Display and parking areas.*
(1) No parking space or loading zone required by the parking regulations set forth in this chapter shall be used for the display of merchandise.
(2) Areas used for display may be grass or other surface, provided it is maintained in a sightly, dustfree manner.

(e) *Storage areas.* Areas used for the commercial storage of motor vehicles, trailers, recreational vehicles, and construction equipment which is not being displayed for sale or rent shall be enclosed (see division 36 of this article), unless *Storage, open* is permitted through approval of a suitable planned development zoning district (see § 34-620(d)).

(f) *Lighting.* Artificial lighting used to illuminate the premises shall be directed away from adjacent properties and streets, shining only on the subject site.

Sec. 34-1353 Automobile rental.

New or expanded establishments renting automobiles or trucks must obtain a special exception for *Automobile rental* in accordance with division 2 of article III of this chapter.

Secs. 34-1354--34-1380. Reserved.

DIVISION 9. BUS STATIONS AND TRANSIT TERMINALS

Sec. 34-1381. Purpose of division.

The purpose of this division is to set forth standards and criteria for the safe and efficient development of transit terminals whereby they may be permitted by special exception in accordance with Tables 34-1 and 34-2. A central transit terminal is encouraged by Policy 7-D-1 of the Fort Myers Beach Comprehensive Plan to connect local trolleys and taxis with an airport shuttle service.

Sec. 34-1382. Site plan.

All applications for a transit terminal shall include a site plan, drawn to scale, indicating but not limited to following:

(1) The location of the bus stalls.
(2) Commuter parking, if provided.
(3) Taxi waiting stalls.
(4) Circulation pattern of the buses including ingress and egress points.
(5) The location of any building housing the transit terminal and the area designated for a waiting area, to include the storage and handling of luggage and parcels.

Sec. 34-1383. Access.

The site plan shall be designed so that the location of ingress and egress points and turning radii are adequate for the anticipated vehicles.

Sec. 34-1384. Parking

(a) *Parking.* The parking for a transit terminal where the loading and unloading of passengers, luggage, or parcels may occur shall meet the following minimum requirements:

(1) Parking spaces shall be required for all buses using the site. A minimum of one bus parking space shall be required for each bus carrier using the facility. If arrival and departure times run concurrently, then additional parking must be provided to ensure that each bus has a separate parking space.
(2) The parking spaces for each bus stall shall be designated by signage and pavement markings and
(3) For every 12 daily scheduled bus arrivals and departures, or a portion thereof, at locations where passengers may disembark, one parking space for taxicabs and one parking space for commuters shall be required.

(b) *On-street parking.* In some instances, it may be appropriate for a transit terminal to have the buses parked within an adjacent road right-of-way. In all such instances, the location of the bus turnout, proximity to the transit terminal, and how the bus will enter and exit the turnout must be shown on the site plan.

Secs. 34-1385--34-1410. Reserved.

DIVISION 10. CARE AND ASSISTED LIVING FACILITIES

Sec. 34-1411. Assisted living facilities.

(a) ***Location.*** Assisted living facilities (ALF's) may be located in zoning districts as specified in Tables 34-1 and 34-2 in § 34-622, but they are subject to the maximum density for the land use category applicable to the subject property, with density calculated in accordance with §§ 34-1415.

(b) ***Design.*** An assisted living facility must be designed so as to appear as, and be compatible with, adjacent residential buildings.

(c) ***Parking.*** For parking requirements, see § 34-2020(d)(1).

Secs. 34-1412–34-1413. Reserved.

Sec. 34-1414. Continuing care facilities.

(a) ***Generally.*** Continuing care facilities (CCF's) may only be located in a CPD or RPD district, if enumerated on the master concept plan.

Continuing care facilities shall be subject to the maximum density for the land use category applicable to the subject property, with density calculated in accordance with § 34-1415.

(b) ***Design; required facilities.***

(1) A continuing care facility shall provide housing for older persons pursuant to title VII USC.
(2) A continuing care facility must provide full common dining facilities on the site. Individual units may be equipped with kitchens, but an average of at least one meal a day must be provided by the continuing care facility for all residents.
(3) A continuing care facility must incorporate one or more resident services on the site, such as banking facilities, barbershops, or beauty shops, pharmacies, and laundry or dry cleaning.
(4) A continuing care facility must provide a shuttle bus service or similar transportation service for residents.

(c) ***Parking.*** For parking requirements, see § 34-2020(d)(1) et seq.

Sec. 34-1415. Density equivalents.

(a) Where assisted living facilities (ALF), continuing care facilities (CCF), or other "group quarters" are provided in living units, each of which has its own cooking facilities, density equivalents will be calculated on a 1:1 ratio.

(b) Except as may be specifically set forth elsewhere in this chapter, where assisted living facilities, continuing care facilities, or other "group quarters" are provided in living units or other facilities wherein each unit does not have individual cooking facilities and where meals are served at a central dining facility or are brought to the occupants from a central kitchen, density equivalents will be calculated at the ratio of four people being equivalent to one dwelling unit.

(c) Independent living units within a licensed continuing care facility will be calculated on the basis of two independent living units being equivalent to one residential dwelling unit.

Secs. 34-1416--34-1440. Reserved.

DIVISION 11. COMMERCIAL ANTENNAS AND COMMUNICATION TOWERS

Sec. 34-1441. Purpose and intent.

(a) The purpose of this division is to regulate commercial antennas, the structures on which they are located, and communication towers. Wireless telephone service providers are also affected by F.S. 365.172.

(b) Cellular telephones and other personal communications services rely on a network of antennas. Due to its location, Fort Myers Beach can be served partially by nearby antennas on the mainland and partially by antennas placed on tall buildings within the town. Only rarely, if ever, will a free-standing communications tower be needed to support any type of commercial antenna. These regulations are designed to facilitate the location of commercial antennas on tall buildings and also to provide a procedure for approving a new communication tower where it can be demonstrated conclusively that one is required.

(c) Amateur radio antenna/towers and satellite dishes are not regulated by this division; see § 34-1175.

Sec. 34-1442. Definitions

For purposes of this division, certain terms are defined as follows:

Alternative support structure means any man-made structure, except communication towers, including, but not limited to, buildings, power poles, light poles, clock towers, bell towers, steeples, water towers, and other similar structures suitable for the attachment of commercial antennas.

Commercial antenna means an exterior apparatus used for transmitting and/or receiving radio-frequency signals for the convenience of users not employed or residing on the premises.

Communication tower means a tower structure that is designed and constructed primarily to elevate one or more commercial antennas for communications purposes, whether such tower is mounted on the ground or on another structure.

Old tower means a communication tower that existed or was granted a special exception prior to March 3, 2003.

New tower means a communication tower that requires approval under this section.

Sec. 34-1443. Commercial antennas mounted on alternative support structures.

(a) ***Zoning districts.*** Commercial antennas on alternative support structures may be approved in all zoning districts, except that no commercial antenna may be permitted on a single family or two-family home or its accessory building or structure.

(b) ***Administrative approval required.*** The town manager may issue administrative approval for commercial antennas to be mounted on alternative support structures when they comply with the standards in subsection (c) and the remainder of this code. The town manager's decision may be appealed in accordance with § 34-86.

(c) ***Standards.*** Commercial antennas mounted on alternative support structures must meet the following standards:

(1) Neither the antenna, its supporting structure, or any ancillary structure may extend more than 10 feet above the highest existing point of the roof; and

(2) The antenna and related structures including equipment rooms shall be concealed from view or designed and maintained to blend into the surrounding environment.
   a. Concealment may be accomplished using parapet walls or existing mechanical facilities, or through the use of screening devices such as lattice enclosures.
   b. Blending may be accomplished through the physical arrangement of antenna elements and through painting or coating of surfaces to match the primary structure in a way that makes them visually unobtrusive.

(3) The antenna and related structures must be insured against damage to persons and property. A certificate of insurance must be provided to the town manager annually.

(d) ***Nonconformities.*** The installation of a commercial antenna on a nonconforming building or a building containing a nonconforming use will not be deemed to constitute the expansion of the nonconformity.

Sec. 34-1444. Commercial antennas mounted on communication towers.

(a) ***Required zoning approvals.*** New communication towers suitable for commercial antennas may be approved by special exception, as provided in division 2 of article III of this chapter, subject to the additional requirements of this division. Special exception applications for communication towers must also include the same documentation for antenna-supporting structures required by Lee County through its land development code.

(b) ***Required sharing of communication towers.*** The owner/operator of any proposed new communication tower must enter into an agreement (shared-use plan agreement) with the town or county requiring the owner/operator of the proposed tower to honor all reasonably and technically feasible requests for shared use of the tower for additional commercial antennas.

(1) New towers must be designed to withstand a wind load of at least 120 mph (TIA/EIA Standard 222-F) and must accommodate three additional carriers with a minimum wind loading of 160 sq. ft. factored area including the mounting bracket.

(2) Once a shared-use plan for a tower is approved, additional antennas may be added to that tower in accordance with the approved shared-use plan without additional special exception approval.

(c) ***Development standards for communication towers.*** The owner/operator of any new communication tower must also obtain a development order and comply with the specific application requirements and development standards for antenna-supporting structures required by Lee County through its land development code.

Secs. 34-1445--34-1550. Reserved.

DIVISION 12. DRUG PARAPHERNALIA

Sec. 34-1551. Drug paraphernalia defined.

The term "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of state law. Drug paraphernalia includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in the planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived.
(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances.
(3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance.
(4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness, or purity of, controlled substances.
(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances.
(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances.
(7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, cannabis.
(8) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances.
(9) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances.
(10) Containers and other objects used, intended for use, or designed for use in storing, concealing, or transporting controlled substances.
(11) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body.
(12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body, such as:
    a. Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls.
    b. Water pipes.
    c. Carburetion tubes and devices.
    d. Smoking and carburetion masks.
    e. Roach clips, meaning objects used to hold burning material, such as a cannabis cigarette, that has become too small or too short to be held in the hand.
    f. Miniature cocaine spoons and cocaine vials.
    g. Chamber pipes.
    h. Carburetor pipes.
    i. Electric pipes.
    j. Air-driven pipes.
    k. Chillums.
    l. Bongs.
    m. Ice pipes or chillers.
    n. A cartridge or canister, which means a small metal device used to contain nitrous oxide.
    o. A charger, sometimes referred to as a "cracker," which means a small metal or plastic device that contains an interior pin that may be used to expel nitrous oxide from a cartridge or container.
    p. A charging bottle, which means a device that may be used to expel nitrous oxide from a cartridge or canister.
    q. A whip-it, which means a device that may be used to expel nitrous oxide.

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.

DIVISION 14. ESSENTIAL SERVICES, ESSENTIAL SERVICE EQUIPMENT, AND ESSENTIAL SERVICE BUILDINGS

Sec. 34-1611. Purpose of division.

The purpose of this division is to set forth the development regulations for uses defined in § 34-2 as essential services, essential service equipment, and essential service buildings.

Sec. 34-1612. Where permitted

(a) All essential services, as defined in § 34-2, are permitted by right as shown in Table 34-1 when necessary for the day-to-day operation of the service, subject to the requirements set forth in this division.

(b) New or expanded essential service equipment, as defined in § 34-2, is permitted by right as shown in Table 34-1 when necessary for the day-to-day operation of the service, subject to the requirements set forth in this division.

(c) New or expanded essential service buildings, as defined in § 34-2, are permitted by special exception as shown in Table 34-1 if the building(s) are sited, constructed, and maintained to appear as a conventional building that would be permitted in the site's zoning district. All other new or expanded essential service buildings can be permitted only through approval of a suitable planned development zoning district (see § 34-620(d)).

Sec. 34-1613. Reserved.

Sec. 34-1614. Height of structures in visibility triangle.

No portion of any building or structure regulated by this division which exceeds two feet in height shall be permitted within the visibility triangle set forth in § 34-3131, pertaining to vehicle visibility.

Sec. 34-1615. Maximum number of structures per residential block.

Not more than one structure or group of structures which collectively exceed 150 cubic feet in volume shall be permitted on the same side of a street within any residential block, unless a minimum separation of four lot widths is observed between the structures.

Sec. 34-1616. Screening and buffering.

(a) Structures or equipment (excluding transmission poles) exceeding 3 feet in height, or which individually or collectively on the same parcel exceed 27 cubic feet in volume, must be of neutral, non-glare color or finish so as to make them as visually unobtrusive as possible.

(b) Structures or equipment (excluding transmission poles) exceeding 3 feet in height, or which individually or collectively on the same parcel exceed 80 cubic feet in volume, must be of neutral, non-glare color or finish and be shielded on all sides by shrubs at least 3 feet high at time of planting consistent with the requirements of § 10-420.

Sec. 34-1617. Exemptions from property development regulations.

Essential services or essential service equipment shall be exempt from the property development regulations which set forth minimum lot size, area, dimensions, and setbacks, except that above-ground essential services or essential service equipment may not be placed closer than 3 feet to any sidewalk or bike path or to the right-of-way of Estero Boulevard.

Secs. 34-1618--34-1650. Reserved.

DIVISION 15. EXCAVATIONS

Sec. 34-1651. Required approvals.

No manmade water detention or retention bodies shall be commenced prior to receiving approval in accordance with the provisions of ch. 10. A certificate to dig shall be obtained prior to receiving approval to excavate properties located within Level 1 or Level 2 zones of archaeological sensitivity pursuant to ch. 22.

Secs. 34-1652--34-1740. Reserved.

DIVISION 16. RESERVED

DIVISION 17. FENCES, WALLS, AND ENTRANCE GATES

Sec. 34-1741. Applicability of division.

This division shall apply to all fences, walls, and entrance gates which are not specifically exempted in this division. This division shall not apply to seawalls (see ch. 26 for regulations on seawalls).

Sec. 34-1742. Design and construction of fences and walls.

(a) ***Building permits required.*** All fences and walls that are over 25 inches in height shall comply with established building permit procedures.

(b) ***Design.*** All fences and walls on each property must have reasonably uniform or complementary materials and design. Figure 34-28 shows several recommended designs for fences and walls.

(c) ***Materials.*** Fences and walls must be constructed of traditional building materials including brick, stone, stucco over concrete block, finished concrete, metal, vinyl, wood (natural, stained, or painted), and composite products manufactured specifically for fences and walls. Non-traditional fence materials such as tires, mufflers, hubcaps are prohibited. Chain link and other wire fences are not permitted in front yards (the area between a street right-of-way or easement and the minimum required street setback or build-to line).

(d) ***Finished sides.*** Fences and walls must be constructed to present a finished side to adjoining lots and any abutting rights-of-way. Where there is an existing fence, wall, or continuous landscape hedge on the adjoining parcel, the director may waive this provision administratively.

(e) ***Maintenance.*** After construction, fences and walls must be maintained with all original components and they must remain substantially vertical to serve their functions and aesthetic purposes. Structural integrity must not be compromised to the point that the fence would present a danger of flight or destruction during high winds.

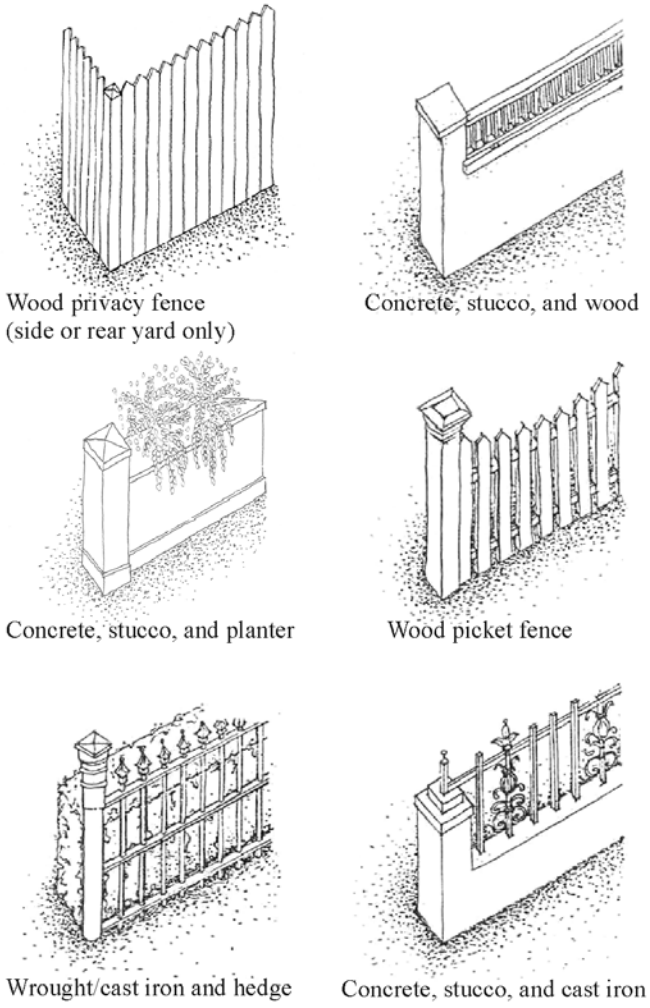


Figure 34-29

(f) ***Dangerous fences.*** No barbed wire, spire tips, sharp objects, or electrically charged fences shall be erected except that a fence 72 inches high with three strands of barbed wire on top of the fence with six-inch spacing between the strands of barbed wire may be required or approved by the director around structures or equipment of potential hazard to residents or passersby not otherwise protected. However, chain link and other non-decorative wire fences may not be used in front yards (the area between a street right-of-way or easement and the minimum required street setback or build-to line).

Sec. 34-1743. Reserved.

Fences and Walls

Sec. 34-1744. Location and height of fences and walls.

(a) ***Setbacks.*** Except as may be specifically permitted or required by other sections of this chapter or chapter 10, no fence or wall, excluding seawalls, shall be erected, placed, or maintained:

(1) Within any street right-of-way or street easement, or closer than 3 feet to any sidewalk or bike path or to the right-of-way of Estero Boulevard.

(2) Closer to the Gulf of Mexico than permitted by ch. 6, article III.

(3) Closer than five feet to the mean high-water line along natural water bodies, including canals created from sovereign lands, except that, where the canal is seawalled, the fence may be built immediately landward or on top of the seawall.

(b) ***Height.*** The maximum height for fences and walls, measured from the existing elevation of the abutting property, is illustrated in Figure 34-29 and described as follows:

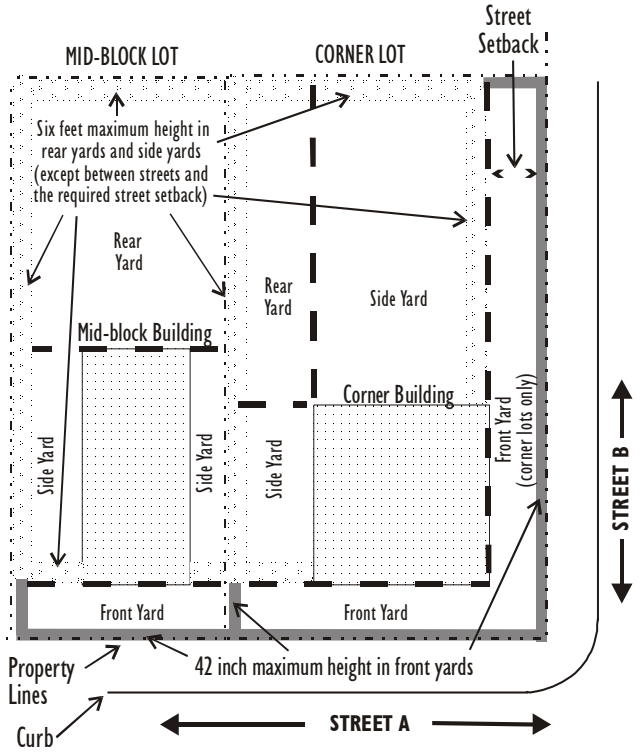


Figure 34-30

(1) ***Front yards.*** Any fence or wall located in a front yard (between a street right-of-way or easement and the minimum required street setback or build-to line) shall not exceed 42 inches in height, except as provided in subsection 34-1744(b)(4) below. This division does not excuse any fence wall from compliance with any lesser height required to meet vehicle visibility requirements (see § 34-3131) at traffic access points.

