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MEMORANDUM

TO: Fort Myers Beach Local Planning Agency
FROM: Bill Spikowski
DATE: January 6, 2005
SUBJECT: **LAND DEVELOPMENT CODE AMENDMENTS**
CHAPTERS 1 - 2 - 6 - 10 - 14 - 26 - 27 - 30 - 34

Attached are two ordinance that would amend Chapters 1, 2, 6, 14, 26, 27, 30, and 34 of the Land Development Code.

The code was overhauled chapter by chapter between 1999 and 2003. Now that the code is complete, we have discovered various errors, minor problems with implementation, and inconsistencies between chapters. These ordinances would resolve those problems and make other timely modifications.

The Local Planning Agency is charged with preparing amendments and updates to the Land Development Code. On December 21, the LPA held a workshop and decided that this ordinance was ready for public hearings. The public hearing schedule is as follows:

- LPA public hearing: January 18, 2005 at noon
- Town Council public hearings: February 28 and March 7, 2005, both at 6:30 P.M.

Here are references to all changes to the code language since the December 13 drafts that were reviewed by the LPA on December 21:

- ▶ § 6-12 now includes explicit references to canals as requested by the LPA.
- ▶ A complete draft of Chapter 10 revisions is now included. This is the same draft delivered to LPA members during the December 21 workshop.
- ▶ § 14-3 now includes a specific prohibition on the use of herbicides on dune vegetation.
- ▶ § 14-5(a) now includes an Alternative #3 which will be reviewed by the Marine Resources Task Force on January 12, 2005.
- ▶ § 26-41 now indicates that the drawings are not to scale.
- ▶ New subsection § 30-56(d)(2) codifies new rules on nonconforming storm-damaged signs that were decided upon by the Town Council when they considered Ordinance 04-16 on December 20, 2004.

- ▶ § 34-631 has been modified to clarify height measurements for buildings with cathedral (sloped) ceilings. The proposed language on rooftop towers has not been changed.
- ▶ § 34-638(d)(1)g. on mechanical equipment in setback areas has been modified in accordance with suggestions from the LPA.
- ▶ § 34-638(d)(2) on porches and balconies in street setbacks has been restored in accordance with LPA direction.
- ▶ § 34-676(a)(2)–(3) have been clarified.
- ▶ § 34-1807 has been simplified in the January 6th draft. The previous language was confusing because it mixed two different concepts:
 - (A) Conversion of an existing building between residential and hotel/motel uses; and
 - (B) Demolishing then rebuilding an over-density building and changing the new building either to or from a hotel/motel.The latest language for § 34-1807 deals only (A). Demolition and rebuilding (B) will continue to be addressed by the buildback provisions later in Chapter 34.

CHAPTER 1

HISTORY: The original version of Chapter 1 of the Land Development Code was Lee County's version of that chapter which was adopted by the Town Charter as the code existed on the date of incorporation. Chapter 1 was completely revised by Fort Myers Beach Ordinance 02-01 in February 2004.

PROPOSED CHANGES: The only changes to Chapter 1 would substitute the term "special master" for the code enforcement hearing examiner to reflect the changes made for the remainder of this code by Ordinance 03-12, and would add a new § 1-15 explaining that variances to any chapters of this code may follow the variance procedures in Chapter 34.

CHAPTER 2

HISTORY: The original version of Chapter 2 of the Land Development Code was also Lee County's version of that chapter. Chapter 2 was completely revised by Fort Myers Beach Ordinance 00-11 in June 2000. Additional amendments were made to Chapter 2 through Ordinance 02-01 to clarify various provisions and to maintain consistency between Chapter 2 and other chapters of the code as they were being revised. Ordinance 03-12 replaced the hearing examiner for code enforcement with a special master.

PROPOSED CHANGES: The proposed changes attached to this memorandum affect the following sections of Chapter 2:

- ▶ **§ 2-1:** A section reference is being corrected to match recent revisions to Chapter 34.
- ▶ **§ 2-52:** Unnecessary verbiage is being eliminated.
- ▶ **§ 2-306:** The fee schedules for transportation and fire impact fees are being adjusted and other minor changes are being made to match recent changes made by Lee County to its impact fee program.