(2) ***Side and rear yards.*** Any fence or wall located in a side or rear yard shall not exceed six feet in height.

a. For purposes of this requirement, the side yard does not include any portion of the lot between a street and the minimum required street setback or build-to line.

b. Where a side or rear yard slopes downward from the street, a fence may be up to seven feet above the elevation of the abutting property to avoid unnecessary variations in the height of a fence.

(3) ***Near water bodies.*** Within 25 feet of a body of water, those portions of a fence that exceed 42 inches in height cannot be more than 25% opaque (as viewed from perpendicular to the fence).

(4) ***Exceptions:***

a. *Architectural features.* Fences and walls may include occasional architectural features such as columns, posts, gates, and arbors at a height not exceeding 84 inches. All such features must be visually compatible with the fence or wall design.

b. *Administrative setback variances.* Under certain limited circumstances, administrative variances can be granted to minimum setbacks as provided in § 34-268.

c. *Enclosure of high-voltage transformers.* See § 34-1748.

d. *Screening of refuse containers.* On sites where the location and configuration of existing structures and vehicle use areas prevent the placement of refuse containers outside the front yard, fences and/or walls erected for the sole purpose of providing reasonable screening of refuse containers located in a front yard may exceed 42 inches in height, but must not exceed six feet in height.

Sec. 34-1745. Buffer for commercial uses.

Some land uses are required to provide perimeter buffers in accordance with §§ 34-3005 or 10-416. Where buffers are required by other provisions of this code, this division will not interpreted to restrict the height, location, or other features of required buffers.

Sec. 34-1746. Reserved.

Sec. 34-1747. Construction in easements.

Nothing in this division shall be construed so as to permit the construction or placing of any construction within a public or private easement which prohibits such construction or placement.

Sec. 34-1748. Enclosure of high-voltage transformers and other utility equipment.

All substation high-voltage transformers and any other utility structures or equipment of potential hazard to residents or passersby not otherwise protected shall be completely enclosed by a fence not less than eight feet in height. On top of the fence shall be three strands of barbed wire with a six-inch spacing in between each strand. However, chain link and other non-decorative wire fences may not be used in front yards (the area between a street right-of-way or easement and the minimum required street setback or build-to line).

Sec. 34-1749. Entrance gates.

(a) Entrance gates are not permitted on public or private streets. Decorative entrance features that do not restrict access may be placed along public or private streets provided permission is granted by the town and others entity with authority over the right-of-way or easement.

(b) Entrance gates may be placed on private property that is not subject to any access easements in order to control access to a private parking lot or to a parking lot that lawfully rents parking spaces to the general public. Adequate stacking space must be provided in front of the gate to avoid interference with traffic flow on adjoining streets.

(c) Access for emergency vehicles must be provided to any existing entrance gates on private streets.

(1) Any security gate or similar device that is not manned 24 hours per day must be equipped with an override mechanism acceptable to the local emergency services agencies or an override switch installed in a glass-covered box for the use of emergency vehicles.
(2) If an emergency necessitates the breaking of an entrance gate, the cost of repairing the gate and the emergency vehicle if applicable, will be the responsibility of the owner or operator of the gate.

Secs. 34-1750--34-1770. Reserved.

DIVISION 18. HOME OCCUPATIONS; LIVE/WORK AND WORK/LIVE DWELLINGS

Sec. 34-1771. Intent of division.

It is the intent of this division to allow the operation of:

(a) *Home occupations*, by right, in all districts permitting dwelling units, but to regulate them so that the average neighbor, under normal circumstances, will not be disturbed or inconvenienced by them; and

(2) *Live/work and work/live dwelling units*, by right or by special exception as specified in Tables 34-1 and 34-2 in § 34-622, but to regulate them so that their mixed-use character is compatible with their neighborhood and is maintained over time.

Sec. 34-1772. Home occupations.

(a) Any use of a residence for a home occupation as defined by this chapter shall be clearly incidental and subordinate to its use for residential purposes by its occupants and thus is considered to be a residential accessory use and is permitted in accordance with the regulations in this section in all zoning districts except EC.

(b) Such use shall be conducted entirely within the dwelling unit or customary accessory building.

(c) No employees or contractors other than members of the household residing in the dwelling shall be permitted to work at the residence, but may be employed to work elsewhere provided that the employees do not regularly come to the residence for equipment, vehicles, or supplies. Under special conditions, such as a handicapped person or retiree needing clerical assistance, the director may grant administrative approval to allow one employee who is not a resident of the home to work at the residence.

(d) There shall be no exterior indication that the dwelling is being used for any purpose other than a residence, except that one nonilluminated nameplate, not exceeding one square foot (144 square inches) in area, may be attached to the building on or next to the entrance.

(e) No commodities, stores, or display of products on the premises shall be visible from the street or surrounding residential area, and no outdoor display or storage of materials, goods, supplies, or equipment used in the home occupation shall be permitted on the premises. Vehicles and trailers for use by the business may not be parked or stored on the premises unless completely enclosed within a building.

(f) No equipment shall be used which creates noise, vibration, glare, fumes, or odors outside the dwelling unit that are objectionable to the normal senses.

(g) A home occupation shall not generate greater volumes of traffic than would otherwise be expected by normal residential uses, and a home occupation shall not attract more than an average of ten total visits per week from customers, clients, and suppliers.

Sec. 34-1773. Live/work dwelling units.

(a) A live/work dwelling unit is defined by this chapter as a single dwelling unit in a detached building, or in a multifamily or mixed-use building, that also accommodates limited commercial uses within the dwelling unit.

(b) The predominate use of a live/work unit is residential, and commercial activity is a secondary use. The quiet enjoyment expectations of residential neighbors takes precedence over the work needs of a live/work unit.

(c) Commercial uses in live/work units must be conducted entirely within the unit or customary residential accessory building.

(d) Up to two employees or contractors other than members of the immediate family residing in the dwelling may work in a live/work unit.

(e) Ground signs and pole signs are not permitted. Signage for live/work units is limited to up to four square feet of nonilluminated nameplates or blade signs that are attached to the building on or next to the entrance.

(f) No commodities, stores, or display of products on the premises shall be visible from the street or surrounding residential area, and no outdoor display or storage of materials, goods, supplies, or

equipment used in the live/work unit shall be permitted on the premises.

(g) Required parking spaces shall be in accordance with the residential parking standards in § 34-2020, plus 1 space per employee.

(h) No equipment shall be used which creates noise, vibration, glare, fumes, or odors outside the dwelling unit that are objectionable to the normal senses.

(i) Commercial uses in live/work units are limited to *Office, general or medical* as defined by this chapter (see § 34-2). However, due to the residential nature of live/work units, visits from customers, clients, and suppliers shall average no more than a total of thirty visits per week.

Sec. 34-1774. Work/live dwelling units.

(a) A work/live dwelling unit is defined by this chapter as a single dwelling unit in a detached building, or in a multifamily, mixed-use, or commercial building, where the predominate use of the unit is commercial.

(b) Because the predominate use of a work/live unit is commercial, customary commercial impacts may take precedence over the quiet enjoyment expectations of residential neighbors.

(c) Commercial uses in work/live units must be conducted entirely within the unit or customary accessory building.

(d) Signs shall be in accordance with the standards for business signs in ch. 30.

(e) Required parking spaces shall be in accordance with the commercial parking standards in § 34-2020, plus 2 spaces for the dwelling unit.

(f) Commercial uses in work/live units are limited to *Office, general or medical; Personal services; Restaurant;* and *Retail store, small,* as defined by this chapter (see § 34-2).

Secs. 34-1775--34-1800. Reserved.

DIVISION 19. HOTELS, MOTELS, AND BED-AND-BREAKFAST INNS

Sec. 34-1801. Definitions and general requirements.

(a) The following definitions from § 34-2 are repeated here for convenience:

(1) ***Bed-and-breakfast inn*** means a public lodging establishment with nine or fewer guest units that serves breakfast to overnight guests. A bed-and-breakfast inn may be located in a single building or in a cluster of separate buildings.

(2) ***Guest unit*** means a room or group of rooms in a hotel/motel or bed-and-breakfast inn that are designed to be used as temporary accommodations for one or more people traveling together. All guest units provide for sleeping and sanitation, although sanitation may be provided through shared bathrooms. Guest units may be equipped with partial or full kitchens.

(3) ***Hotel/motel*** means a building, or group of buildings on the same premises and under single control, which are kept, used, maintained, or advertised as, or held out to the public to be, a place where sleeping accommodations are supplied for pay to transient guests for periods of one day or longer.

(4) ***Lock-off accommodations*** means a single guest unit or living unit designed in such a manner that at least one room and a bathroom can be physically locked off from the main unit and occupied as a separate unit. Each portion may have a separate outside entry or share a common foyer with separate lockable interior doors, or may share a lockable door or doors separating the two units.

(b) Hotels/motels and bed-and-breakfast inns must:

(1) Be licensed as transient public lodging establishments with the Florida department of business and professional regulation; and

(2) Pay the levied tourist development tax promulgated by the county and the state sales tax; and

(3) Provide and staff a front desk during regular business hours to arrange for the rental of guest units; and

(4) Guest units may not be occupied by the same guest for more than 60 days in any year. "Guest" includes the guest's children and parents. "Year" means the period beginning October 1 and ending September 30 of each successive year.

Hotels/motels and bed-and-breakfast inns which do not meet these requirements will be subject to enforcement action (see § 34-266). Proposed developments that will not meet these requirements will not be approved as hotels/motels or bed-and-breakfast inns; if approved instead as multiple-family buildings, they will be subject to the density limitations and property development regulations for multiple-family buildings.

(c) Guest units in new hotels/motels and bed-and-breakfast inns may be sold as timeshare units or as hotel condominiums provided that they meet all requirements of this code for hotels/motels or bed-and-breakfast inns.

(d) Guest units in existing hotels/motels and bed-and-breakfast inns that are being parcelized to timeshare units or hotel condominiums do not need to comply with the special parcelization requirements of § 34-636.

Sec. 34-1802. Size of guest units.

(a) ***Method of measurement.*** For purposes of this division, the size of a guest unit is the actual square footage within each guest unit including balconies and private patios, but not including common facilities such as corridors, stairways, shared bathrooms, or other common spaces including utility areas or parking spaces.

(b) ***Hotels/motels.*** Individual guest units in a hotel/motel must be at least 180 square feet in size, except as provided in § 34-1803(b)(2).

(c) ***Bed-and-breakfast inns.*** Individual guest units in a bed-and-breakfast inn must be at least 120 square feet in size.

Hotels and Motels

Sec. 34-1803. Allowable intensity.

(a) ***Hotels/motels.*** When a hotel/motel is permitted on a property, guest units can be substituted for the dwelling units that would be allowed on that property (see § 34-632 regarding density). The maximum number of guest units can be computed by multiplying the maximum number of dwelling units by the appropriate equivalency factors:

(1) The following table indicates the equivalency factors that apply to properties in various land-use categories in the Fort Myers Beach Comprehensive Plan:

Comprehensive Plan land-use category:	***Equivalency factors for guest units of various sizes [1] (in square feet):***		
	< 450	***450 to 750***	***750 to 1,000***
Mixed Residential	2.0	1.5	1.0
Boulevard	2.5	2.0	1.5
Pedestrian Comm.[2]	3.0	2.5	2.0
(all others)	0.0	0.0	0.0

[1] see § 34-1802

[2] see also § 34-1803(b)

(2) Guests units exceeding these equivalency factors or exceeding 1,000 square feet each may be allowed under exceptional circumstances as described in the Comprehensive Plan if approved as a deviation through a planned development rezoning. Before approving such a deviation, the town council must find that:
   a. All other aspects of the development (height, traffic, intensity of use, etc.) are compatible with the surrounding area;
   b. The proposal clearly exceeds all standards of the Fort Myers Beach Comprehensive Plan; and
   c. In no case can equivalency factor increases exceed the maximum intensities allowed by the Fort Myers Beach Comprehensive Plan.

(3) Where lock-off accommodations are provided, each keyed room will be counted as a separate guest unit.

(b) ***Hotels on Old San Carlos Boulevard.*** The 1999 Old San Carlos Boulevard – Crescent Street Master Plan encourages mixed-use buildings with second and third floors over shops on Old San Carlos Boulevard. To help implement this plan, an alternate method is provided by Comprehensive Plan Policy 4-C-6 for computing maximum hotel intensities for properties between Fifth to First Streets that lie within 200 feet east and west of the centerline of Old San Carlos Boulevard. In this situation and location only:

(1) Guest units may be substituted for otherwise allowable office space without using the equivalency factors in § 34-1803(a), provided that all other requirements of this code are met including minimum parking requirements and maximum floor-area-ratios.
(2) These guest units must contain at least 250 square feet each.
(3) The standard height limit at this location is three stories. Under no circumstances may a deviation be granted that would allow these guest units in any building taller than four stories. (The ground level is counted as the first story.)

(c) ***Bed-and-breakfast inns.*** The intensity of bed-and-breakfast inns shall be calculated in the same manner as for hotel/motels, except that inns with three or fewer guest rooms per building are exempt from the requirement to use equivalency factors to measure their intensity.

Sec. 34-1804. Parking.

(a) ***Hotels/motels.*** The minimum requirement for off-street parking is 1.2 parking spaces for guest units up to 450 square feet and 1.5 spaces for each larger guest unit. Ancillary uses located in separate buildings and available to nonguests must provide parking spaces in accordance with the requirements of division 26 of this article.

(b) ***Bed-and-breakfast inns.*** The minimum requirement for off-street parking is 1 parking space for each guest room plus 1 space for the owners' quarters.

Sec. 34-1805. Additional regulations for bed-and-breakfast inns.

(a) Whenever guests are present, the owner or operator must live on the premises or on abutting property, or if the inn is in a cluster of separate buildings the owner or operator must live in one of the buildings.

(b) The maximum continuous length of stay for guests is 90 days.

(c) Each guest unit must be accessed by a common corridor or outside door rather than through another guest unit or dwelling unit.

(d) Food service is limited to breakfast and/or snacks and may be served only to overnight guests.

(e) A single non-illuminated identification sign up to four square feet in area may be mounted onto each building.

Sec. 34-1806. Replacing a nonconforming hotel/motel.

(a) A nonconforming hotel/motel can be replaced with a new building in one of the following manners:

(1) In full conformance with all current provisions of this code as they apply to a new hotel/motel on vacant land; or
(2) In the same manner as provided for enlargements to the various types of nonconforming buildings as provided in § 34-3234; or
(3) As provided in the *pre*-disaster buildback regulations found in § 34-3237 or the *post*-disaster buildback regulations found in § 34-3238.

(b) If a nonconforming hotel/motel is being replaced by a multiple-family building, the existing number of guest units cannot be used as the basis for rebuilding more dwelling units than are permitted on undeveloped land by the Fort Myers Beach Comprehensive Plan. The equivalency factors in § 34-1803 are not applicable to replacement of an existing hotel/motel with a new multiple-family building.

Sec. 34-1807. Conversions of existing buildings.

(a) Any hotel or motel proposing to parcelize its guest units to timeshare units or to a hotel condominium does not need to comply with the special parcelization requirements of § 34-636.

(b) Any hotel or motel proposing to convert its guest units to dwelling units, or any residential building proposing to convert its dwelling units to hotel/motel guest units, will be required to comply with density limitations of the Fort Myers Beach Comprehensive Plan, all applicable parking regulations, and all other regulations of this code including equivalency factors that affect the allowable number of hotel/motel guest units.

Secs. 34-1808--34-1830. Reserved.

DIVISION 20. LIGHTING STANDARDS

Sec. 34-1831. Purpose and applicability of division.

(a) ***Purpose.*** The purposes of this division are:
(1) to curtail and reverse the degradation of the night time visual environment by minimizing light pollution, glare, and light trespass through regulation of the form and use of outdoor lighting, and
(2) to conserve energy and resources while maintaining night-time safety, utility, security, and productivity.

(b) ***Applicability.*** All new luminaires, regardless of whether a development order is required, must comply with the provisions and standards of this division.

(c) ***Exemptions.*** The following are generally exempt from the provisions of this division:
(1) Emergency lighting required for public safety and hazard warning luminaires required by federal or state regulatory agencies;
(2) Outdoor light fixtures producing light directly by the combustion of fossil fuels such as kerosene and natural or bottled gas;
(3) Low wattage holiday decorative lighting fixtures (comprised by incandescent bulbs of less than 8 watts each or other lamps of output less than 100 lumens each) used for holiday decoration; and
(4) Lighting for public roads except as provided in § 14-77.

Sec. 34-1832. Definitions.

The following words, terms, and phrases, when used in this division, shall have the following meanings, unless the context clearly indicates a different meaning:

Back-lighted means a surface that is at least partially transparent and is artificially illuminated from behind.

Direct light means light emitted directly from the lamp, off the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire.

Footcandle means the quantify of light striking a surface, measured in lumens per square foot.

Full cutoff means that a light fixture in its installed position does not emit any light. either directly or by reflection or diffusion, above a horizontal plane running through the lowest light-emitting part of the fixture. Additionally. the fixture in its installed position does not emit more than 10% of its total light output in the zone between:

(1) the horizontal plane through the lowest light-emitting part of the fixture, and
(2) 10 degrees below the horizontal plane (80 degrees above the vertical plane).

Lumen means a unit of light emission. For example, incandescent light bulbs with outputs of 60, 75, and 100 watts emit approximately 840, 1170, and 1690 lumens respectively.

Luminaire means a complete unit for producing artificial light, commonly referred to as a lighting fixture.

Mercury vapor means a high-intensity discharge light source that is filled with mercury gas under pressure and which emits a blue/white light.

Non-essential lighting means lighting that is not necessary for an intended purpose after the purpose has been served. For example, lighting for a business sign, architectural accent lighting. and parking lot lighting may be considered essential during business or activity hours, but is considered non-essential once the activity or business day has concluded.

Shielded means that an outdoor light fixture that is fully and permanently blocked by a physical device or by its integral design from discharging light in specific directions.

Sec. 34-1833. Technical standards for lighting.

(a) **Generally.** This section contains minimum and maximum standards that apply whenever outdoor lighting is provided.

(1) In addition to the standards and criteria in this section, there are standards for artificial lighting near sea turtle nesting habitat in ch. 14, article II of this code.
(2) When specific standards are not addressed in these sources, the standards of the Illuminating Engineering Society of North America (IESNA) will apply.

(b) ***Specific standards.***

(1) **Illuminance.** The following table indicates minimum and maximum illumination levels. These levels are specified for general use categories and are measured in footcandles on the task surface (for example, the lighted parking lot or walkway) with a light meter held parallel to the ground, facing up, unless otherwise specifically stated.

Use/Task	*Minimum (1)*	*Maximum (average) (1), (2), (3), (4)*
PARKING LOTS – MULTI-FAMILY:		
Medium vehicular/pedestrian activity	0.8	3.2
Low vehicular/pedestrian activity	0.3	1.2
PARKING LOTS – COMMERCIAL/ INSTITUTIONAL/ MUNICIPAL:		
Medium activity, e.g., major shopping districts, cultural/civic/ recreational facilities	0.8	3.2
Low activity, e.g., neighborhood retail, offices, employee parking, school/church parking	0.3	1.2
NON-RESIDENTIAL WALKWAYS & BIKEWAYS	0.3	1.5
CANOPY OVER FUEL PUMPS	6.0	30.0

NOTES:

(1) The specified illumination levels are the initial levels to be measured at the time of final inspection for a certificate of compliance. Outdoor lighting must be maintained so the average illumination levels do not increase above the specified maximum values. The minimum illumination levels may decrease over time consistent with the Light Loss Factor (LLF) associated with the installed fixtures.

(2) In no case may the illumination exceed 0.5 footcandles measured at the property line. The amount of illumination projected onto a residentially zoned property or use from another property may not exceed 0.2 footcandles measured at 10 feet from the property line onto the adjacent residential property.

(3) Maximum values listed in this column are the average of actual measurements taken throughout the lighted area at the time of final inspection.

(4) Where all-night safety or security lighting is to be provided, the lighting intensity levels should provide the lowest possible illumination to discourage crime and undesirable activity and to effectively allow surveillance, but may not exceed 50 percent of the levels normally permitted for the use as specified in this code.

(2) **Lamp standards.** Lamp types and colors must be in harmony with the adjacent community, any special circumstances existing on the site, and with surrounding installations. Lamp types must be consistent with the task and setting and should not create a mix of colors unless otherwise specifically approved by the director for a cause shown. Specifically, mercury vapor lamps are prohibited. Lighting of outdoor recreational facilities (public or private) such as athletic fields and tennis courts is exempt from the lamp type standards provided that all other applicable provisions are met.

(3) **Luminaire (fixture) standards.** Fully shielded, full cutoff luminaires with recessed bulbs and flat lenses are the only permitted fixtures for outdoor lighting, with the following exceptions:

a. Luminaires that have a maximum output of 260 lumens per fixture (the approximate output of one 20-watt incandescent bulb), regardless of number of bulbs, may be left unshielded provided the fixture has an opaque top to keep light from shining directly up.

b. Luminaires that have a maximum output of 1,000 lumens per fixture (the approximate output of one 60-watt incandescent bulb), regardless of number of bulbs, may be partially shielded, provided the bulb is not visible, and the fixture has an opaque top to keep light from shining directly up.

c. Sensor-activated lighting may be unshielded provided that:

1. The light is located in such a manner as to prevent direct glare and lighting into properties of others or into a public right-of-way, and
2. The light is set to only go on when activated and to go off within five minutes after activation has ceased, and
3. The light must not be triggered by activity off the property.

d. Flood or spot luminaires with a lamp or lamps rated at 900 lumens or less may be used except that no spot or flood luminaire may be aimed, directed, or focused such as to cause direct light from the luminaire to be directed toward residential buildings on adjacent or nearby land, or to create glare perceptible to persons operating motor vehicles on public ways, or directed skyward, or directed towards the shoreline areas.

1. The luminaire must be redirected or aimed so that illumination is directed to the designated areas and its light output controlled as necessary to eliminate such conditions.
2. Illumination resulting from such lighting must be considered as contributing to the illumination levels specified herein.

e. All externally illuminated signs must be lighted by shielded fixtures mounted at the top of the sign and aimed downward. Illumination resulting from sign lighting must be considered as contributing to the illumination levels specified herein.

f. Fixtures used to accent architectural features, materials, colors, style of buildings, landscaping, or art must be located, aimed, and shielded so that light is directed only on those features. Such fixtures must be aimed or shielded to minimize light spill onto adjacent properties or into the night sky in conformance with illumination and luminaire standards.

g. All non-essential exterior commercial lighting must be turned off after business hours.

(4) **Luminaire mount standards.** The following standards apply to luminaire mountings.

a. ***Freestanding luminaires.*** Light poles must be placed on the interior of the site. When light poles are proposed to be placed on the perimeter of the site, specific consideration should be addressed to compliance with the illumination standards at the property line and off the property onto adjacent

residential property. The maximum height of light poles for parking lots and vehicular use areas may not exceed 15 feet measured from the ground level directly below the luminaire to the bottom of the lamp itself (see additional restrictions in ch. 14 for luminaires near sea turtle nesting habitat). Light poles located within 50 feet of a residentially zoned property or use may not exceed 12 feet. Poles used to illuminate pedestrian walkways may not exceed 12 feet. Lighting of outdoor recreational facilities (public or private) such as athletic fields and tennis courts is exempt from the mounting height standards provided that all other applicable provisions are met.

b. ***Building-mounted luminaires.*** These luminaires may only be attached to the building walls and the top of the fixture may not exceed the height of the parapet for flat roofed buildings or the lowest point on the nearest sloped roof.
c. ***Canopy lighting.*** Luminaires mounted on the underside of a canopy must be fully shielded full cutoff fixtures. As an alternative (or supplement) to canopy ceiling lights, indirect lighting may be used where the light is beamed upward and then reflected down from the underside of the canopy. When this method is used, light fixtures must be shielded so that direct illumination is focused exclusively on the underside of the canopy. No part of the canopy may be back-lighted. Lights may not be mounted on the top or sides (fascias) of the canopy. The sides (fascias) of the canopy may not be illuminated in any manner.
d. ***Trees and landscaping.*** To avoid conflicts, locations of all light poles and fixtures must be coordinated with the locations of all trees and landscaping whether existing or shown on the landscaping plan. Vegetation screens may not be employed to serve as the means for controlling glare. Glare control must be achieved through the use of such means as cutoff fixtures, shields, and baffles, and appropriate application of fixture mounting height, wattage, aiming angle, and fixture placement.

Sec. 34-1834. Permits for lighting.

(a) ***Development order and building permit criteria.*** The applicant for any development order or building permit involving outdoor lighting fixtures, must submit as part of the application evidence that the proposed work will comply with the outdoor lighting standards of this code. Specifically the submission must include the following:

(1) Plans indicating the location on the premises and the type of illuminating devices, fixtures, lamps, supports, reflectors, and other devices.
(2) A detailed description of the illuminating devices, fixtures, lamps, supports, reflectors, and other devices. The description must include manufacturer's catalogue cuts and drawings, including pictures, sections, and proposed wattages for each fixture.
(3) All applications for development orders or building permits, except for single-family and two-family building permits, must provide photometric data, such as that furnished by the manufacturer of the proposed illuminating devices, showing the angle of cut-off and other characteristics of the light emissions including references to the standards contained herein.
(4) All applications for development orders or building permits, except for single-family and two-family building permits, must provide photometrics in initial footcandles output for all proposed and existing fixtures on-site shown on a 20' by 20' grid on an appropriately scaled plan. On-site lighting to be included in the calculations must include, but is not limited to, lighting for parking lot, canopies, and building-mounted and recessed lighting along the building facades and overhangs. The photometric plan must include a table showing the average, minimum, and maximum footcandles of illumination on the site and within 50 feet of the site and the calculations deriving the averages. Evidence must be provided demonstrating that the proposed lighting plan will comply with the requirements of this code. The use of a light loss factor (LLF) is not permitted in these photometrics. This photometric plan must be coordinated with the landscape plan to identify the location of trees and other landscaping features with respect to the lighting devices. Rejection or

acceptance of the photometric plan will be based on this code.

(b) ***Compliance.***

(1) Prior to the final inspection for a certificate of compliance pursuant to § 10-183, site-verified footcandle readings must be provided demonstrating that the outdoor lighting, as installed, conforms with the proposed photometrics and the letter of substantial compliance provided by a registered professional engineer must include a certification that the outdoor lighting is in compliance with this code.

(2) If any outdoor light fixture or the type of light source therein is changed after the permit or development order has been issued, a change request or development order amendment must be submitted for approval together with adequate information to assure compliance with this code. This request or amendment must be approved prior to the installation of the proposed change.

(3) Outdoor lighting must be maintained in compliance with this code.

(c) ***Existing outdoor lighting.*** Light pole height requirements do not apply to existing light poles. Existing light fixtures must be brought into compliance with this code by January 1, 2010. Any fixtures replaced after the date of the adoption of this code must be replaced with fixtures that comply with the standards established herein. Illuminance levels specified in this code apply to all outdoor lighting.

Secs. 34-1835--34-1860. Reserved.

DIVISION 21. MARINE FACILITIES, AND LIVE-ABOARD VESSELS*

***Cross reference(s)**--Marine facilities and structures generally, ch. 26; marine sanitation, § 26-111 et seq.*

Sec. 34-1861. Boats, floating structures, floating equipment, and live-aboards.

(a) No boat, floating structure, or other floating equipment shall be moored to mangroves except for emergency purposes.

(b) No person shall discharge or permit or control or command to discharge any raw sewage, garbage, trash, or other waste materials into the waters of the town.

(c) No boats, floating structures, or other floating equipment designed to accommodate one or more living units, or designed or used for retail sales, shall be permitted to anchor, moor, tie up, or otherwise be attached to any wharf, pier, or other structure emanating from real property or to real property itself within the town except in conformity with the regulations contained in this chapter and all other applicable town ordinances.

(d) Except as provided in this subsection, no person shall live aboard any vessel under his command or control, which is moored to real property or to any dock, pier, seawall, or other structure attached to real property in the town. The provisions of this subsection shall not apply to:

(1) Live-aboard vessels equipped with a discharge device that is listed by the United States Coast Guard as an approved marine sanitation device, and occupied by a licensed captain and his immediate family;

(2) Commercial vessels, such as commercial fishing boats, tugs, barges, salvage vessels, passenger vessels, or cargo vessels, when used in commerce and navigation; or

(3) The mooring of any vessel necessitated by an emergency.

(4) Live-aboard vessels at a marina which is properly zoned for marina uses (see § 26-116).

(5) Live-aboard vessels lawfully occupying a berth in a public mooring field managed by

the town, provided the vessel is in compliance with all regulations.

The exceptions granted by subsections (d)(1) and (2) of this section are not intended to apply to personal fishing boats used for recreation or to fishermen with marine products licenses.

Sec. 34-1862. Reserved.

Sec. 34-1863. Construction and maintenance of docks, seawalls, and other structures designed for use on or adjacent to waterways.

Construction, placement, erection, and maintenance of docks, mooring piles, seawalls, watercraft landing facilities, and other structures designed for use on or adjacent to waterways shall be in compliance with established building permit procedures and with ch. 26, article II. See also division 2 of this article regarding accessory uses, buildings, and structures.

Secs. 34-1864--34-1890. Reserved.

DIVISION 22. RESERVED

Secs. 34-1891--34-1920. Reserved.

DIVISION 23. MOBILE HOMES

Sec. 34-1921. Mobile home subdivisions.

(a) New or expanded mobile home subdivisions are not allowed in the Town of Fort Myers Beach.

(b) A mobile home cannot be substantially improved or placed on any lot in any subdivision except:

(1) to replace an existing mobile home, provided that:
   a. a mobile home is in lawful existence on that lot and the lot has not been vacant for more than nine months,
   b. the replacement or substantially improved mobile home is elevated so that its lowest floor is at or above the base food elevation, in accordance with § 6-472(2)a, and
   c. the move-on permit requirements of § 34-1923 are met; or

(2) on a temporary basis in accordance with § 34-3046.

Sec. 34-1922. Mobile home parks.

(a) New or expanded mobile home parks are not allowed in the Town of Fort Myers Beach.

(b) A mobile home cannot be substantially improved or placed in any existing mobile home park except in some parts of the VILLAGE zoning district in accordance with the regulations set forth in subdivision III of division 5 of article III of this chapter, and in accordance with the elevation requirements of § 6-472(2)b. and the move-on permit requirements of § 34-1923.

Sec. 34-1923. Move-on permit requirements.

(a) This section applies to mobile homes, and also to park trailers as that term is defined in § 34-694, in those zoning districts where either are permitted.

(b) No mobile home shall be relocated or moved onto any property without first obtaining a move-on permit from the director.

(c) All mobile homes shall be tied down in accordance with local, state, and federal regulations, including § 6-471(2) of this code and F.S. § 320.8325.

(d) All mobile homes shall have removable skirting around the entire perimeter.

(1) Skirting shall be of a durable material such as decorative block, concrete block, fiberglass, aluminum or vegetation. Junk doors or other scrap material is prohibited.
(2) Skirting shall be maintained at all times by the resident.

Secs. 34-1924--34-1950. Reserved.

DIVISION 24. MOVING OF BUILDINGS

Sec. 34-1951. Building relocation permit.

(a) ***Compliance with applicable regulations.*** When a building is moved to any location within the town, the building or part thereof shall be made to conform to applicable provisions of the Florida Building Code and to all the provisions of this chapter within 90 days of the date of issuance of the moving permit.

(b) ***Contents of application.*** Any person desiring to relocate or move a building must first file with the director a written application on an official form. The application must include the following information furnished by the applicant and must be accompanied by the required application fee:

(1) The present use of the building.
(2) The proposed use of the building.
(3) The building's present location and proposed new location by STRAP number, as well as by street numbers.
(4) Certified survey of the proposed site with ground elevations, flood zone, and required elevation.
(5) Plot plan showing lot dimensions, setbacks, location of existing structures, and location of building drawn to scale no more than ½-inch equals one inch and no less than one inch equals 50 feet. The plot plan should depict the roof overhang as well as the foundation.
(6) Construction details, drawn to a scale of no larger than one-half inch equals one foot and no smaller than one-eighth inch equals one foot, including the following:
    a. Foundation layout with connection details.
    b. Floor plan, existing and proposed.
    c. Mechanical plans, including air conditioning, electric system, and plumbing plans.
    d. Elevations, front, side, and rear.
    e. Flood elevations for the proposed new location shall be shown on the foundation layout and elevations.
(7) Current termite inspection by licensed pest controller.
(8) Photographs showing all sides of the building and the site where the building is proposed to be located.
(9) Proof of notice to all owners of property abutting or across the street from the site where the building is proposed to be located.
(10) A detailed written statement describing all proposed exterior alterations to the building after it is relocated. At a minimum, these details shall include methods and materials, and construction details as appropriate, regarding:
    a. The height and method of elevating the building above grade;
    b. Any proposed enclosure of space below the lowest habitable floor;
    c. Any changes to exterior doors, windows, siding, awnings, and shutters;
    d. Any porches or decks to be built, modified, or eliminated; and
    e. Any changes to the roof other than routine maintenance or replacement with similar materials.

(c) ***Criteria for suitability of building to proposed site.*** The town manager shall determine whether the building to be relocated is suitable for its proposed site under one of the following categories:

(1) ***Historic buildings***. For buildings that, after relocation, would be eligible for historic designation pursuant to § 22-204(a)-(d):
    a. Is the proposed use of the building permitted by the zoning district?
    b. Has the property owner consented to historic designation of the site after the building is relocated?
    c. Has the property owner proposed improvements that restore the building while retaining its essential historic characteristics, consistent with the criteria in § 22-101–103?

(2) ***Other buildings***. For all other buildings:
   a. Is the proposed use of the building permitted by the zoning district and similar to existing uses in the neighborhood?
   b. Is the building reasonably compatible with the neighborhood when considering factors such as its size, age, and condition? If not, has the property owner proposed sufficient renovations or improvements to the building to achieve compatibility?

The town manager may place reasonable conditions on suitability decisions to bring applications up to these criteria or to ensure the performance of proposed improvements or renovations. Suitability decisions pursuant to this subsection are administrative decisions which may be appealed in accordance with § 34-86.

(d) ***Inspection of building.*** The director will have the building inspected to determine:

(1) If the building can be brought into compliance in all respects with this chapter and other town regulations pertaining to the area to which the building is to be moved.
(2) If the building is structurally sound and either complies with applicable portions of the Florida Building Code and other codes adopted by the town or can be brought into compliance with such codes.

(e) ***Rejection of application.*** The director must reject any application if:

(1) The building fails to meet the suitability criteria in subsection (c), as determined by the town manager, or the inspection criteria in subsection (d) of this section;
(2) In the opinion of the director, the moving of any building will cause serious injury to persons or property;
(3) The building to be moved has deteriorated due to fire or other element to more than 50 percent of its market value, as that term is defined in § 6-405; or
(4) The moving of the building will violate any of the requirements of the Florida Building Code, this code or other applicable town regulations.

Except for decisions as to the Florida Building Code, such decisions are administrative decisions which may be appealed in accordance with § 34-86.

(f) ***Approval of building relocation permit.***

(1) Upon approval of the application for building relocation, a licensed building relocation contractor representing the applicant must:
   a. Apply for and receive all required permits from the departments of transportation of the county or state, if county or state roads will be used during the relocation;
   b. Pay the required fees and obtain the building relocation permit and appropriate sub-permits.
(2) Any building being moved for which a permit was granted may not remain in or on the streets for more than 24 hours unless an extension of an additional 24 hours is approved by the town manager.

Secs. 34-1952--34-1980. Reserved.

DIVISION 25. OFF-STREET LOADING AREAS

Sec. 34-1981. Applicability of division.

(a) The off-street loading requirements of this division shall apply to commercial, and other nonresidential uses.

(b) Establishments are encouraged to schedule deliveries before or after their normal business hours. Deliveries that are made during normal hours may not obstruct parking aisles or parking entrances.

Sec. 34-1982. Access.

(a) Street access to off-street loading areas shall observe the same provisions as set forth for parking lots in § 34-2013.

(b) Except as provided in § 34-1987, off-street loading areas shall be spatially or physically separated from parking areas and pedestrian walkways.

Sec. 34-1983. Lighting, maintenance, and drainage.

Site lighting, maintenance, and drainage required for off-street loading areas shall comply with the provision of §§ 34-2015 and 34-2017.

Sec. 34-1984. Other use of loading areas.

Except as provided in § 34-2019, off-street loading areas shall not be utilized for the sale, repair, dismantling, or servicing of any vehicles or equipment, except on an emergency or temporary basis.

Sec. 34-1985. Screening.

When any off-street loading area is located adjacent to a residential use or zoning district, and is not otherwise entirely visually screened from it at ground level, there shall be provided a continuous visual screen along the lot line abutting the residential use in accordance with division 17 of this article or ch. 10, whichever is the most restrictive.

Sec. 34-1986. Loading area required; loading plan; location of loading area.

(a) All commercial and other nonresidential uses on sites larger than 1 acre shall be provided with an off-street loading area for receiving and shipment of commodities.

(b) A plan for off-street loading areas shall be provided as part of the site plan submitted in accordance with the regulations and procedures set forth in ch. 10, or, if the development is exempt from ch. 10, then a plan shall be submitted at time of application for a building permit and be reviewed by the director for consistency with this division and this chapter.

(c) The location of all off-street loading areas shall embody the following provisions:

(1) The required loading area shall be provided on the same lot or parcel it serves or within 300 feet of that parcel.
(2) The surfaced portions of all loading areas, excluding driveways, shall observe a 20-foot setback from all right-of-way lines and a ten-foot setback from all property under separate ownership or control.
(3) Loading spaces shall be so located as not to obstruct or otherwise hinder or endanger the movement of vehicles and pedestrians.
(4) Off-street loading areas shall not be placed between the principal building and a street right-of-way line.