- ▶ **§ 2-427:** The underlined sentence in this section first appeared in Ordinance 03-12 but wasn't underlined there. To avoid any question over its legality, it is being included here as well.

CHAPTER 6

HISTORY: The original version of Chapter 6 was also Lee County's version of that chapter. Chapter 6 was completely revised by Fort Myers Beach Ordinance 00-12 in June 2000. Additional amendments were made to Chapter 6 through Ordinance 02-01 to clarify various provisions and to maintain consistency between Chapter 6 and other chapters of the code as they were being revised. Article IV was further revised by Ordinance 04-09 in June 2004.

PROPOSED CHANGES:

Article I: Several important changes to the property maintenance code are being proposed at this time, including proper disposition of swimming pool water and runoff from rooftops of existing and expanded buildings. The proposed changes attached to this memorandum affect the following sections:

- ▶ **§ 6-4:** The requirement that property owners maintain trees and shrubs so that they do not block adjoining sidewalks is being expanded to include bike paths and streets.
- ▶ **§ 6-11:** A cross-reference is being added.
- ▶ **§ 6-12:** The proper disposition of swimming pool water was addressed in the Comprehensive Plan; implementing regulations are now being proposed to carry out Policies 6-C-5 and 9-C-3.
- ▶ **§ 6-13:** The effects of discharging stormwater on the beach are addressed by Comprehensive Plan Policies 6-C-5 and 9-C-1; implementing regulations are being proposed here to begin requiring compliance from existing structures.
- ▶ **§ 6-14:** Large new homes along with various technical requirements (such as floodplain elevation requirements) sometimes contribute to flooding in existing neighborhoods. This is a thorny problem without any simple solutions. New language is proposed here that would reduce flooding when existing lots are filled or when homes are expanded or rebuilt.

Article II: Most of the changes to Article II are the same changes that Lee County made to its Article II to reflect the adoption of the Florida Building Code. By law, this statewide code supersedes most prior locally adopted codes (the Standard Building Code series). Certain changes, mainly administrative changes, may be made by local governments provided the technical standards in the code are not weakened. The proposed changes attached to this memorandum affect the following sections:

- ▶ **§ 6-44:** An obsolete reference to the "standard code" is being eliminated.
- ▶ **§ 6-111:** This section contains the significant change from the Standard Building Code to the new Florida Building Code.
- ▶ **§ 6-112:** This new section identifies the correct wind-borne debris region for Fort Myers Beach as required by the Florida Building Code.
- ▶ **§ 6-113:** This section provides a cross-reference to new outdoor lighting standards that are being added to Chapter 34.

- ▶ **§ 6-114:** This section provides a cross-reference to NPDES erosion control standards for construction sites that are contained in Chapter 10.
- ▶ **§ 6-122:** A reference is being changed from “Standard Building Code” to “Florida Building Code.”
- ▶ **Division 4** of this article continues to adopt the Standard Existing Buildings Code, which until at least next year is not a part of the Florida Building Code.
- ▶ **Divisions 5 through 9** are being deleted as their subjects have now been incorporated into the Florida Building Code.

Article III: Much of the content of Article III is controlled by the state as a result of the Coastal Zone Protection Act of 1985, whose relevant provisions are found in F.S. 161.52 et seq. The original legislation required local building codes to include certain provisions of the act and required local officials to enforce those provisions during the permitting process.

During the 2000 legislative session, the Coastal Zone Protection Act was modified significantly. In part due to the adoption of the Florida Building Code, many parts of the statutes were overhauled to centralize authority over building-related matters into the new code and to forbid, rather than require, local amendments to building codes. This overhaul eliminated the requirement for local land development regulations to recite portions of the Coastal Zone Protection Act, but still requires local governments to enforce the remaining rules.

Since it is difficult to enforce rules that are not published in official code books, the proposed amendments to Chapter 6 will continue to recite the remaining statutory requirements but would eliminate those that have been repealed or moved to the Florida Building Code. The remaining requirements have also been modified in a number of ways to ensure consistency with the remainder of the Land Development Code.