Sec. 34-1987. Number of spaces.

(a) Establishments which normally receive or ship commodities via small panel trucks or vans shall not be required to provide off-street loading areas and may utilize the parking area, provided:

(1) Deliveries normally are received before or after normal hours open to the public.
(2) No delivery truck remains in the parking lot for more than four hours.
(3) Deliveries do not interfere with normal pedestrian or vehicle movements.

(b) Establishments which receive or ship goods via large semitrailer or full trailer trucks shall provide a minimum of one loading space for the first 10,000 square feet of floor area, plus one space for each additional 20,000 square feet of floor area or major fraction thereof.

Secs. 34-1988--34-2010. Reserved.

DIVISION 26. PARKING

Sec. 34-2011. Types of parking facilities.

Parking facilities in the Town of Fort Myers Beach take a variety of forms, generally classified as follows:

(a) ***Single-purpose parking lots.*** Single-purpose parking lots are designed to serve individual businesses, multiple-family buildings, mixed-use buildings, and multiple-occupancy complexes. Single-purpose parking lots are usually located on the same parcel as the use(s) they serve and may include parking spaces under a building or in a parking garage.

(1) Most single-purpose parking lots are considered by this code to be accessory uses of land (§ 34-1171) and thus can be built to serve any permitted principal use on the same parcel of land.
(2) Some single-purpose parking lots serve two or more non-abutting parcels, as provided in § 34-2018 for joint-use parking lots.
(3) Surplus spaces in some single-purpose parking lots may be rented to the general public during peak periods, as provided in subsection 34-2019(a).

(b) ***Shared parking lots.*** Shared parking lots are open to the public, generally for a fee, regardless of the destination of the person parking there. Shared parking lots may be operated as a private business or by a governmental entity, and may include a surface parking lot and/or a parking garage.

(1) All seasonal shared parking lots require permits that may be issued administratively as provided in § 34-2022 of this chapter.
(2) Permanent shared parking lots are considered a principal use of a parcel of land and may be approved in certain zoning districts only by special exception or through the planned development zoning district procedures.
(3) Parking garages that operate in whole or part as shared parking lots are also considered a principal use of land and may be approved only through the planned development zoning district procedures (see §§ 34-620(d) and 34-676(e))

(c) ***On-street parking.*** Governmental entities sometimes provide on-street parking spaces, usually with parking meters, that are available for use by the public regardless of their destination. On-street parking is closely related to the functioning of the adjoining street and is provided as a public works project rather than being regulated as a land development activity by this code.

Sec. 34-2012. Definitions.

For purpose of this division only, certain words or phrases are defined as follows:

Employees means the regular working staff, paid, volunteer, or otherwise, at maximum strength and in full-time equivalent numbers, necessary to operate, maintain, or service a given facility or use under normal levels of service.

High turnover applies to parking lots where vehicles are parked for relatively short periods of time ranging from a few minutes to several hours. Customer parking for retail stores, restaurants, bars, offices, or similar establishments is considered to be high turnover.

Low turnover applies to parking where vehicles are parked for relatively long periods of time, such as employee parking during the day, uses such as beach parking or marina parking where customers typically leave their cars for periods of several hours or more, and overnight parking in residential developments.

Parking aisle means an accessway within a parking lot that provides direct access to individual parking spaces.

Parking lot means an area of land designed, used, or intended for parking five (5) or more vehicles.

Parking lot entrance means the accessway which provides ingress or egress from a street right-of-way or easement to a parking lot.

Parking space means an area of land designed or intended for parking one (1) vehicle. Some parking spaces are designated as disabled spaces.

Sec. 34-2013. Access.

(a) Each parking lot must have a distinct parking lot entrance. Such entrance must meet the requirements of ch. 10, as well as the following:

(1) Minimum width at the property line for one-way entrances is 10 feet.
(2) Minimum width at the property line for two-way entrances is 20 feet.
(3) Maximum width at the property line is 25 feet.

The director may determine that traffic volumes, truck traffic, or other special circumstances warrant other requirements.

(b) Parking lot entrances must not exceed a six percent grade for 20 feet into any lot or parcel. A parking lot entrance must not enter a street right-of-way or easement at an angle of less than 90 degrees unless a lesser angle is approved by the director.

Sec. 34-2014. Parking plan.

A parking plan is required for all uses, except single-family and two-family dwelling units, and must be submitted for review and approval in accordance with ch. 10. Developments that are not required to be approved in accordance with chapter 10 must submit plans to the director prior to issuance of a building permit. The plan must accurately designate the required parking spaces, parking aisles, and parking lot entrance, as well as the relation of any off-street parking facilities to the uses or structures such facilities are designed to serve.

Sec. 34-2015. Location and design.

The location and design of all parking lots must comply with the following provisions:

(1) ***Location***. Parking spaces that are required to support specific land uses (see § 34-2020) must be provided on the same premises and within the same zoning district as the use they serve, except in the DOWNTOWN zoning district as provided in § 34-676(a). Joint-use parking lots are regulated by § 34-2018.
(2) ***Design***. In addition to the requirements set forth in this division, all parking lots must be designed in accordance with the buffer, landscaping, drainage, and other requirements of this code.
(3) ***Lighting***. If the parking lot is to be used at night, adequate lighting must be provided for the driveways, ingress, and egress points, and parking areas of all commercial and industrial uses. Such lighting must be so arranged and directed as to eliminate glare on any other use, and must comply with applicable sea turtle lighting restrictions in ch. 14.
(4) ***Stacking***. All individual parking spaces must be accessible from a parking aisle intended to provide access to the space. Stacking of vehicles (one behind the other) may be permitted only where each dwelling unit has a specific garage or driveway appurtenant to it and in valet parking facilities wherein parking is performed only by employees of the facility.
(5) ***Exiting***. All parking lots must be provided with sufficient maneuvering room so as to allow an exiting vehicle to leave the parking lot in a forward motion, except where approved by the director under the following conditions:
    a. The right-of-way is a local street and:
        1. there is insufficient room on the parcel for vehicles to turn and exit in a forward direction, and
        2. the number of parking spaces backing out are no more than the minimum required by this division to serve existing buildings; or
    b. The parking spaces are in the "Pedestrian Commercial" category of the comprehensive plan and do not unduly interfere with critical congested road segments or the normal usage of existing or proposed sidewalks.
(6) ***End spaces***. Parking lots utilizing 90º parking with dead-end aisles must provide a turning bay for those spaces at the end of the aisle.
(7) ***Pedestrian system***. In any parking lot where more than one tier of parking spaces is to be developed, walkways must be provided which accommodate safe and convenient pedestrian movement.

Sec. 34-2016. Dimensional requirements; delineation of parking spaces.

In addition to satisfying all other provisions of this division, the arrangement and spacing of off-street parking lots must conform to the following requirements:

(1) ***Minimum dimensions.*** Minimum aisle widths and parking space dimensions shall be as follows:

	AISLE WIDTHS		*PARKING SPACES*	
Angle of Parking	*One-Way (feet)*	*Two-Way (feet)*	*Width (feet)*	*Length (feet)*
Parallel	10	20	7	20
45º -50º	11	20	8.5	
55º -60º	14	22	8.5	
70º -75º	17	22	8.5	
90º	20	22	8.5	18

(2) ***Effect of minimum dimensions on size of parking lots.*** The following table illustrates the effect of the minimum aisle and parking space dimensions on the size of parking lots, keyed to the dimensions indicated in Figure 34-30.

DIMENSION (in feet):		***45º***	***60º***	***75º***	***90º***
Stall width	**A**	8.5	8.5	8.5	8.5
Stall width (parallel to aisle)	**B**	12.0	9.8	8.8	8.5
Aisle width (one-way travel)	**C**	11.0	14.0	17.0	20.0
Stall depth (interlock)	**D**	15.3	17.5	18.6	18.0
Stall depth (to wall)	**E**	17.5	19.1	19.4	18.0
Module (interlocking)	**F**	41.6	49.0	54.2	56.0
Module (wall to interlock)	**G**	43.9	50.6	55.0	56.0
Module (wall to wall)		46.0	52.2	55.8	56.0

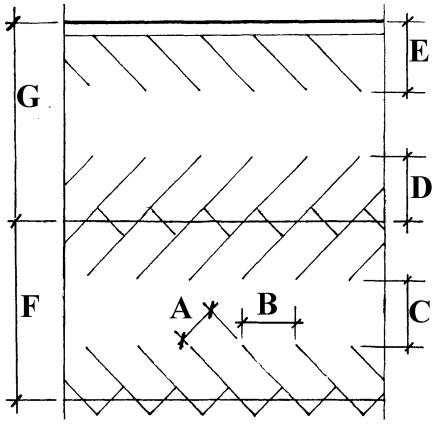


Figure 34-31

(3) ***Disabled space dimensions***. Individual disabled parking space dimensions must be 12 feet by 18 feet. Parking access aisles must be no less than 5 feet wide and must be part of an accessible route to the building or facility entrance. These dimensions do not guarantee compliance with the Americans with Disabilities Act (ADA) of 1990.

(4) ***Delineation of spaces***.

a. *Paved parking lots.*

1. Parking spaces must be delineated by all-weather painted lines, not less than four inches in width, centered on the dividing line between spaces.
2. Parking spaces for the disabled must be prominently outlined with blue paint, and must be repainted when necessary to be clearly distinguishable as a parking space designated for persons who have disabilities and must be posted with a permanent above-grade sign bearing the international symbol of accessibility and the caption "PARKING BY DISABLED PERMIT ONLY." Signs erected after October 1, 1996 must indicate the penalty for illegal use of these spaces.

b. *Unpaved parking lots.*

1. Perimeter parking spaces in unpaved parking lots must be delineated by placing a parking block three feet from the end of the parking space and centered between the sides of the space.
2. If a perimeter space abuts a structure, the space may be indicated on the structure, in which case parking blocks are not required.
3. Parking spaces for the disabled must be clearly distinguishable as a parking space designated for persons who have disabilities and must be posted with a permanent above-grade sign bearing the international symbol of accessibility and the caption "PARKING BY DISABLED PERMIT ONLY." Signs erected after October 1, 1996 must indicate the penalty for illegal use of these spaces. Parking spaces for the disabled must comply with all other

applicable requirements of state law and the Florida Building Code.

Sec. 34-2017. Parking lot surfaces.

(a) ***High turnover parking lots***. Except as provided in this section, all high turnover parking lot aisles and parking spaces must be a paved surface, except for the open space beyond parking blocks. The term "paved" means and includes asphalt, concrete, brick, paving blocks, porous (pervious) asphalt or concrete, and other similar treatments. Clean (washed) angular gravel (such as FDOT #57 stone) may also be used if stabilized as provided in subsection (b)(1).

(1) Any parking spaces that may be permitted, seaward of the 1978 coastal construction control line shall be stabilized with best management practices approved by the director.
(2) All disabled parking spaces, including disabled parking spaces seaward of the coastal construction control line, must comply with applicable requirements of state law and the Florida Building Code.

(b) ***Low turnover parking lots***. Due to the low volume of vehicle turnover in this type lot, alternative unpaved surfaces may parking lot can provide some or all of the required parking spaces for two (2) or more unrelated busin also be permitted provided that the areas are adequately drained and continuously maintained in a dustfree manner.

(1) Alternative surfaces may include stabilized surfaces of grass or clean (washed) angular gravel over a well-drained base, or other similar porous materials. Stabilization may be accomplished by turfblocks (concrete or plastic) or proprietary cellular or modular porous paving systems installed in accordance with manufacturers' specifications.
(2) Crushed limerock that has not been washed or otherwise processed to remove fine particles will be permitted as a surface material only when designed, placed, and maintained in a manner that will:
    a. prevent the flow of sediment-laden runoff from the lot, and
    b. keep the surface dust-free at all times.
(3) The use of unimproved surfaces such as sand or dirt as approved parking shall be prohibited.
(4) Disabled spaces must comply with applicable requirements of state law and the Florida Building Code.

(c) ***Reduced surfacing standards***

(1) The director is authorized to permit portions of high turnover parking lots (including parking lot aisles), to meet the surfacing standards for low turnover parking lots (§ 34-2017(b), above) when the reduced surfacing standard will be used in those portions of the parking lot expected to receive the lightest usage, such as overflow or employee parking areas.
(2) This subsection must not be construed inconsistently with the Americans with Disabilities Act (ADA) of 1990.

(d) ***Reservation of spaces for future use***. When a use or activity is required by this chapter to provide more than ten (10) high turnover parking spaces, the director may approve leaving up to 25 percent of the required spaces as landscaped areas reserved for future use, provided that:

(1) The applicant clearly shows the reserved parking spaces on the site plan;
(2) The reserved parking areas must not be counted towards the minimum open space or landscaping or buffering requirements of this chapter or chapter 10;
(3) All drainage facilities shall be calculated and built as though the reserved parking areas were impervious surfaces; and
(4) The reserved parking areas must not be used for any purpose other than landscaped open space or temporary overflow parking during special holiday seasons or sales.

Should the property owner decide to pave the reserved area for parking, he must submit the original site plan or development order approval to the director, who is authorized to approve the paving provided that such paving does not include any new entrances onto a public street. If the parking areas does involve new entrances, then a limited review development order is required.

Sec. 34-2018. Joint use of parking lots.

(a) A single-purpose parking lot can provide some or all of the required parking spaces for two (2) or more unrelated businesses, provided that such joint-use parking lot:

(1) is built on a parcel where a commercial parking lot is permitted, and
(2) is placed on the parcel so as not to violate any applicable build-to lines or block visibility of vehicles (see § 34-3131), and
(3) is built to the same standards as a single-purpose parking lot, and
(4) is located within 750 feet of each business.

(b) The peak parking demands of the different uses must occur at different times. The director may require an applicant to provide a technical analysis of the timing and magnitude of the proposed parking demands.

(c) Applications for joint-use parking lots must include:

(1) A notarized statement from all property owners involved indicating the use of each property and forecasting that the peak level of activities of each separate building or use which create a demand for parking will occur at different times.
(2) A draft joint-use parking agreement, acceptable to the town, that:
    a. specifically identifies the designated spaces that are subject to the agreement;
    b. includes a statement indicating that the parties understand that these designated spaces cannot be counted to support any use other than those identified in the agreement;
    c. identifies the current property uses, property owners, and the entity responsible for maintenance of the parking area.
    d. includes a backup plan to provide sufficient parking if the joint-use parking agreement is violated by either party.
(3) Upon approval of the agreement by the town, the agreement(s) must be recorded in the Lee County public records at the applicant's expense.
(4) A certified copy of the recorded joint-use parking agreement must be provided to the town before any joint-use of parking spaces may commence.

Sec. 34-2019. Other use of parking lots.

(a) Parking spaces that are not in daily use and are located in parking lots having ten (10) or more parking spaces and meeting the other requirements of this division may be rented to the general public during peak periods.

(b) The following structures and uses may be approved in parking lots by the director provided that a site plan is submitted showing that the structure will not reduce the parking spaces required for the principal use, or create a traffic or pedestrian hazard:

(1) Charitable or other similar drop-off collection stations.
(2) Aluminum can or other similar receiving machines or facilities.
(3) Photo pickup stations.
(4) Telephone booths and pay telephone stations.
(5) Automatic teller machines (ATMs).
(6) Other similar uses that do not unreasonably interfere with the normal functioning of the parking lot.

(c) Except as provided in this section and for ancillary temporary uses as provided in § 34-3048, required parking areas must not be utilized for the sale, display, or storage of merchandise, or for repair, dismantling, or servicing of any vehicles or equipment. This subsection does not prohibit a residential property owner from the occasional servicing of his own noncommercial vehicle or conducting normal residential accessory uses.

Sec. 34-2020. Required parking spaces.

(a) ***New developments***. New residential and nonresidential uses must provide off-street parking spaces in single-purpose parking lots in accordance with the standards specified in this section, as modified by certain reductions as provided in the DOWNTOWN and SANTINI zoning districts (see division 5 of article III).

(b) ***Existing developments***. Existing buildings and uses may be modernized, altered, or repaired without providing additional parking spaces, if there is no increase in total floor area or capacity.

(1) Existing buildings or uses enlarged in terms of floor area must provide additional parking spaces for the enlarged floor area in accordance with the standards specified in this section.

(2) When the use of a building is changed to a different use that is required to have more parking than exists, the additional parking must be provided in accordance with the standards specified in this section.

(c) ***Bicycle parking.*** Commercial, multiple-family, and mixed-use buildings may eliminate one (1) required parking space by providing and maintaining a bicycle rack able to hold four (4) bicycles.

(d) ***Minimum parking standards.***

(1) ***RESIDENTIAL USES***.

a. ***Dwelling units with individual driveways****:* The minimum requirement is 2.0 spaces for each dwelling unit. Stacking of vehicles in the driveway is permitted.

b. ***Dwelling units with common parking lots****:* Minimum requirements are as follows:

1. Studio or efficiency: 1.0 spaces per unit.
2. One bedroom: 1.25 spaces per unit.
3. Two bedrooms: 1.25 spaces per unit.
4. Three or more bedrooms: 1.5 spaces per unit.
5. Live/work units: 2.0 spaces per unit.

Stacking of vehicles is not permitted except as provided in § 34-2015(5).

c. ***Timeshare units:*** Parking requirements are the same as for multiple-family buildings. If lock-off accommodations are provided, 0.5 extra spaces per lock-off unit are required.

d. ***Living units without kitchens****:* Living units that do not contain customary cooking facilities within the individual units but instead have a central kitchen for food preparation and where meals are served in a central dining area or individual rooms must provide one (1) parking space per four (4) residents or four (4) beds (whichever is greater), plus ten percent (10%).

e. ***Group quarters****, excluding living units subject to § 34-2020(d)(1)d.* The minimum requirement is one (1) parking space per bedroom or one (1) space per two (2) beds, whichever is greater.

(2) ***COMMERCIAL USES***.

a. ***Bars and cocktail lounges***. The minimum requirement is 15 spaces per 1,000 square feet of total floor area. If outdoor seating is provided, an additional one (1) space per four (4) outdoor seats or 75 square feet of outdoor seating area (whichever is greater) must be provided. See also subsection (2)h of this section, pertaining to restaurants, and subsection (4) of this section.

b. ***Bed-and-breakfast inns.*** The minimum requirement is one (1) parking space for each guest room plus one (1) space for the owners' quarters.

c. ***Car washes***. The minimum requirement is two (2) spaces per car wash stall or space, plus drive-through facilities (see subsection (2)d of this section). Each individual car wash stall or space may count as one (1) of the required two (2) parking spaces per stall.

d. ***Drive-through facilities***. Where permitted, any commercial establishment providing drive-through service windows or stalls must provide separate vehicle stacking for those uses. For the purpose of this section, a stacking unit is defined as 18 feet in length and 9 feet in width. The total number of stacking units required is based on the type of business, as follows:

1. *Banks and financial establishments:* Stacking lanes to accommodate three (3) cars per window.
2. *Car washes:* Stacking to accommodate one (1) car per service stall or three (3) cars, whichever is greater.
3. *Restaurants:* New or expanded drive-through facilities are not permitted for restaurants (see § 34-620(g)). For existing drive-through facilities that are being lawfully reconfigured, stacking lanes to accommodate six (6) cars per

service lane, with a minimum of four (4) spaces preceding the menu board.