The proposed changes attached to this memorandum affect the following sections of Article III:

- ▶ **§ 6-331:** The introductory statement for Article III is being updated to reflect the 2000 legislation.
- ▶ **§ 6-632:** In addition to minor editing, this section is being updated to include a reference to the beach debris regulations in Chapter 14 and to conform the state regulations to certain stricter rules at Fort Myers Beach that do not allow hardened seawalls or rip-rap revetments along the beach.
- ▶ **§ 6-333:** This article uses many terms such as “beach” and “dune” that are defined in the Beach and Dune Management article of Chapter 14. To reduce confusion, the definitions of these terms would now become the same and would be contained in § 14-1. Other terms that had been defined here are no longer used in the code or are being modified slightly to be consistent with Chapters 14, 27, or 34, or with relevant Florida Statutes.
- ▶ **§ 6-362:** This section had been mandated by state law but has now been rendered obsolete by the new Florida Building Code.
- ▶ **§ 6-364:** This section is being made consistent with the 2000 amendments to the Coastal Zone Protection Act and other state regulations.
- ▶ **§ 6-366:** This section is being made consistent with the 2000 amendments to the Coastal Zone Protection Act and other portions of the Land Development Code. Subsection (b) is being added to clarify what kind of “minor structures” will be

permitted by the town in the EC zoning district either “by right” or upon approval of a special exception. Subsection (d) is being added to summarize state requirements on dune walkovers. Subsection (e) is being added as a reminder of a related rule found in Chapter 10 (a rule that was mandated by Policy 6-E-3 of the Fort Myers Beach Comprehensive Plan).

- ▶ **§ 6-368:** Obsolete references are being deleted.

Article IV: Extensive revisions were made to Article IV by Ordinance 04-09 in June 2004. A few minor clarifying amendments are being proposed at this time:

- ▶ **§ 6-405:** The job of “floodplain coordinator” had been delegated to Lee County’s floodplain coordinator; after the troublesome review of procedures and implementation by FEMA earlier this year, it is apparent that the town needs to keep closer tabs on the administration of its floodplain regulations. A new definition is being proposed for determining the cost of proposed improvements; this is the numerator in the fraction used to measure compliance with the 50% rule. The definition of “market value of the structure” is being changed to allow the town to conduct a new appraisal instead of a review appraisal for the denominator in the 50% rule; in some cases this is a less expensive approach, in other cases it is more expensive but more reliable.
- ▶ **§ 6-472(1):** Subsection 2. addresses the situation of an owner who wishes to build an addition onto an older building that does not meet post-1984 floodplain elevation requirements. The existing language could be interpreted to allow a large addition at ground level.

CHAPTER 10

HISTORY: The original version of Chapter 10 of the Land Development Code was also Lee County’s version of that chapter. Chapter 10 was completely revised by Fort Myers Beach Ordinance 04-01 in January 2004.

PROPOSED CHANGES: The proposed changes attached to this memorandum affect the following sections of Chapter 10:

- **§ 10-1:** A redundant definition is being eliminated.
- **§ 10-7:** The term “notice of clearing” is being eliminated as that term is no longer used in this code.
- **§ 10-154:** Several technical changes are proposed:
 - Subsection (1) on legal descriptions would now conform with § 34-202(a)(1).
 - Subsection (7) would require that development order plans show finished floor elevations (to simplify administration of the floodplain regulations).
 - Subsection (8) would now cross-reference other relevant regulations in this code.
- **§ 10-174:** This section corrects of an error regarding nonconforming lots and renumbers the types of “limited review” development orders to match Lee County’s numbering system.
- **§ 10-213:** This section clarifies an ambiguity in technical requirements for plats.
- **§ 10-296:** This section clarifies an ambiguity in street standards.
- **§ 10-329:** This section adds standards that would forbid the rectangular lakes that are occasionally dug by developers.

- **§ 10-385:** This section updates building code references.
- **§ 10-415:** New references are being added to correspond with changes to Chapters 6 and 14.
- **§ 10-416:** References and clarifications are being added to this section.
- **§ 10-421:** Pruning and planting standards are being updated.

CHAPTER 14

HISTORY: The original version of Chapter 14 of the Land Development Code was also Lee County's version of that chapter. Its sea turtle lighting regulations in Article II were amended by Ordinance 98-03. Chapter 14 was then completely revised by Fort Myers Beach Ordinance 02-01 in February 2002, which added a new Article I titled "Beach and Dune Management" that incorporated the substance of Ordinance 00-10. Minor changes were also made by Ordinance 02-29.

PROPOSED CHANGES: The proposed changes attached to this memorandum affect the following sections of Chapter 14:

- **§ 14-1:** This section now contains the definitions for "beach," "dune," and "dune vegetation" that are used here and in several other chapters of the code. The terms "vegetation line" and "seaward line of vegetation" are being eliminated as they are ambiguous and/or are no longer used in this code.
- **§ 14-3:** The list of prohibited activities would now be clear that mowing dune vegetation and applying herbicides are illegal types of destruction of that vegetation.
- **§ 14-5:** This section needs to be amended to resolve a number of interpretation and enforcement problems with the existing regulations:
 - The time is being changed in subsection (a) to match the time requirement in (e). The removal of beach furniture and equipment from the beach at night was inconsistently treated in subsection (a) and in §§ 27-49 and 27-51; subsection (a) now contains three different approaches that could apply here and to §§ 27-49 and 27-51. Instead of vague references to "the beach," the first two approaches refer to the "EC zoning district" whose landward boundary is the 1978 coastal construction control line, which is the same line that is used throughout Chapter 34 to distinguish between developable uplands and the undevelopable beachfront. The third approach would use a newly defined term, "landward line of dune vegetation." (The Marine Resources Task Force has been evaluating this proposed language and did not endorse either of the first two approaches; the third approach is new and will be reviewed by MRTF at their January 12 meeting.)
 - Subsection (d) is being revised to allow one free-standing structure for each beach vendor to use during the day; this structure must be moved from the beach after business hours the same as is now required by § 27-51(c)(3) for parasail operators and personal watercraft vendors.
 - Subsection (e) would forbid the dragging of beach furniture, an activity that damages the beach.
- **§ 14-6:** This section would clarify the requirement for DEP permits for beach raking and would require insurance for beach raking equipment. It would also eliminate 4x4 lumber from being dragged behind beach raking equipment, an activity that smooths and compacts the sand rather than removing litter and debris.

- **§ 14-7:** Two new sentences would clarify the regulations for research and patrol vehicles driving on the beach.
- **§§ 14-9, 14-10, 14-384, 14-453, and 14-354:** Ordinance 03-12 established a “special master” to replace the former “hearing examiner” system of code enforcement. The changes in these sections reflect the new terminology.
- **§ 14-10(b)(4):** Temporary irrigation would be forbidden within 50 feet of a sea turtle nest.
- **§ 14-12:** This section details the new insurance requirement for beach raking; it parallels the current insurance requirements in § 27-56 for personal watercraft rentals and parasailing operators.
- **§ 14-72:** This section now refers to definitions found in § 14-1 rather than using different definitions.
- **§ 14-75:** New language would remove some redundancies and clarify the responsibilities of existing development with regard to lighting that may affect sea turtle nesting habitat.
- **§ 14-76:** Technical requirements for lighting permits are being clarified. The standards provided here are those currently being used in the permitting process.
- **§ 14-78:** The rule against fires on the beach during sea turtle nesting season is being strengthened due to enforcement problems with the previous wording.
- **§ 14-118:** An obsolete reference to “notice of clearing” is being eliminated.
- **§ 14-374:** A reference to Chapter 10 is being corrected.

CHAPTER 26

HISTORY: The original version of Chapter 26 of the Land Development Code was also Lee County’s version of that chapter. Chapter 26 was completely revised by Fort Myers Beach Ordinance 02-01 in February 2002.