4. *Other:* Stacking for two (2) cars.

e. ***Hotels and motels***. The minimum requirement is 1.2 parking spaces for each guest unit up to 450 square feet and 1.5 spaces for each larger guest unit.

f. ***Offices***. This category includes offices of all types not specifically listed elsewhere, including banks and medical facilities. The minimum requirement is two (2) spaces per 1,000 square feet of total floor area. See also subsection (2)d. of this section pertaining to vehicle stacking for drive-through facilities.

g. ***Personal services***. The minimum requirement is five (5) spaces per 1,000 square feet.

h. ***Restaurants***. With the exceptions noted below, the minimum parking requirements for restaurants is eight (8) spaces per 1,000 square feet of total floor area plus any outdoor seating area.

1. *Accessory restaurant.* When a restaurant is located within the same building as the principal use, and is clearly provided primarily for the employees and customers of the principal use, no additional parking spaces are required.
2. *Bars and cocktail lounges.* If the restaurant contains a cocktail lounge or bar, the minimum requirement is eight (8) spaces per 1,000 square feet of total floor area plus five (5) additional spaces per 1,000 square feet of floor area used for the bar or cocktail lounge. If outdoor seating is provided, parking must also be provided for the area used for outdoor seating at these same rates.

i. ***Retail stores****, freestanding.* This subsection applies to individual retail or business establishments. Any retail establishment proposing drive-through facilities must also meet the requirements of subsection (2)d of this section.

1. *Convenience food and beverage stores.* The minimum requirement is four (4) spaces per 1,000 square feet of total floor area. If more than 20% of the total floor area or 600 square feet, whichever is less, is used for the preparation and/or sale of food or beverages in a ready-to-consume state, parking required for this area is the same as a restaurant. One (1) parking space per four (4) pumps will be credited against the required parking.
2. *Other retail or business establishments.* The minimum parking requirement is three (3) spaces for each 1,000 square feet of total floor area. Required parking for areas within the principal building that are used only for dead storage and are not available to the public is two (2) spaces per 1,000 square feet.

j. ***Warehousing (mini-warehouses)****.* The minimum requirement is one (1) space per 25 storage units, with a minimum of three (3) spaces.

k. ***Wholesale establishments***. The minimum requirement is one (1) space per company vehicle plus one (1) space per 1,000 square feet of total floor area.

(3) ***MISCELLANEOUS USES***.

a. ***Educational institutions***.

1. *Public schools.* Parking must be provided in compliance with state law.
2. *Private or parochial schools and day care centers.* The minimum requirement is one (1) space per employee plus one (1) space for each 40 students.

b. ***Marinas and other water-oriented uses***. Minimum requirements are as follows:

1. *Boat slips:* One (1) space per two (2) slips.
2. *Dry storage:* One (1) space per six (6) unit stalls.
3. *Charter or party fishing boat services:* One (1) space per three (3) people based on maximum passenger capacity of the boats using the dock or loading facility.
4. *Cruise ships:* One (1) space per three (3) people based on the maximum passenger and crew capacity of the ship.
5. *Water taxis:* Dedicated parking spaces are not required at stopping points for water taxis or water shuttles.
6. *Other uses:* Other uses including accessory or ancillary marina uses such as restaurants, bars, or lounges, boat

sales, etc. must be calculated separately in compliance with this division.

c. **Museums, art galleries, libraries**, and other similar uses not covered elsewhere:. The minimum requirement is one (1) parking space for each 500 square feet of total floor area.

d. ***Places of worship and religious facilities***. Refer to division 27 of this article.

e. ***Recreation facilities, indoor***. The minimum requirement is one (1) parking space for each 150 square feet of total floor area.

f. ***Theaters, auditoriums, meeting halls, and other similar places of public assembly****, not covered elsewhere.* The minimum requirement is one (1) parking space for each four (4) seats plus one (1) space per employee

g. ***Carnivals, fairs, and amusement attractions and devices***. The minimum requirement is five (5) parking spaces provided for each permanent amusement device.

(4) ***COMBINED USES***. The number of parking spaces required for combined uses is the total of the spaces required for each separate use established by this schedule. Exceptions are as follows:

a. ***Joint use of parking lots.*** As provided in § 34-2018,

b. ***Multiple-occupancy complexes***. This subsection applies to multiple-occupancy complexes where five (5) or more individual business establishments are located and that all share a common parking area. Specifically excluded from this subsection are theaters and hotels. Minimum requirements are as follows:

1. If the complex contains less than 25% of its gross floor area as restaurants, bars, and cocktail lounges, two (2) spaces per 1,000 square feet.
2. If the complex contains 25% to 50% of its gross floor area as restaurants, bars, and cocktail lounges, four (4) spaces per 1,000 square feet.
3. If the complex contains 50% to 75% of its gross floor area as restaurants, bars, and cocktail lounges, six (6) spaces per 1,000 square feet.
4. If the complex contains over 75% of its gross floor area as restaurants, bars, and cocktail lounges, eight (8) spaces per 1,000 square feet.

(5) ***USES NOT SPECIFICALLY LISTED***. Uses not specifically mentioned in this chapter must provide the same number of off-street parking spaces as for the most similar use.

Sec. 34-2021. Reserved.

Sec. 34-2022. Seasonal parking lots.

(a) Each permitted seasonal shared parking lot may operate for a period up to 8 months, commencing on November 15 and continuing until July 15 of the succeeding year. Prior to commencing its operation for all or any portion of each 8-month period beginning November 15 and ending July 15 of the succeeding year, a seasonal shared parking lot must obtain a seasonal parking lot permit in compliance with this code.

(b) A seasonal parking lot must comply with the following regulations:

(1) A seasonal parking lot may only be permitted in accordance with article III, division 2 of this chapter, or in a planned development zoning district where a shared permanent parking lot or seasonal parking lot is included in the approved schedule of uses.

(2) Ingress and egress to seasonal parking lots must not be through a residential neighborhood or residentially zoned district.

(3) The applicant must submit to the director a parking plan, drawn to scale, indicating the location of access points, ropes, and posts, and the circulation pattern within the parking lot.

(4) Individual spaces in seasonal parking lots do not need to be delineated provided the end of each space and all aisles are clearly delineated with temporary posts and ropes.

(5) Seasonal parking lots do not need to be surfaced, but must be maintained as a

planted area or otherwise in a dust-free manner.

(6) Seasonal parking lots must be designed so as to permit vehicles exiting the lot to enter the street right-of-way in a forward motion. The seasonal parking lot, where applicable, must utilize an existing entrance or exit, except that additional traffic must not be directed onto residential streets. Where no access exists, a parking lot plan showing an acceptable temporary access point(s) may be approved by the director.

(7) If the seasonal parking lot is to be used at night, adequate lighting must be provided for the driveway's ingress and egress points. The lighting must be directed to eliminate glare on any other use and must comply with applicable sea turtle lighting restrictions provided in ch. 14.

(8) The seasonal parking lot must be secured in a manner that prohibits ingress and egress except during the designated hours of operation.

(9) The seasonal parking lot must not adjoin or be less than ten (10) feet from residential uses or residentially zoned property.

(10) The seasonal parking lot must be supervised by a parking attendant during its posted hours of operation.

(11) The seasonal parking lot must only be used for the parking of operable motor vehicles, with no overnight parking or camping.

(12) Hours of operation must not begin earlier than 7:00 A.M. and must end no later than 10:00 P.M., unless extended by the director in writing.

(13) The parking spaces created through the approval of seasonal parking lots must not be used for calculating off-street parking requirements as set out in § 34-2020.

(14) Intersections of parking lot entrances and exits with street rights-of-way and easements must comply with § 34-3131.

(15) Seasonal parking lot signs must comply with requirements for commercial development signs in § 30-151, except that the signs may remain in use for the duration of the seasonal parking lot permit. These signs must be created and displayed in a professional manner. The director may require the removal of any signs that do not comply with these standards. Seasonal parking lot signs must be removed immediately upon expiration of the seasonal parking lot permit.

(16) The director may require visual screening between a seasonal parking lot and any residentially zoned or used property. If additional screening is required by the director, it must be installed within 30 days of written notice to the property owner or parking lot operator or the seasonal parking lot permit will be null and void.

(c) As of November 15, 2010, a total of three (3) consecutive or non-consecutive seasonal parking lot permits may be issued for a parcel without requiring compliance with the requirements below. Prior to issuance of the fourth (4^{th}) and each subsequent consecutive or non-consecutive permit for that parcel, the permit applicant must comply with the following requirements:

(1) Where the parcel of land containing a seasonal parking lot abuts residentially zoned or used property, that portion of the parking lot must be buffered by a continuous visual screen with a minimum opacity of 50 percent and a minimum height of three (3) feet. This screen may contain a combination of walls, fences, railings, and shrubs. Walls, fences, and railings may not exceed the maximum heights established by this code. The visual screen may be located as close as one (1) foot from the right-of-way or street easement line but not closer than five (5) feet from the edge of a travel lane, and must comply with § 34-3131. The director may require more extensive screening if the height, character, and location of the screen does not or may not adequately protect the abutting property from excessive impacts from the seasonal parking lot. Additional screening required by the director must be installed within 30 days of written notice to the property owner or parking lot operator, or the temporary use permit will be null and void.

(2) Where a seasonal parking lot abuts a street, that portion of the parking lot must be buffered by a continuous visual screen with a minimum opacity of 25 percent and a minimum height of three (3) feet. This

visual screen must contain a combination of walls, fences, railings, and shrubs. The visual screen must be located not less than one (1) foot from the right-of-way or street easement line and must comply with § 34-3131. Walls, fences, and railings must not exceed the maximum heights established by this code.

Secs. 34-2023--34-2030. Reserved.

DIVISION 26-A. PERFORMANCE STANDARDS

Sec. 34-2031. Performance standards, environmental quality.

All uses and activities permitted by right, special exception, or temporary use permit in any zoning district, including planned development districts, shall be constructed, maintained, and operated so as to:

(1) comply with all local, state, and federal air, and noise, and water pollution standards, and
(2) not adversely impact water quality.

Sec. 34-2032. Performance standards, creation of nuisance.

All uses and activities permitted by right, special exception, or temporary use permit in any zoning district, including planned development districts, shall be constructed, maintained, and operated so as to:

(1) not be injurious or offensive and thereby constitute a nuisance to the owners and occupants of adjacent premises, nearby residents, or to the community, by reason of the emission or creation of noise, vibration, smoke, dust, or other particulate matter, toxic or noxious waste materials, odors, fire or explosive hazard, light pollution, or glare; and
(2) not cause light from a point source of light to be directed, reflected, or refracted beyond the boundary of the parcel or lot, onto adjacent or nearby residentially zoned or used property or onto any public right-of-way, and thereby constitute a nuisance to owners or occupants of adjacent premises, nearby residents, or to the community; and
(3) ensure all point sources of light and all other devices for producing artificial light are shielded, filtered, or directed in such a manner as to not cause light trespass; minimum standards are provided in division 20 of this article.

Secs. 34-2033--34-2050. Reserved.

DIVISION 27. PLACES OF WORSHIP AND RELIGIOUS FACILITIES

Sec. 34-2051. Property development regulations.

Places of worship and religious facilities shall adhere to the dimensional regulations of their zoning district (see Table 34-3).

Sec. 34-2052. Parking.

(a) *Places of worship.* Parking for places of worship shall be provided at the ratio of one parking space for each three seats within the sanctuary or main assembly hall, whichever is greater. Where benches, pews or other similar seating arrangements are used, each 24 lineal inches shall be counted as one seat.

(b) *Religious facilities.* Parking for religious facilities shall be the same as for places of worship, with additional parking for ancillary facilities as required in division 26 of this article; provided that, where the ancillary facilities will not be used at the same time, parking shall be based upon the peak anticipated attendance at any one time, for all facilities.

(c) *Parking on grass.* Up to 75 percent of the parking spaces required for the sanctuary or main assembly hall of a place of worship may be provided as parking on grass, provided the regulations set forth in the relevant sections of division 26 of this article, are met.

Sec. 34-2053. Expansion of existing place of worship.

Expansion of existing places of worship and religious facilities, lawfully existing as of August 1,

1986, by right or by special exception, is hereby declared a legal use. Additions, renovations, or other expansion of the main place of assembly may be permitted upon application for and approval of a building permit in accordance with all applicable town regulations.

Sec. 34-2054. Living quarters.

Dwelling units and living units that provide living quarters within a religious facility must comply with the density restrictions found in § 34-632.

Secs. 34-2055--34-2080. Reserved.

DIVISION 28. RESERVED

Secs. 34-2081--34-2110. Reserved.

DIVISION 29. PRIVATE CLUBS AND MEMBERSHIP ORGANIZATIONS

Sec. 34-2111. Applicability of regulations to membership organizations.

The listing in this code of membership organizations is not meant to limit or abridge the rights of assembly. Such organizations are not prohibited from meeting in various traditional and appropriate places. For example, a service club's weekly meeting at a restaurant in a district not otherwise allowing a membership organization shall not constitute a zoning violation. However, where such an organization is the principal user of real property for meetings, entertainment, and food and beverage service, such a meeting place, hall, or clubhouse shall be permitted only where this use is explicitly enumerated.

Secs. 34-2112--34-2140. Reserved.

DIVISION 30. RECREATION FACILITIES

Sec. 34-2141. Applicability

(a) The regulations set forth in this division for recreation facilities are in addition to any other applicable regulations. In the case of conflict, the most restrictive regulations shall apply.

(b) This chapter defines five types of recreation facilities (see § 34-2):

(1) *Recreation facilities, commercial,* which are permitted by special exception in certain zoning districts.
(2) *Recreation facilities, personal,* which are considered to be residential accessory uses.
(3) *Recreation facilities, private ON-SITE*, which are permitted by right in certain zoning districts.
(4) *Recreation facilities, private OFF-SITE*, which are permitted by special exception in certain zoning districts.
(5) *Recreation facilities, public*, which are permitted by right in certain zoning districts.

(c) This chapter also defines *Park, neighborhood* and *Park, community or regional* (see § 34-2), both of which are permitted by right in certain zoning districts.

Sec. 34-2142. Minimum lot area and setbacks.

(a) All recreation facilities, whether a principal use or accessory use, shall be located on property meeting the minimum lot size and dimensions of the zoning district in which located as well as any additional area, width, or depth required to permit full compliance with all setbacks, ground cover, open space, buffering, drainage, and parking requirements as set forth in this chapter or ch. 10, whichever is most applicable.

(b) Minimum setbacks for uses subject to this division are as set forth in the property development regulations of the zoning district in which located.

(c) Additional setback requirements for specific uses are as follows:

(1) *Recreation facilities, commercial.* Amusement devices, water slides, miniature golf, and other commercial recreation

facilities shall be located not less than 50 feet or a distance equal to the height of the structure or device, whichever is greater, from any property under separate ownership, provided further that such setback shall be 100 feet from any adjacent property with residential zoning or any existing residential use.

(2) *Recreation halls.* Recreation halls and ancillary facilities and membership organizations shall be located at least 40 feet from any residential dwelling and situated in a manner so as to encourage pedestrian and bicycle traffic.

(3) *Other facilities.* Other facilities are specifically regulated elsewhere in this code, such as swimming pools and tennis courts in division 2 of this article.

Sec. 34-2143. Accessory uses.

(a) Accessory uses, buildings, or structures for recreation facilities which are customarily incidental to the principal use may be permitted. Such uses include but are not limited to restroom facilities, maintenance sheds, refreshment stands (with no alcoholic beverages unless approved in accordance with division 5 of this article), pro shops (where applicable), and administrative offices.

(b) Food and beverage service is permitted in any recreation hall; provided, however, no alcoholic beverages shall be distributed or consumed on the premises except in compliance with division 5 of this article.

Sec. 34-2144. Lighting.

Artificial lighting used to illuminate the premises of recreation facilities shall be directed away from adjacent properties and streets.

Sec. 34-2145. Sound systems.

Sound systems shall meet the requirements of the town's noise control ordinance, Ordinance No. 96-24 as may be amended from time to time.

Secs. 34-2146--34-2350. Reserved.

DIVISION 31. RECREATIONAL VEHICLES

Sec. 34-2351. Recreational vehicle subdivisions.

(a) New or expanded recreational vehicle subdivisions are not allowed in the Town of Fort Myers Beach.

(b) A recreational vehicle cannot be substantially improved or placed on any lot in any subdivision except:

(1) for parking of a single recreational vehicle for purposes of dead storage, or

(2) on a temporary basis in accordance with § 34-3046.

Sec. 34-2352. Recreational vehicle parks.

(a) New or expanded recreational vehicle parks are not allowed in the Town of Fort Myers Beach.

(b) A recreational vehicle cannot be substantially improved or placed in any existing recreational vehicle park except in the VILLAGE zoning district in accordance with the regulations set forth in subdivision III of division 5 of article III of this chapter, and in accordance with the requirements of § 6-472(3).

Secs. 34-2353--34-2380. Reserved.

DIVISION 32. SCHOOLS

Sec. 34-2381. All schools.

(a) All schools, whether run by government, religious, or non-profit agencies or operated as businesses, may be located only in the following categories on the future land use map in accordance with Policy 4-B-14 of the comprehensive plan:

(1) Mixed Residential,
(2) Boulevard,
(3) Pedestrian Commercial, or
(4) Recreation (but never seaward of the 1978 coastal construction control line).

(b) The maximum intensity of new or expanded schools shall not exceed a floor area ratio of 0.50 (see § 34-633).

Sec. 34-2382. Noncommercial schools.

(a) *Public schools*. All schools constructed by the district school board on land owned by the district school board are permitted by right in any zoning district, provided the site complies with § 34-2381(a).

(b) *Other noncommercial schools.* Other noncommercial schools are permitted by right in accordance with the district use regulations in, provided the site complies with § 34-2381(a).

Sec. 34-2383. Schools operated as businesses.

Schools that are operated as private businesses are permitted wherever this code allows *Offices, general and medical* (see division 2 of article III of this chapter), provided the site complies with § 34-2381(a).

Secs. 34-2384--34-2390 Reserved.

DIVISION 32-A. SHORT-TERM RENTALS

Sec. 34-2391. Restrictions on weekly rentals in certain zoning districts.

Table 34-2 restricts the rental of any permitted dwelling unit in certain zoning districts to a single family during any one-month period, with a minimum stay of one week (see the "Restricted" sub-group of the "Lodging" use group in Table 34-1). The following exceptions apply to this restriction:

(1) This restriction on weekly rentals does not apply to:
   a. Any land between Estero Boulevard and the Gulf of Mexico.
   b. Any land directly adjoining the bay side of Estero Boulevard.
   c. Any dwelling unit that is recognized by the Town of Fort Myers Beach as having had pre-existing weekly rentals as of January 1, 2003, when registered in accordance with § 34-2392.

(2) Dwellings units on property that qualifies for any of these exceptions may be rented to a single family for periods of one week or longer, without the once-per-month maximum that would otherwise have applied.

Sec. 34-2392. Registry of certain pre-existing weekly rentals.

(a) Dwelling units in certain zoning districts are not permitted to be rented to more than a single family during any one-month period due to restrictions found in Tables 34-1 and 34-2. The owner of any such dwelling unit that was being lawfully used for weekly rentals during the 12-month period prior to January 1, 2003, may apply for registration under this section to continue weekly rentals.

(1) Upon verification by the town and placement of such dwelling units on a registry of pre-existing weekly rentals, the owners of registered dwelling units may continue to rent those units to a single family for periods of one week or longer, without the once-per-month maximum that would otherwise have applied.

(2) This right shall run with the land and shall not be affected by the transfer of the property to subsequent owners.

(3) If weekly rentals of a particular dwelling unit are terminated for any reason for any 12-month period, weekly rentals may not thereafter be reinstated in that dwelling unit.

(4) Dwelling units on land that is not affected by the restrictions in Tables 34-1 and 34-2 limiting rentals to no more than a single family during any one-month period should not be submitted for registration. Such units will not be placed on the registry of pre-existing weekly rentals.

(b) Applications for annual registration of lawful pre-existing weekly rental units shall be submitted to the town manager by June 1, 2003. Each application must include:

(1) Name of the applicant, if different than the property owner, and the applicant's mailing address and telephone number.

(2) Name of current property owner (and previous owner, if property has been transferred since January 1, 2003).

(3) Street address and STRAP number of parcel.

(4) Number of rental dwelling units at that address that are part of the application.

(5) Evidence of lawful pre-existing weekly rental use of each dwelling unit in the application as of January 1, 2003. Such evidence may include:
   a. Evidence that each dwelling unit was licensed by the state of Florida as a "resort dwelling" or as a public lodging establishment, in accordance with F.S. § 509.241.
   b. Evidence of regular payment of Lee County's 3% tourist development tax on rentals of each dwelling unit.
   c. Evidence of regular payment of Florida's 6% sales tax on rentals of each dwelling unit.
   d. Signed rental contracts or income tax returns.

(6) A local telephone number with a contact that is available 24 hours a day.

(7) Payment of an application fee established by the town.

(8) Notarized signatures of the property owner (and the applicant, if different than the property owner) attesting to the truth and accuracy of all information submitted with the application and consenting to inspection of the premises at reasonable hours to determine compliance with town and fire codes.

(c) The town manager will evaluate each application and notify applicants in writing within 60 days whether each dwelling unit is being registered with the town as a pre-existing weekly rental unit or whether the dwelling unit does not qualify for such registration. Reasons for disqualification will be stated in the written notice. All applications and written responses are public records and will be available for inspection at town hall.

(d) Decisions by the town manager pursuant to this subsection may be appealed to the town council by the applicant or adjoining property owner in accordance with § 34-86. In addition to the criteria in this subsection, the town council may consider evidence submitted by the appellant alleging equitable considerations for registration of a dwelling unit despite noncompliance with a particular requirement of this division. The town council shall consider the advice of the town attorney when evaluating allegations for equitable relief.

(e) Registrants must supplement their application within 30 days if they change the local telephone number for the contact that must be available 24 hours a day.

(f) Beginning on June 1, 2004 and every year thereafter, renewal applications are due for all registered weekly rental units.

(1) The renewal application shall be the same as the original application except that evidence of subsections (b)(5)a, (b)(5)b, and (b)(5)c shall be mandatory for every renewal period.
(2) Registrants who continue weekly rentals after failing to complete a renewal application and obtaining registration for another year will be in violation of this code.

Sec. 34-2393. Code of conduct for short-term rentals.

(a) The town hereby establishes a code of conduct that applies to operators and guests of all short-term rental units, including those on the registry of pre-existing weekly rentals and also those rentals between one week and one month that are permitted by right in accordance with Table 34-2. The code of conduct is as follows:

(1) ***Maximum Occupancy:*** Occupancy of each short-term rental unit must be consistent with the definition of "family" that is found in § 34-2 of this code, which defines a family as one or more persons occupying a dwelling unit and living as a single, nonprofit housekeeping unit, provided that a group of five or more adults who are not related by blood, marriage, or adoption shall not be deemed to constitute a family.
(2) ***Refuse Collection:*** Refuse containers shall not be moved to the street more than 24 hours prior to scheduled curbside collections nor remain there more than 24 hours after scheduled collections, as required by § 6-11 of the Fort Myers Beach land development code. In addition, if a property owner or property manager is unable to comply with this requirement around the weekly pick-up day, arrangements for additional refuse collection must be secured by the operator.
(3) ***Quiet Hours:*** Between the hours of 10:00 P.M. and 7:00 A.M., all guests shall observe quiet hours. This means all outdoor activity, including swimming, shall be kept to a reasonable noise level that is non-intrusive and respectful of neighbors. Town of Fort Myers Beach Ordinance 96-24 sets limits on noise levels during quiet hours and these levels must be obeyed by all guests.
(4) ***Mandatory Evacuations:*** All guests staying in short-term rental units must comply with mandatory evacuations due to hurricanes and tropical storms, as required by state and local laws.

(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.

(b) This code allow outdoor display and sales of merchandise only as follows:

(1) In farmers' markets or other special events authorized by the town;
(2) Beach furniture (in accordance with § 14-5);
(3) Bicycles, motorbikes, and motorcycles (by dealers or rental agencies in zoning districts where they are permitted);
(4) Boats (by boat dealers in zoning districts where they are permitted);
(5) Personal watercraft (in accordance with § 27-49);
(6) Lawn and garden ornaments (by retail stores in zoning districts where they are permitted), provided the merchandise collectively does not exceed a height of 4 feet and a width (parallel to the right-of-way) of 8 feet;
(7) On private property in the DOWNTOWN zoning district (in accordance with § 34-678(e)); and
(8) On public property in parts of the DOWNTOWN zoning district (in accordance with § 34-678(f)).

(c) Artificial lighting used to illuminate premises subject to this division shall be directed away from adjacent properties and streets, shining only on the subject site.

(d) The outdoor display and sales of merchandise, food, and beverages is prohibited within the town limits, except in accordance with this section.

Sec. 34-3005. Storage facilities.

(a) ***Indoor storage.***

(1) *Permitted districts.* Except for warehouses and mini-warehouses, indoor storage is permitted within any zoning district when accessory to the permitted principal use of the property. Warehouses and mini-warehouses are permitted only in zoning districts for which it is specifically stated that such uses are permitted.
(2) *Setbacks.* All buildings used for indoor storage which are located on the same lot as the principal building shall comply with the setback requirements for accessory buildings. Buildings used for indoor storage which are not on the same lot as the principal building, but are on the same premises, shall meet the setbacks set forth in the district regulations for principal buildings.

(b) ***Open storage.***

(1) *Fencing and screening.* All commercial outdoor storage shall be shielded behind a continuous visual screening at least eight feet in height when visible from a residential use or residential zoning district, and six feet in height when visible from any street right-of-way or street easement.
(2) *Storage area.* Storage areas do not need to be paved. Grass or other ground cover may be used provided it is kept in a sightly and dustfree manner.

(c) ***Use of vehicles, truck trailers, or shipping containers for storage.*** Vehicles, truck trailers, shipping containers, and other similar structures may not be used to store goods, produce, or other commodities except in conjunction with an active building permit or development order (see § 34-3044) or unless approved on a temporary basis in accordance with § 34-3041.

(d) ***Bulk storage of flammable liquids.***

(1) *Firewalls or dikes required.* Whenever aboveground tanks for storage of gasoline, gas, oil, or other flammable liquids are located on any land where such use is permitted, such tanks shall be surrounded by an unpierced firewall or dike of such height and dimensions as to contain the maximum capacity of the tanks. All storage tanks and adjacent structures shall meet the requirements of the Board of Fire Underwriters.
(2) *Exceptions.* Storage tanks containing liquified petroleum, commonly known as bottled gas, are specifically excluded from the provisions of this subsection.

Secs. 34-3006--34-3020. Reserved.

DIVISION 37. SUBORDINATE AND TEMPORARY USES

Subdivision I. In General

Sec. 34-3021. Subordinate uses.

(a) ***Purpose.*** The purpose of this section is to provide for certain commercial uses provided such uses are clearly subordinate to permitted principal uses of *Cultural facilities*; *Hotels/motels*; *Multiple-family buildings*; *Park, community or regional*; or *Resorts*.

(b) ***Permitted uses; restrictions.***

(1) The uses listed in subsection (b)(2) of this section shall be permitted when clearly subordinate to the principal use, subject to the following requirements:
   a. The subordinate use shall be totally within the building(s) housing the principal use;
   b. The subordinate use shall not occupy more than ten percent of the total floor area of the principal use; and
   c. Public access to the subordinate use shall not be evident from any abutting street.

(2) Uses permitted are:
   a. *Personal services*.
   b. *Retail store, small*.
   c. *Restaurant*.

Secs. 34-3022--34-3040. Reserved.

Subdivision II. Temporary Uses

Sec. 34-3041. Generally.

(a) ***Purpose.*** The purpose of this subdivision is to specify regulations applicable to certain temporary uses which, because of their impact on surrounding land uses, require a temporary use permit.

(b) ***Permit required.*** No temporary use shall be established until a temporary use permit has been obtained from the director in accordance with the requirements of § 34-3050. Some temporary uses may qualify as special events that are regulated by Ordinance 98-01 as amended, or may qualify as special events on or near the beach, which are further regulated by § 14-11 of this code.

(c) ***Lighting.*** No permanent or temporary lighting shall be installed without an electrical permit and inspection.

(d) ***Time limit.***

(1) All uses shall be confined to the dates specified by the director, on the temporary use permit; provided, however, that:
   a. Except as provided for seasonal parking lots in §§ 34-2022 and for other uses where specifically provided in §§ 34-3043 through 34-3048, the director may not authorize a temporary use for more than 30 days; and
   b. If no time period is specified on the temporary use permit, then the temporary use permit will expire and the use must be abated within 30 days from the date of issuance.

(2) A temporary use permit may not be renewed or reissued to the same applicant or on the same premises for a similar use for a period of six months from the date of expiration of the previous temporary use permit.

(e) ***Hours of operation.*** Hours of operation shall be confined to those specified in the permit.

(f) ***Cleanup.*** The site shall be cleared of all debris at the end of the temporary use and all temporary structures shall be removed within 48 hours after termination of the use. A cash bond of a minimum of $25.00 and not to exceed $5,000.00 or a signed contract with a disposal firm may be required as a part of the application for a temporary use permit to ensure that the premises will be cleared of all debris during and after the event.

(g) ***Traffic control.*** Traffic control as may be required by the county sheriff's department and the county department of transportation shall be arranged and paid for by the applicant.

(h) ***Damage to public right-of-way.*** A cash bond of a minimum of $25.00 and not to exceed $5,000.00 may be required to ensure the repair of any damage resulting to any public right-of-way as a result of the event.

Sec. 34-3042. Carnivals, fairs, circuses, and amusement devices.

(a) ***Location of amusement devices and other structures.*** Refer to § 34-2142(a) and (b) for setback requirements.

(b) ***Off-street parking.*** Refer to § 34-2020(d)(3)g. for off-street parking requirements.

(c) ***Hours of operation.*** The hours of operation shall be limited to 10:00 A.M. to 10:00 P.M., unless otherwise extended by the director in writing.

(d) ***Special event permit.*** In addition to a temporary use permit, a carnival, fair, circus, or amusement device, or other event may be subject to the provisions of the town's special events ordinance, No. 98-01 as amended (see also division 34 of this article).

Sec. 34-3043. Christmas tree sales.

(a) Christmas tree sales may be permitted in any commercial district, provided that:

(1) No parking lot required for another use shall be used for display of trees; and
(2) Temporary off-street parking for at least five vehicles shall be provided utilizing an existing or approved parking lot entrance or driveway.

(b) The maximum length of time for display and open-lot sales shall be 45 days.

Sec. 34-3044. Temporary contractor's office and equipment storage shed.

A contractor's office or construction equipment shed may be permitted in any district where use is incidental to an ongoing construction project with an active building permit or development order. Such office or shed shall not contain sleeping or cooking accommodations. The contractor's office and construction shed shall be removed within 30 days of the date of final inspection for the project.

Sec. 34-3045. Alcoholic beverages.

Temporary one-day permits for the service of alcoholic beverages may be permitted in accordance with § 34-1264(d)

Sec. 34-3046. Temporary use of mobile home.

(a) ***Rehabilitation or construction of residence following disaster.***

(1) When fire or disaster has rendered a single-family residence unfit for human habitation, the temporary use of a mobile home or recreational vehicle located on the single-family lot during rehabilitation of the original residence or construction of a new residence may be permitted subject to the regulations set out in this section.
(2) The maximum duration of the use shall be 18 months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is 6 months. The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.

(b) ***Rehabilitation or construction of damaged business or commercial uses following disaster.***

(1) Business or commercial uses damaged by a major or catastrophic disaster that are necessary for the public health and safety or that will aid in restoring the community's economic base may be permitted to use a mobile home or similar type structure to carry out their activities until the damaged structure(s) is rebuilt or replaced according to applicable development or redevelopment regulations.
(2) The maximum duration of the temporary use is 9 months after the date the President of the United States issues a disaster declaration. If no disaster declaration is issued, the maximum duration of the use is 6 months.

The director may extend the permit once for a period not to exceed 60 days in the event of circumstances beyond the control of the owner. Application for an extension shall be made prior to expiration of the original permit.

(c) ***Conditions for use.***

(1) Required water and sanitary facilities must be provided.
(2) The mobile home or recreational vehicle shall be removed from the property within ten days after the certificate of occupancy is issued for the new or rehabilitated residence, business, or commercial use, or upon expiration of the temporary use permit, whichever occurs first.

Sec. 34-3047. Temporary telephone distribution equipment.

Telephone distribution equipment may be granted a temporary use permit during planning and construction of permanent facilities, provided that:

(1) The equipment is less than six feet in height and 300 cubic feet in volume; and
(2) The maximum length of the use shall be six months, but the director may extend the permit once for a period not to exceed six additional months in the event of circumstances beyond the control of the telephone company. Application for an extension shall be made at least 15 days prior to expiration of the original permit.

Sec. 34-3048. Ancillary temporary uses in parking lots.

(a) The following ancillary temporary uses may be permitted in parking lots upon application and issuance of a temporary use permit (see § 34-3050):

(1) Seasonal promotions.
(2) Sidewalk or parking lot sales.
(3) Fairs and carnivals (see § 34-3042).
(4) Tent sales.
(5) Flea markets by nonprofit organizations.
(6) Welcome stations in accordance with § 34-3051.

(b) In approving a temporary use permit, the director shall require that the area of the lot to be used is clearly defined and that the use will not obstruct pedestrian and vehicular movements to portions of the lot not so used.

Sec. 34-3049. Seasonal parking lots.

Seasonal parking lots may be permitted in commercial zoning districts, provided that they are in compliance with § 34-2022.

Sec. 34-3050. Temporary use permits.

(a) ***Applicability.*** Any person desiring to conduct any of the temporary uses described in this subdivision shall be required to submit an application for a temporary use permit.

(b) ***Initiation of application.*** An application for a temporary use permit may be initiated by the town or any individual authorized in accordance with § 34-201(a).

(c) ***Submission of application.***

(1) No application shall be accepted unless it is presented on the official forms provided by the director.
(2) Before an application may be accepted, it must fully comply with all information requirements enumerated in the application form as well as the requirements set forth in subsection (d) of this section.
(3) The applicant shall ensure that an application is accurate and complete. Any additional expenses necessitated because of any inaccurate or incomplete information submitted shall be borne by the applicant.

(d) ***Additional required information.*** In addition to the application information, the applicant shall submit satisfactory evidence of the following:

(1) Evidence shall be submitted that adequate sanitary facilities meeting the approval of the county health department are provided.
(2) Evidence shall be submitted that sounds emanating from the temporary use shall not adversely affect any surrounding property.
(3) Evidence shall be submitted that all requirements as to providing sufficient parking and loading space are assured.
(4) When deemed necessary, a bond shall be posted, in addition to an agreement with a

(4) When deemed necessary, a bond shall be posted, in addition to an agreement with a responsible person sufficient to guarantee that the ground area used during the conduct of the activity is restored to a condition acceptable to the director.
(5) All applications for temporary use permits, excluding those for the temporary use of mobile homes following a natural disaster (see § 34-3046), shall provide public liability and property damage insurance. This requirement may be waived by the town council.
(6) Evidence shall be submitted that, where applicable, the applicant for a proposed use has complied with town ordinances pertaining to special events, including Ordinances No. 98-1, 00-16, and any later amendments (see also division 34 of this article).
(7) Evidence shall be submitted that the law enforcement and fire agencies who will be coordinating traffic control or emergency services have been advised of the plans for a temporary use and that they are satisfied with all aspects under their jurisdiction.

(e) ***Inspection following expiration of permit; refund of bonds.*** Upon expiration of the temporary use permit, the director shall inspect the premises to ensure that the grounds have been cleared of all signs and debris resulting from the temporary use and shall inspect the public right-of-way for damages caused by the temporary use. Within 45 days after a satisfactory inspection report is filed, the director shall process a refund of the bonds. An unsatisfactory inspection report shall be sufficient grounds for the town to retain all or part of the bonds posted to cover the costs which the town would incur for cleanup or repairs.

Sec. 34-3051. Mobile tourist information centers.

(a) ***Defined.*** Mobile tourist information centers are located in a mobile vehicle, either self-propelled or otherwise readily moveable from place to place, and are operated by a non-profit organization. Mobile tourist information centers are intended to promote community businesses and organizations and are therefore limited to providing information without the sale or distribution of any product or service, provided, however, that such centers are permitted to sell tickets for local attractions and events. Mobile tourist information centers may not collect food or clothing or accept other donations.

(b) ***Type of approval.***
(1) **Administrative**
a. *Length of Permit.* A permit to operate a mobile tourist information center may be issued for a maximum of one (1) year, and may be renewed annually. No more than two (2) mobile tourist information centers may be operating at one time.
b. *Location.* Mobile tourist information centers may be located in existing parking lots on property zoned commercial. The mobile tourist information center must be ancillary to the principal use and the required number of parking spaces for the principal use must be maintained.
c. *Permit requirements.* In addition to the requirements found in § 34-3050, organizations must provide a photograph of the mobile tourist information center and its dimensions, corresponding locations where the mobile tourist information center will be operating, daily hours of operation for a minimum of 5 days per week, and a site plan of the parking lot, drawn to scale, with the location of existing parking spaces and the mobile tourist information center. Each mobile tourist information center is permitted one 24-square-foot identification sign, mounted on the mobile tourist information center, which should be shown in the required photograph.
d. *Review of permit.* The director will approve or deny the application, in part or whole, based on the mobile tourist information center's compatibility with surrounding uses. The mobile tourist information center must be maintained in good condition, consistent with the photograph submitted with the application.
e. *Emergency Evacuation.* Mobile tourist information centers must be removed from the town or placed within an approved off-site storage area within 48 hours of the

issuance of a hurricane watch for the town by the National Hurricane Center.

Secs. 34-3052--34-3054. Reserved.

Subdivision III. Special Events

Sec. 34-3055. Special events.

(a) 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.

(b) See division 34 of this chapter for a summary of permitting rules for special events.

Secs. 34-3056--34-3060. Reserved.

DIVISION 38. TALL STRUCTURES

Sec. 34-3061. Permit for tall structures.

(a) Any construction or alteration of a greater height than 125 feet above mean sea level shall require a tall structures permit. An applicant is required to obtain a tall structures permit prior to the issuance of any further development orders or permits.