PROPOSED CHANGES: The proposed changes attached to this memorandum affect the following sections of Chapter 26:

- **§ 26-41:** The definition of “multi-slip dock” used to be in Chapter 34 but was eliminated there; the original definition has been moved to this section. The definition of retaining wall has been changed slightly so that it won’t be confused with decorative retaining walls that surround landscaped areas. The definition of “tie-up area” has been expanded beyond its original usage for docks only.
- **§ 26-71:** The regulations for dock boxes have been moved here to make room for new § 26-72 on boat lifts
- **§ 26-72:** This new section clarifies the regulations for boat lifts and davits.

CHAPTER 27

HISTORY: The original version of Chapter 27 of the Land Development Code was adopted by Fort Myers Beach Ordinance 96-27 shortly after incorporation. At that time it only contained personal watercraft regulations. A separate Chapter 28 was adopted by Ordinance 97-02 containing parasailing regulations (later amended by Ordinance 99-4). The two chapters were combined into Chapter 27 by Ordinance 01-05 in September 2001.

PROPOSED CHANGES: The proposed changes attached to this memorandum affect the following sections of Chapter 27:

- **§ 27-45:** This section now refers to definitions found in § 14-1 rather than using different definitions.
- **§ 27-49:** The times in subsections (4) and (9) are being changed to match the time requirements in § 14-5. Subsection (9) is being modified to resolve conflicts on nighttime removal of personal watercraft from the beach; the regulations in § 14-5 would now apply without being repeated here. (Please note that some changes to language shown for § 27-49 may change as a result of ongoing discussions at the Marine Resources Task Force.)
- **§ 27-51:** The requirements for nighttime storage of rental kiosks are being clarified to become the same as § 14-5 without being repeated here.

CHAPTER 30

HISTORY: The original version of Chapter 30 of the Land Development Code (the sign chapter) was Lee County's version of that chapter as it existed on the date of incorporation. The Local Planning Agency overhauled Chapter 30 through Ordinance 99-1 in February 1999, followed by minor changes as follows:

- Ordinance 99-11 in September 1999
- Ordinance 99-14 in November 1999
- Ordinance 03-06 in June 2003
- Ordinance 04-15 in September 2004
- Ordinance 04-16 (pending in December 2004)

The previous revisions and the current update all retain the organizational structure of the original Chapter 30. The structure is quite complicated but is being retained primarily to remain consistent with the format of Lee County's sign regulations (which are also used by the city of Cape Coral).

This ordinance can be used in two different ways. Regulations for certain types of signs are found in specific sections of Chapter 30; for instance, prohibited signs are listed in § 30-5; allowable signs are listed in § 30-6; non-conforming signs are discussed in § 30-56; and signs that identify businesses are addressed in § 30-153. Those already familiar with this chapter, or who need just a single piece of information, can go directly to those sections.

Those with more general questions will probably start with the definitions in § 30-2. Every distinct type of sign is defined there. The definitions section now includes specific references to all other sections of this chapter that address that particular type of sign. Thus someone

interested in placing a temporary sign across Estero Boulevard to publicize a civic event would begin by reviewing the definitions section, learn there that “banner” is the appropriate term, then be directed to §§ 30-5 and 30-151 for details on banners.

For your convenience I am attaching to this memorandum a cross-reference chart that lists every type of sign in this version of Chapter 30 and then identifies all sections of the chapter that address each type of sign. This chart is not a formal part of Chapter 30 but should prove useful as an aid to learning how the chapter is structured.

DETAILS OF PROPOSED CHANGES: The proposed changes attached to this memorandum affect the following sections of Chapter 30:




- **§ 30-2:** This section adds definitions for previously undefined sign types; adds cross-references to other parts of this chapter; eliminates existing terms that are no longer used in Chapter 30; and eliminates some regulations that had been contained in their definitions (the regulations have been moved to the appropriate section of this chapter).
- **§§ 30-3—30-6:** These sections had been renumbered in 1999, causing confusion to those who use both Lee County’s and Fort Myers Beach’s sign regulations. With this draft, the original numbering would be reinstated in order to eliminate this confusion.
- **§ 30-4:** In 2003, special sign regulations were added to Chapter 34 as part of new commercial design standards. These new sign regulations are now being moved from Chapter 34 into Chapter 30 so that all regulations for signs that identify businesses are in a single location.
- **§ 30-5:** This section lists all prohibited signs. The new regulations are very similar in content to the existing regulations, but the terminology has been made more consistent and certain contradictions have been eliminated.
- **§ 30-6:** This section lists all allowable signs. Subsection (a) lists allowable signs that do not require a sign permit; subsection (b) lists allowable signs for which a sign permit is required.
- **§ 30-51:** The penalty provisions are being made consistent with the remainder of the land development code.
- **§§ 30-53—30-55:** These sections address administrative matters such as permitting and inspections. The major change is that the (Lee County) building official would no longer be the authority for issuing sign permits at Fort Myers Beach; the town manager or designee at town hall would issue sign permits.
- **§ 30-56:** This section on non-conforming signs is extremely important. When this section was rewritten in 1999, signs that did not conform to the new rules were given an 8-year-period before they had to be removed. This period will expire on September 13, 2007, at which time these signs must be replaced with signs that conform to Chapter 30. No significant changes are being proposed to these nonconforming rules except to codify the policy for storm-damaged signs that was developed by the Town Council on December 20, 2004 (see new § 30-56(d)(2)).
- **§ 30-91:** This section describes how the size of a sign is measured. The traditional rule is that the area measurement is to the outside edge of the sign frame, or if there is no sign frame, the area where a frame would have gone (completely surrounding all letters in the sign). A significant change is being proposed in this draft; signs that are mounted on the wall of a building and consist of individual letters or symbols

would use a different standard, now being measured as the sum of the areas within the perimeter of each letter of symbol. This change would encourage this type of sign by allowing the individual letters to be larger than if the sign were mounted on a frame or placed on a freestanding monument sign.

- **§ 30-92—30-96:** These sections contain other technical standards regarding the height and location of signs, followed by construction and landscaping standards.
- **§ 30-151:** This section contains regulations for six types of temporary signs. This draft makes only minor changes to these regulations, primarily to resolve inconsistencies in terminology.
- **§ 30-152:** This section contains regulations for permanent identification signs in residential areas. Some changes are being made for consistency, and two subsections are being deleted as they apply only to very large master-planned real estate developments.
- **§ 30-153:** This section is perhaps the most important in the entire chapter as it regulates signs that identify businesses in commercial areas. The existing structure of this section has always confused even regular users of this code; in addition, this is the proper location for the sign standards being moved from Chapter 34. Thus a new format for this section has been prepared for the town's consideration. The standards themselves are very similar to the existing code.
 - Standards have been added to allow certain signs to extend over sidewalks; these standards are needed for buildings that are built immediately up to the sidewalk.
 - New language has been added to coordinate with the sea turtle lighting regulations in Chapter 14 that apply to signs.
 - New regulations strongly favor lighting that is inside individual letters or is an external light shining on the sign, rather than signs that are internally lit with light shining through translucent panels.
 - When signs are internally lit, the lighting needs to come through the letters and symbols, rather than through a surrounding translucent panel.
 - The existing Chapter 30 is somewhat unclear as to how monument signs are to be measured, particularly as to the amount of structure that can be placed *below* the sign. I have attempted to make this standard easier to understand without changing its original intent.



- Allowable identification signs for businesses fall into three categories, each of which is illustrated in the code:

<p>Wall Signs (mounted flat on the walls of buildings)</p>	
<p>Projecting Signs (mounted on building walls but projecting outward so they are visible to someone passing by, rather than someone looking directly toward the face of the building where the sign is mounted)</p>	
<p>Monument Signs (low freestanding signs placed directly on the ground)</p>	

CHAPTER 34

HISTORY: The original version of Chapter 34 of the Land Development Code (the zoning chapter) was also Lee County’s version of that chapter as it existed on the date of incorporation. Interim amendments were made by seven Fort Myers Beach ordinances between 1996 and 2002. Chapter 34 was completely revised by Ordinance 03-03 in March 2003, with minor changes by Ordinance 03-11.