(b) Applications for a tall structures permit shall include the height and location of derricks, draglines, cranes, and other boom-equipped machinery, if such machinery is to be used during construction.

(1) Applicants intending to use derricks, draglines, cranes, and other boom-equipped machinery for such construction, reconstruction, or alteration as is consistent with the provisions of this division shall, when the machine operating height exceeds the height limitations imposed by this division, require a tall structures permit.
(2) Upon obtaining this permit through the procedures outlined in this section, the applicant shall mark, or mark and light, the machine to reflect conformity with the Federal Aviation Administration's or the county port authority's standards for marking and lighting obstructions, whichever is more restrictive, and shall be required in such cases to inform the county port authority, through this tall structures permit process, of the location, height, and time of operation for such construction equipment use prior to the issuance of any construction permit to the applicant.

(c) The permitting procedures for a tall structures permit are outlined as follows. If a tall structures permit application is deemed necessary by the director, the following procedures shall apply:

(1) The director shall give a written notice to the applicant that a tall structures permit is required and that no further permits or development orders can be issued until a tall structures permit is obtained.
(2) The applicant shall then submit a completed tall structures permit application to the Lee County Port Authority, 16000 Chamberlin Parkway, Ft. Myers, Florida 33913. The county port authority shall review the application, and the following procedures will apply:
   a. If the county port authority determines that the proposed construction or alteration represented in the application does not violate the provisions of Federal Aviation Regulations, part 77, or the provisions of this division or any other application of federal or state rules and regulations or does not adversely affect the airspace surrounding any county airport, the port authority shall indicate such determination on the tall structures permit application. The signed tall structures permit application will then be returned to the applicant. The applicant shall present the tall structures permit application to the administrative director in order that a tall structures permit may be issued. If the signed tall structures permit application is accompanied with stipulations of compliance as determined by the county port authority, it is the responsibility of the administrative director to ensure that these stipulations are adequately addressed prior to the issuance of a tall structures permit.
   b. If the county port authority determines that the proposed construction or alteration violates the notification criteria of Federal Aviation Regulations, part 77, or otherwise violates any provisions of this division or any other applicable federal or state rules or regulations, the county port authority will notify the applicant in writing that the proposed construction or alteration may adversely affect the airspace surrounding county airports and require that a notice of proposed construction or alteration be filed with the Federal Aviation Administration for review through the submittal of Federal Aviation Administration Form 7460-1 as required by Federal Aviation Regulations, part 77. The county port authority shall suspend the tall structures permit application process until Federal Aviation Administration findings of aeronautical effect are received and reviewed.
   c. It is the responsibility of the applicant to forward the Federal Aviation Administration's findings of aeronautical effect, along with a copy of the completed original Federal Aviation Administration

Form 7460-1, to the county port authority in order to continue the tall structures permit process.

d. The tall structures permit application shall not be issued if the proposed construction or alteration is found to violate the provisions of this division or any other applicable federal or state rules or regulations. No tall structures permit will be issued if all Federal Aviation Administration and county port authority comments are not addressed to the satisfaction of the county port authority. The applicant shall be forwarded a written notice if the tall structures permit is denied, from the county port authority. This written notice shall specify the reason for objections and suggestions for compliance under this division and all other applicable federal or state rules and regulations.

e. After reviewing the Federal Aviation Administration's comments pertaining to the Federal Aviation Administration Form 7460-1, if the county port authority determines that the proposed construction or alteration does not adversely affect any other requirements pertaining to county airports, the port authority shall return to the applicant the signed tall structures permit application. The applicant shall present a copy of the tall structures permit application, along with all port authority comments and stipulations, to the director in order that a tall structures permit may be issued. If the signed tall structures permit application is accompanied with stipulations of compliance, it is the responsibility of the director to ensure that these stipulations are adequately addressed prior to the issuance of a tall structures permit.

(d) If the director determines that all procedures and application approvals are in compliance with the provisions outlined in this section, then a tall structures permit will be issued to the applicant.

(1) No tall structures permit shall be issued prior to obtaining a determination of acceptability and compliance from the county port authority.

(2) Temporary or conditional tall structures permits pending completion of the Federal Aviation Administration's or the county port authority's review shall not be issued.

Secs. 34-3062--34-3065. Reserved.

DIVISION 38-A. TATTOO STUDIOS AND BODY-PIERCING SALONS

Sec. 34-3066. Purpose of division.

This division regulates the placement of tattoo studios and body-piercing salons. The purpose is to avoid the proliferation or concentration of such establishments in the Town of Fort Myers Beach.

Sec. 34-3067. Definitions.

Body-piercing means for commercial purposes the act of penetrating the skin to make, generally permanent in nature, a hole, mark, or scar. "Body piercing" does not include the use of a mechanized, presterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear or both.

Body-piercing salon means any temporary or permanent place, structure, or business that is licensed under the provisions of F.S. § 381.0075 to perform body piercing.

Establishment means a body-piercing salon or tattoo studio as defined in this division, but does not include the practice of any state-licensed physician or osteopath who may attempt to cover up existing tattoos.

Tattooing means the placement of indelible pigment, inks, or scarification beneath the skin by use of needles for the purpose of adornment or art. "Tattooing" includes the practice of permanent makeup and micropigmentation.

Tattooing means the placement of indelible pigment, inks, or scarification beneath the skin by use of needles for the purpose of adornment or art. For the purposes of this division, "tattooing" does not include the practice of permanent makeup and micropigmentation when such procedures are performed as incidental services in a medical office or in a personal services establishment such as a hair or nail salon.

Tattoo studio means any temporary or permanent place, structure, or business used for the practice of tattooing.

Sec. 34-3068. Minimum spacing required for new or relocated establishments.

No new or relocated tattoo studio or body-piercing salon shall be placed within 2,000 feet of any lawfully existing establishment as defined in § 34-3067. This distance shall be measured from any public entrance or exit of the new or relocated establishment in a straight line to the nearest property line of the existing establishment.

Sec. 34-3069. Destruction by natural disaster.

If a building containing a lawfully existing establishment as defined in § 34-3067 is damaged or destroyed by a natural disaster, including fire, tropical storm, or hurricane, the establishment may be relocated within 1,000 feet of its original location on land that is properly zoned for this use, without regard for the 2,000-foot limitation in § 34-3068.

Secs. 34-3070–34-3100. Reserved.

DIVISION 39. USE, OCCUPANCY, CONSTRUCTION, AND MOVING REGULATIONS

Sec. 34-3101. Compliance with applicable regulations.

No building, structure, land, or water shall hereafter be used or occupied, and no building, structure or part thereof shall hereafter be erected, constructed, reconstructed, located, moved, or structurally altered, and no land shall be cleared, graded, excavated, or filled, or otherwise altered, except in conformity with the regulations specified in this chapter for the district in which it is located, the Fort Myers Beach Comprehensive Plan and all other applicable town ordinances.

Sec. 34-3102. Reserved.

Sec. 34-3103. Permit for moving building.

No building or part of any building shall be relocated or moved through or across any sidewalk, street, alley, or highway within the town unless a permit has first been obtained from the director in accordance with the procedures and application requirements for building relocation as set forth in § 34-1951. Buildings or structures that have been designated as historic resources pursuant to ch. 22 shall also obtain a certificate of appropriateness as provided in § 22-105.

Secs. 34-3104--34-3130. Reserved.

DIVISION 40. VEHICLE VISIBILITY

Sec. 34-3131. Vehicle visibility at intersections.

(a) ***Corner lots; driveways on Estero Boulevard.*** On all corner lots as defined in this chapter, no obstruction shall be planted or erected which materially obstructs traffic visibility within the visibility triangle as shown in Figure 34-31. This requirement also applies to all driveways entering onto Estero Boulevard. No structures (except along Old San Carlos Boulevard) or plantings shall be permitted between two feet and six feet above the average grade of each street within this triangular space.

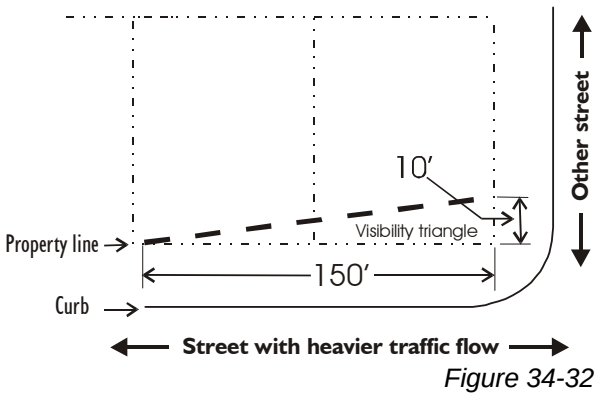


Figure 34-32

(b) ***All other driveways and parking lot entrances.*** At all other intersections of driveways or parking lot entrances with a street right-of-way or easement, no obstruction shall be planted or erected which materially obstructs the driver's view of approaching traffic or pedestrians within a visibility triangle as shown in Figure 34-32 on both sides of the driveway. No structures (except along Old San Carlos Boulevard) or plantings shall be permitted between two feet and six feet above the average grade of each street within this triangular space.

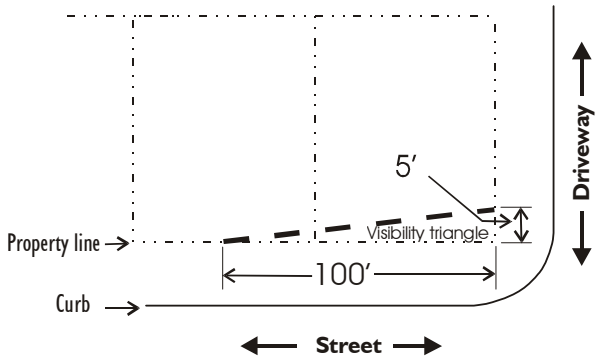


Figure 34-33

(c) ***Trees and shrubs.*** Where plantings are restricted between two feet and six feet in height, this restriction shall require the property owner to prune shrubs that extend above two feet and tree limbs that hang below six feet. The restriction on plantings shall not apply to the trunks of trees.

Secs. 34-3132--34-3150. Reserved.

DIVISION 41. WATER-ORIENTED RENTALS

Sec. 34-3151. Water-oriented rental establishments.

(a) ***Applicability.*** This section addresses those outdoor rental activities that may be permitted on property adjacent to the Gulf of Mexico and are not located fully within a building. This section is supplemented by the specific standards for beach furniture and equipment that are found in ch. 14 and for personal watercraft rental businesses and parasail activities that are found in ch. 27 of this code.

(b) ***Permitted districts.*** Water-oriented rentals are permitted only in resorts as resort accessory uses and in certain zoning districts where permitted by right or by special exception (see division 2 of article III of this chapter). Locations for personal watercraft rental businesses and parasail activities are further restricted by § 27-51(a).

(c) ***Location.*** There may not be any indication from any street that these activities are occurring except as allowed by § 27-51(c)(5).

(d) ***Setbacks.*** The activity must be located within the side property lines and may not be permitted seaward of the minimum waterbody setback for the Gulf of Mexico as set forth in § 34-638(d)(3). Exceptions are:

(1) Beach chairs and umbrellas may be displayed or placed anywhere landward of the mean high water line.
(2) Personal watercraft rental operations and parasail activities that are authorized by this code are permitted seaward of the mean high water line as set forth in ch. 27.

(e) ***Time limitations.*** The rental activity may not occur between the hours of 9:00 P.M. and 8:00 A.M., and movement of personal watercraft is further restricted by § 27-49(4). Artificial lighting is prohibited.

(f) ***Storage during sea turtle nesting season.*** No structures or equipment of any kind may be left on the beach before or after regular business hours between the hours of 9:00 P.M. and 8:00 A.M. from May 1 until October 31. See also §§ 14-5, 14-78, and 27-49(9).

(g) ***Signage.*** The only signage permitted shall be those signs specifically authorized by § 27-51(c).

Secs. 34-3152--34-3200. Reserved.

ARTICLE V. NONCONFORMITIES [1]

DIVISION 1. GENERALLY

Sec. 34-3201. Purpose of article.

The regulations of this code and various amendments thereto have caused or will cause some buildings, uses, or lots to no longer conform with one or more provisions of this code.

(1) It is the purpose of this article to set forth the rules and regulations regarding those nonconforming buildings, uses, or lots which were created by the adoption of this code or amendments thereto.
(2) Nothing contained in this article is intended to preclude the enforcement of federal, state, and other local regulations that may be applicable.

Sec. 34-3202. Three types of nonconformities defined.

(a) ***Three types of nonconformities.*** There are three distinct types of nonconformities recognized by this article, with a separate division devoted to each. In situations where there is more than one type of nonconformity, for example a nonconforming use in a nonconforming building, all relevant divisions shall apply.

(b) ***Nonconforming building.*** For purposes of this article, the term "*nonconforming building*" means a building or structure, or portion thereof, which was lawful prior to the adoption of any ordinance from which this code is derived, or the adoption of any revision or amendment to this code, or the adoption or amendment to the comprehensive plan, but which fails, by reason of such adoption, revision, or amendment, to conform to specific requirements where the building or structure is located due to its size, dimension, location on the lot, number of dwelling units or guest units, building type, or compliance with floodplain regulations. See division 2 of this article for regulations on nonconforming buildings.

(c) ***Nonconforming use.*** For purposes of this article, the term "*nonconforming use*" means a use or activity which was lawful prior to the adoption of any ordinance from which this code is derived, or the adoption of any revision or amendment to this code, or the adoption or amendment to the comprehensive plan, but which fails, by reason of such adoption, revision, or amendment, to conform to the use requirements where the property is located. See division 3 of this article for regulations on nonconforming uses.

(d) ***Nonconforming lot.*** For purposes of this article, the term "*nonconforming lot*" means a lot of which the area, dimension, or location was "lawful" (see definition in §34-2) prior to the adoption of any ordinance from which this code is derived, or prior to the adoption of any revision or amendment to this code, and which fails by reason of such adoption, revision, amendment, or rezoning to conform to the requirements where the lot is located. However, a lot which no longer conforms due to the adoption or revision of any comprehensive plan can only be developed in accordance with § 34-3274. See division 4 of this article for regulations on nonconforming lots.

Sec. 34-3203. Illegal buildings, uses, and lots.

If a building, use, or lot was not lawful when created and cannot be lawfully modified to comply with this code, it shall not be considered nonconforming but shall be deemed an illegal building, use, or lot and thus not afforded the protection provided by this article to nonconforming buildings, uses, or lots.

(1) Illegal buildings or uses must be lawfully modified to comply with this code or must be removed in accordance with § 34-1(c).
(2) Illegal lots must be lawfully combined with adjoining land so as to conform with this code, or must remain vacant but still be maintained in accordance with the property maintenance code in division 1, article I, ch. 6 of this code and other town regulations.

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[1] ***Cross references***–*Nonconforming marine structures, § 26-48; nonconforming structures on the beach, § 27-51(c)(6); nonconforming beach rental licenses, § 27-53, § 27-55; nonconforming signs, § 30-56; nonconforming establishments serving alcoholic beverages, § 34-1264(h); replacing a nonconforming hotel/motel, § 34-1806*

Sec. 34-3204. Amortization.

Notwithstanding the general provisions of this article, other portions of this code may require that specific types of nonconforming buildings and uses must be modified into conformance with this code, or be eliminated, by a specific date. Such dates are established to allow owners a reasonable period to amortize the value of the nonconforming building or use.

Sec. 34-3205. Reserved.

Sec. 34-3206. Nonconformities created by public acquisition.

Public acquisition of a portion of a lot might cause the remainder to become nonconforming as to area, width, depth, setbacks, floor area ratio, or required parking.

(1) To minimize the adverse effects of such acquisition, previous lawful buildings, structures, or lots that might be rendered nonconforming as to compliance with a specific requirement of this code shall be deemed conforming with that requirement rather than nonconforming.
(2) This applies whether the acquisition occurred by eminent domain, purchase, or a publicly accepted donation of land or easements.

Secs. 34-3207--34-3230. Reserved.

DIVISION 2. NONCONFORMING BUILDINGS

Sec. 34-3231. Nonconforming buildings defined.

For purposes of this division, the term "*nonconforming building*" means a building or structure, or portion thereof, which was lawful prior to the adoption of any ordinance from which this code is derived, or the adoption of any revision or amendment to this code, or the adoption or amendment to the comprehensive plan, but which fails, by reason of such adoption, revision, or amendment, to conform to specific requirements where the building or structure is located due to its size, dimension, location on the lot, number of dwelling units or guest units, building type, or compliance with floodplain regulations.

Sec. 34-3232. Continued use of a nonconforming building.

The occupancy of a nonconforming building may be continued so long as it remains otherwise lawful. However, if the *specific use* of a nonconforming building is itself nonconforming, then that use is also subject to the provisions of division 3 of this article.

Sec. 34-3233. Repairing a nonconforming building.

(a) Internal repairs, reconstruction, and renewal may be made to nonconforming buildings in accordance with this section.

(1) A nonconforming building may be altered to decrease its nonconformity.
(2) Awnings and canopies may be attached to nonconforming buildings as provided in § 34-638(d)(1)d.
(3) Commercial antennas may be installed on nonconforming buildings in accordance with § 34-1443(d).
(4) Permits may be issued for reroofing and roof repairs for any existing mobile home or recreational vehicle, regardless of lot size.

(b) Internal repairs, reconstruction, and renewal of certain nonconforming buildings are limited in scope because the town desires for these buildings to be reconstructed in compliance with this code.

(1) The limitations in this subsection apply only to buildings that are nonconforming:
   a. due to *density* or *intensity* (see § 34-3234(b)(3)), or
   b. due to *floodplain regulations* (see § 34-3234(b)(4)), or
   c. due to *building type* (see § 34-3234(b)(5)).
(2) For such nonconforming buildings, the director shall determine whether the repairs, reconstruction, or renewal, alone or in conjunction with other permitted improvements or enlargements, are major enough to be considered a "substantial improvement," as that term is defined in § 6-405. See § 34-3234(b)(1) for details.

Sec. 34-3234. Enlarging a nonconforming building.

(a) The following types of nonconforming buildings may be physically enlarged, either laterally or vertically, so long as they remain otherwise lawful and the enlargement is in accordance with the regulations in this subsection:

(1) ***If nonconforming due to setbacks.*** A nonconforming building which is lawful in all respects with the exception of a setback requirement or build-to line (see § 34-662) may be enlarged, provided that:
   a. The enlargement is otherwise permitted; and
   b. The enlargement itself, including any enlargement which increases the height or volume of the structure, complies with all the setback requirements and fully complies with any applicable build-to lines.
   c. Also see § 34-268 regarding certain administrative setback variances that may be available for nonconforming buildings.
(2) ***If nonconforming due to lot area.*** A nonconforming building which is lawful in all respects with the exception of lot area requirements may be enlarged, provided that:
   a. The enlargement is otherwise permitted;
   b. All other property development requirements such as setbacks, height, floor area ratio, density, intensity, parking, and open space are met.
(3) ***If nonconforming due to height.*** A nonconforming building which is lawful in all respects with the exception of height restrictions may be enlarged, provided that:
   a. The enlargement is otherwise permitted; and
   b. The enlargement itself complies with current height and setback requirements.
(4) ***If nonconforming due to floor area ratio.*** A nonconforming building which is lawful in all respects with the exception of floor-area-ratio shall not be enlarged.

(b) Certain other types of nonconforming buildings have special limitations on the extent to which they may be repaired and physically enlarged because the town desires for these buildings to be reconstructed in compliance with this code.

(1) The combined cost of enlargements and any repairs to such nonconforming buildings or structures shall be reviewed by the director to determine whether they are major enough to be considered a "substantial improvement," as that term is defined in § 6-405.
   a. If the improvements *do not* constitute a "substantial improvement," their value shall be recorded with the director for the purpose of establishing the extent of allowable future repairs, enlargements, or replacements, using the same methodology as for improvements in the floodplain (article IV of ch. 6).
   b. If the improvements constitute a "substantial improvement," they will be approved only if they result in the building fully complying with all regulations for new buildings on vacant land, except as provided in the buildback regulations found in §§ 34-3237 and 34-3238.
(2) These special limitations on "substantial improvements" apply to the following types of nonconforming buildings, in addition to the specific limitations provided below for each type.
(3) ***If nonconforming due to density or intensity.*** A building, or a group of buildings or structures, may be nonconforming because there are more residential dwelling units, or more guest units, or a greater floor-area-ratio, than currently permitted by this chapter or by the Fort Myers Beach Comprehensive Plan. Substantial improvements to such buildings may not physically enlarge them, either laterally or vertically, and they may not be replaced, except under one of the following three circumstances:

a. If the enlargement or replacement complies entirely with this code and the comprehensive plan as they apply to new buildings on vacant land, including the current density limits on dwelling units and guest units, current height limits, and current caps on floor-area-ratio; or
b. If the replacement has been approved by the town council in accordance with the pre-disaster buildback regulations, as described in § 34-3237; or
c. If the building is damaged or destroyed by a natural disaster and its replacement meets all requirements of the post-disaster buildback regulations, as described in § 34-3238.

(4) ***If nonconforming due to floodplain regulations.*** A nonconforming building whose lowest floor does not meet the base flood elevation requirements for new buildings can only be expanded in accordance with the standards in § 6-472.

(5) ***If nonconforming due to building type.*** Certain buildings are nonconforming due to fundamental design and construction differences between them and new buildings that are permitted in the same zoning district.
a. *Building type described.* Examples include recreational vehicles or mobile homes in zoning districts that do not permit them; automobile service stations or drive-through facilities in pedestrian-oriented commercial districts, and storefront buildings in residential districts. However, buildings that might be considered nonconforming solely due to technical changes in the building codes (which are described in article II of ch. 6) are not classified as nonconforming buildings for the purposes of this article and may be expanded if they are otherwise in conformance with all requirements for their location.
b. *Mobile homes outside mobile home parks.* See § 34-1921.
c. *Mobile homes in mobile home parks.* See §§ 34-694 and 34-1922.
d. *Other nonconforming building types.* Other buildings that are nonconforming due to building type cannot be "substantially improved" as described in § 6-405 unless they are altered to eliminate this type of nonconformity.

Sec. 34-3235. Moving a nonconforming building.

(a) Should a nonconforming building be moved on-site for any reason, for any distance whatever, it shall not be moved unless the relocation decreases the nonconformity.

(b) A nonconforming building that is being moved off-site shall only be placed on its new site in full conformance with this code.

(c) See §§ 34-1951 and 34-3103 regarding permits for moving buildings.

Sec. 34-3236. Replacing a nonconforming building.

Nonconforming buildings can be replaced in one of the following manners:

(1) In full conformance with all current provisions of this code as they apply to new buildings on vacant land; or
(2) In the same manner as provided for enlargements to the various types of nonconforming buildings as provided in § 34-3234; or
(3) As provided by the buildback regulations found in §§ 34-3237 and 34-3238.

Sec. 34-3237. Pre-disaster buildback.

Owners of buildings or groups of buildings that exceed the density, intensity, or height limits for new buildings may seek permission from the town council to voluntarily replace those buildings at up to the existing lawful density or intensity and up to the existing height in accordance with Policy 4-E-1 of the Fort Myers Beach Comprehensive Plan, as follows:

(1) The replacement building must meet the floodplain regulations for new buildings, as provided in article IV of ch. 6.
(2) The replacement 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 rebuilt landward of the 1978 coastal construction control line.
(3) The replacement building must comply with all current building, life safety, and accessibility codes.
(4) The replacement building cannot exceed the lawful density and intensity of the existing building:
    a. as measured for residential buildings in § 34-3238(2)d.;
    b. as measured for hotel/motels in § 34-3238(2)e.; or
    c. as measured for all other buildings by the gross square footage.
(5) Each specific pre-disaster buildback proposal must be proposed to the town council through the planned development rezoning process (see division 6 of article III of this chapter), along with any proposed deviations from this code.
(6) The town council will approve, modify, or deny each such request based on its opinion of the degree of conformance of the specific proposal with the Fort Myers Beach comprehensive plan, specifically including the plan's land-use and community design policies, pedestrian orientation, and natural resource criteria.
(7) If the lowest floor of the rebuilt building must be elevated higher than the existing building to comply with current floodplain or coastal regulations, then the total height of the rebuilt building can be increased by the same amount. However, any pre-disaster buildback request for additional height beyond that increment must comply with Policy 4-C-4 of the comprehensive plan in the same manner as that policy would apply to an entirely new building on vacant land.

Sec. 34-3238. Post-disaster buildback.

Owners of buildings or groups of buildings that exceed the density, intensity, or height limits for new buildings and that are damaged or destroyed by a natural disaster, including fire, tropical storms, and hurricanes, shall be permitted to replace those buildings at up to their existing lawful density, intensity, and/or height in accordance with Policy 4-D-1 of the Fort Myers Beach Comprehensive Plan.

(1) ***Less than 50% damage.*** If the cost to repair the damaged building is *less than 50%* of the building's value and the repair is thus not a "substantial improvement" as that term is defined in § 6-405, then the following rules shall apply:
    a. The repairs may be made without bringing the building into full compliance with the requirements of this code for building size, dimension, location on the lot, number of dwelling units or guest units, building type, or compliance with floodplain regulations.
    b. The repairs may not physically enlarge the building either laterally or vertically, with the following potential exception:
        1. During the repair process, owners may wish to elevate lawfully existing dwelling units or guest units that do not comply with the floodplain regulations in ch. 6 of this code.
        2. To encourage this elevation, the director may administratively modify setbacks, open space, buffer, or height requirements to the minimum extent that would accommodate rebuilding the units in conformance with ch. 6 up to their existing interior square footage, as computed in accordance with §§ 34-3238(2)d.1 or e.1.
        3. However, if the combined cost to repair the damage and elevate the units exceeds 50% of the building's value, then all provisions of § 34-3238(2) will apply.
    c. All repairs must comply with all current building, life safety, and accessibility codes.
(2) ***More than 50% damage.*** If the cost to repair or rebuild the damaged building is *more than 50%* of the building's value and is thus a "substantial improvement" as that term is defined in § 6-405, then the following rules shall apply:
    a. The building must meet the floodplain regulations for new buildings, as provided in article IV of ch. 6.
    b. The building must meet the coastal construction requirements that apply to new

structures and portions thereof, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures that are damaged by more than 50% must be rebuilt landward of the 1978 coastal construction control line.

c. The building must comply with all current building, life safety, and accessibility codes.

d. ***Residential buildings.*** A rebuilt residential building may exceed the density limits for new buildings on vacant land, but cannot exceed the legally documented number of dwelling units in the building immediately before the natural disaster.
   1. All dwelling units legally existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt dwelling units does not exceed the interior square footage of the previous dwelling units. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air-conditioned space.
   2. At the owner's option, this same square footage can be used for fewer but larger dwelling units.
   3. Also at the owner's option, the number of dwelling units and the square footage of the new building may be determined by this code's current regulations for new buildings on the same site instead of using either the pre-disaster or post-disaster buildback regulations.

e. ***Hotels/motels.*** A rebuilt hotel/motel may exceed the intensity limits for new hotel/motel buildings on vacant land, but cannot exceed the documented number of lawful guest units in the building immediately before the natural disaster.
   1. All guest units lawfully existing prior to the natural disaster may be rebuilt, provided the total interior square footage of the rebuilt guest units does not exceed the interior square footage of the previous guest units. However, interior square footage in the new building may be increased by 30 square feet for each bathroom to reflect current code requirements for larger bathrooms, and any lawfully existing guest units that are smaller than the minimum sizes required by this code may be enlarged to meet the minimum size requirements. For purposes of this subsection, interior square footage excludes hallways, stair towers, elevators, open balconies, underbuilding parking, and similar common or non-air-conditioned space.
   2. At the owner's option, this same square footage can be used for fewer but larger guest units.
   3. Also at the owner's option, the number of guest units and the square footage of the new building may be determined by this code's current regulations for new hotel/motel buildings on the same site instead of using either the pre-disaster or post-disaster buildback regulations.

f. ***All buildings.*** The new building must comply with all other zoning and development regulations except where compliance with such regulations would preclude reconstruction otherwise intended by Policy 4-D-1 of the comprehensive plan. Specifically:
   1. If the lowest floor of the rebuilt building must be elevated higher than the damaged or destroyed building to comply with current floodplain or coastal regulations, then the total height of the rebuilt building can be increased by the same amount.
   2. If a rebuilt building must be set back further from any property lines due to current requirements of this code, then the volume of the building so reduced can be rebuilt elsewhere on the site, including one or more extra stories on the building if in the opinion of the director there is no other suitable location to replace the volume.
   3. If current open space or buffer regulations cannot be met, those requirements may be waived administratively by the director.

Secs. 34-3239--34-3240. Reserved.

DIVISION 3. NONCONFORMING USES

Sec. 34-3241. Nonconforming uses generally.

(a) For purposes of this division, the term "*nonconforming use*" means a use or activity which was lawful prior to the adoption of any ordinance from which this code is derived, or the adoption of any revision or amendment to this code, or the adoption or amendment to the comprehensive plan, but which fails, by reason of such adoption, revision, or amendment, to conform to the use requirements where the property is located.

(b) A residential use may not conform because it contains one or more dwelling units more than are permitted under current regulations. If the extra dwelling unit(s) were fully lawful at the time they were created, for the purposes of this article they shall be deemed a *nonconforming building* rather than a *nonconforming use.* The regulations governing nonconforming buildings are found in division 2 of this article; see especially § 34-3234(b)(3) for restrictions on expanding buildings that are nonconforming due to density or intensity.

(c) A nonconforming use of a building, land, or building and land in combination may be continued subject to the limitations found in this division. If the nonconforming use is located in a nonconforming building, the additional requirements of division 2 of this article shall also apply to the building.

Sec. 34-3242. Enlarging a nonconforming use.

(a) No such nonconforming use shall be extended or enlarged:

(1) by having any buildings or structures replaced or expanded in physical size; or
(2) by any increase in land or water area devoted to the nonconforming use; or
(3) by any increase in the size or number or vehicles and boats, or increase in the capacity of services such as parking lots that would expand the operation of the nonconforming use.

(b) No additional structures shall be erected in connection with a nonconforming use.

(c) Nonconforming establishments that sell, serve, or allow the consumption of alcoholic beverages are further limited by § 34-1264(h).

(d) The installation of a commercial antenna on a building containing a nonconforming use will not be deemed to constitute an expansion of the nonconforming use (see § 34-1443(d)).

Sec. 34-3243. Replacing a nonconforming use.

No nonconforming use shall be replaced by another use not specifically permitted where the nonconforming use is located.

Sec. 34-3244. Discontinuing a nonconforming use.

When a nonconforming use is discontinued or abandoned for nine consecutive months, the use shall not thereafter be carried out or reestablished except in conformance with all current regulations.

Sec. 34-3245. Repairing a building containing a nonconforming use.

Only ordinary repairs and maintenance, including repairs of roof covering, walls, fixtures, wiring, or plumbing, shall be permitted on any building or structure devoted to a nonconforming use. In no case shall such repairs include structural alterations.

Sec. 34-3246. Nonconforming uses approved by special exception or permit.

Uses approved by special exception or other permits which were issued or granted by the town council or board of county commissioners before the effective date of any ordinance from which this code is derived, and which are no longer permitted in the zoning district where located, shall be considered to be nonconforming uses and subject to the provisions of this article if the actual use was in operation within two years after its approval by special exception or other permit and has not thereafter been discontinued or abandoned for any nine consecutive months.

Secs. 34-3247--34-3270. Reserved.

DIVISION 4. NONCONFORMING LOTS

Sec. 34-3271. Definition of nonconforming lot.

(a) *Lot* means a parcel of land that has been created from a larger parcel and whose precise dimensions and location were identified through public notice (see § 34-3272).

(b) "*Nonconforming lot*" means a lot of which the area, dimension, or location was "lawful" (see definition in § 34-2) prior to the adoption of any ordinance from which this code is derived, or prior to the adoption of any revision or amendment to this code, or prior to being rezoned, and which fails by reason of such adoption, revision, amendment, or rezoning to conform to the requirements where the lot is located. However, a lot which no longer conforms due to the adoption or revision of any comprehensive plan can only be developed in accordance with § 34-3274.

(c) See § 34-3234(a)(2) for the situation where a nonconforming building with a conforming use exists on a lot whose lot area is smaller than required by its zoning district.

Sec. 34-3272. Determining when a lot was created.

For the purpose of this division, a lot is deemed to have been "created" on such date that one of the following conditions occur, provided the configuration of the lot was not later altered:

(1) *Individual deed.* The date that a deed for the lot containing its full legal description was lawfully recorded in the official record books in the office of the clerk of the circuit court of the county;
(2) *Subdivision plat.* The date that a subdivision plat has been lawfully recorded in the plat books in the office of the clerk of the circuit court of the county, if the individual lot is clearly identified as a part of that subdivision;

Sec. 34-3273. General requirements for residential uses on nonconforming lots.

Nonconforming lots may be developed subject to the following provisions:

(1) All other regulations of this chapter shall be met, except as modified by this division.
(2) A residential building may be placed on a single nonconforming lot provided the lot has at least 40 feet in width, 75 feet in depth, and 4,000 square feet in area.
(3) Minimum residential setbacks on nonconforming lots shall be as follows:
    a. Street and water body setbacks shall be as set forth in the regulations for the applicable zoning district.
    b. Side setbacks shall be 10% of lot width, or 5 feet, whichever is greater.
    c. Rear setbacks shall be 25% of lot depth, or 20 feet, whichever is smaller.
    d. Certain nonconforming lots may qualify for an administrative setback variance (see § 34-268).
(4) Any development on nonconforming lots must comply with all density restrictions of the Fort Myers Beach Comprehensive Plan.
    a. Density computations shall be in accordance with § 34-632.
    b. If density computations do not allow even one dwelling unit on a nonconforming lot, one single-family residence may still be permitted if a minimum-use determination is obtained in accordance with § 34-3274.
(5) No division of any nonconforming lot may be permitted which creates a lot with width, depth, or area below the minimum requirements stated in this chapter, except for combinations and redivisions in accordance with § 34-3275.
(6) The burden of proof for demonstrating that a lot is a nonconforming lot in accordance with this division, and lawfully existed at the specified date, shall be with the owner.
(7) The remaining lot after condemnation shall be treated in accordance with § 34-3206.

Sec. 34-3274. Minimum use determinations.

(a) A single-family residence may also be constructed on a nonconforming lot which *does not* comply with the density requirements of the Fort Myers Beach Comprehensive Plan, provided the owner receives a favorable administrative interpretation of the single-family residence provision (also known as a minimum use determination) in accordance with ch. 15 of the Fort Myers Beach Comprehensive Plan.

(b) To qualify for a minimum use determination, the following additional requirements must be met:

(1) Minimum lot requirements:
   a. Lot area of 4,000 square feet if the lot was created prior to 1962; or
   b. Lot width of 50 feet and lot area of 5,000 square feet if part of a platted subdivision recorded between 1962 and 1984; or
   c. Lot area of 7,500 square feet if not part of a platted subdivision created between 1962 and 1984; or
   d. Lot width, depth, and area were in conformance with the zoning regulations if created after 1984; or
   e. Lot sizes were explicitly approved as part of a planned development rezoning.

(2) Ownership requirements:
   a. Prior to November 21, 2000, the lot shall have been vacant or shall have been improved with one structure located wholly on this lot.
   b. If a structure had been placed on two or more adjoining lots at any time prior to November 21, 2000, the individual lots shall not qualify for this determination.

(c) Lots qualifying for a minimum use determination may not place the home, accessory structures, or driveways on any land in the "Wetlands" or "Recreation" category on the future land use map of the comprehensive plan.

(d) The rights granted by a minimum use determination run with the lot and are available to any subsequent owner if the lot is transferred in its entirety.

(e) Applications for a minimum use determination shall be filed with the town clerk in accordance with ch. 15 of the comprehensive plan. Complete applications will be reviewed by the legal counsel for the local planning agency (see § 34-124(3)) and may be referred to the local planning agency for a decision (see § 34-120(6)).

Sec. 34-3275. Combining nonconforming lots.

(a) Abutting nonconforming lots may be combined and redivided to create larger dimension lots as long as such recombination includes all parts of all lots, allowable density is not increased, and all setback requirements are met. Under these conditions the new lots do not need to meet this code's dimensional requirements for new lots.

(b) If two or more abutting nonconforming lots each qualify for the right to construct a single-family residence, and if the lots or parcels are located in a zoning district that permits two-family dwellings, the property owner may combine the lots to build a single two-family building in lieu of constructing two single-family residences.

Sec. 34-3276. Replacing a mobile home on a nonconforming lot.

A mobile home may be replaced on a nonconforming lot only if allowed by the zoning district regulations and only in accordance with § 34-3234(b)(5).

Sec. 34-3277. Commercial use on a nonconforming lot.

(a) A commercial use of land may be commenced on a single nonconforming lot lawfully existing on February 4, 1978, subject to the specific limitations and regulations set forth in this section, provided that the lot is zoned for such use. However, the lot must be appropriately located and adequate in size and dimension to accommodate the use contemplated and all spatial requirements, i.e., proposed structures, setbacks, parking, access, surface water management facilities, and, where required, buffers, in addition to these specific requirements:

(1) ***Lots created prior to 1962.*** If the nonconforming lot was lawfully created prior to June 1962, it must be at least 4,000 square feet in area and have a minimum width of 40 feet and a minimum depth of 75 feet. Minimum setbacks for structures are as follows:
   a. Street setbacks, build-to lines, and water body setbacks shall be as set forth in the regulations for the applicable zoning district.
   b. Side setbacks shall be 20 percent of lot width, or 15 feet, whichever is less.
   c. Rear setbacks shall be one-half of the lot depth less the street setback, or five feet, whichever is greater, but not more than 25 feet.

(2) ***Lots created 1962–1978.*** If the nonconforming lot was created between June 1962 and January 5, 1978, and was lawfully existing on February 4, 1978, it must be at least 7,500 square feet in area and have a minimum width of 75 feet and a minimum depth of 100 feet. Minimum setbacks for structures are as follows:
   a. Street setbacks, build-to lines, and water body setbacks shall be as set forth in the regulations for the applicable zoning district.
   b. Side setbacks shall be 15 feet.
   c. Rear setbacks shall be one-half the lot depth less the street setback, or five feet, whichever is greater, but not more than 25 feet.

(b) Nothing in this division shall be construed to prohibit the rezoning of nonconforming lots into commercial districts where the public interest is served by such a rezoning.