PROPOSED CHANGES: The proposed changes attached to this memorandum affect the following sections of Chapter 34:

- **§ 34-1:** A new subsection refers readers to certain sections of Chapter 10 that supplement Chapter 34.
- **§ 34-2:**
 - The term “animal clinic and kennel” was modified last year to conform with a Lee County change. After further review, the county’s original definition seems to provide a more practical delineation between a true “animal clinic and kennel” and informal situations where someone cares for their neighbor’s pets during vacations or provides foster care in their home to help out a shelter. The change proposed here would revert to the county’s original distinction between the intensity of these activities.

- The term “duplex” is no longer used in this code.
- The term “religious facilities” would now include rectories, which may have been excluded by the existing definition. The newer term “assisted living facilities” is also being substituted for “home for the aged.”
- The term “seawall” would now include “retaining wall.” Chapter 26 distinguishes between these types of walls, but that distinction is not relevant to Chapter 34.
- The exact meaning of the “setback” phrases is dependent on the meaning the “lot line” phrases; cross-references are being added.
- The term “variance” included a phrase about impact fees that was relevant to Lee County’s code but not to this code.
- The term “de minimis variance” is now being defined to reflect a change being proposed to 34-87(3)a.
- **§ 34-84:** These changes would make this section conform with other parts of the code.
- **§ 34-87:**
 - The language in subsection (3)a. is being changed to allow very minor (“de minimis”) variances under certain limited circumstances.
 - New language is being proposed for subsection (5) to eliminate the need for similar wording to be applied as a special condition on variances that are granted to accommodate existing buildings.
- **§ 34-88:** The term “entitlement” is a holdover from the Lee County code. There is no entitlement to a special exception; very specific findings must be made by the Town Council before a special exception may be granted. Other changes are proposed to make this section conform with other parts of the code.
- **§ 34-90:** This change resolves an ambiguity as to application requirements.
- **§ 34-121:** The new sentence clarifies an additional duty of the LPA..
- **§ 34-114:** Appointments to the LPA will now be made in May rather than January to coordinate with recent changes to the election date for Town Council seats.
- **§ 34-202–203:** These changes match recent changes to Lee County’s code.
- **§ 34-214:** An obsolete reference is being eliminated. In addition, amendments to planned developments would now be required to update the entire approval to match the town’s new land development code.
- **§ 34-216:** These changes would make this section conform with other parts of the code.
- **§ 34-217–220:** These changes match recent changes to Lee County’s code.
- **§ 34-265:** A cross-reference has been added.
- **§ 34-268:** An additional type of administrative setback variance has been added.
- **§ 34-613–616:** These sections are being modified to reflect last year’s adoption of official and historic zoning maps.
- **§ 34-617:** This language clarifies the regulations that govern parcels that are split into two or more zoning districts.
- **§ 34-621:** The terms “temporary permit” and “temporary use permit” have been used interchangeably throughout this code; the correct term is “temporary use permit.”
- **Table 34-2:** This table is being modified to correspond with the clarification being added to § 34-632 that dwelling units are not permitted in the “Marina” and “Tidal Waters” categories on the Comprehensive Plan’s future land use map.
- **§ 34-631:** Questions arose during the Eissler rooftop deck variance hearings about the proper interpretation of the code’s height regulations as to rooftop decks and

towers. A circuit court decision upheld the town's decision on that case, but the dispute made it apparent that the code was not clear enough about which "architectural appurtenances" may exceed the height limit. The language proposed here were formalize the town's position that rooftop decks may not exceed the height limit, but it would allow very small roofed "towers" as shown in the new photograph in § 34-631. Rooftop towers would make it possible for many more homes to have a view of the bay or gulf; the size restrictions (150 square feet) would keep these towers from blocking similar views from other homes.

■ **§ 34-632:**

- New language clarifies that dwelling units are not permitted in the "Marina" and "Tidal Waters" categories on the Comprehensive Plan's future land use map.
- Language has been added clarifying how much of a waterway may be added to lot area where lots abut irregular shape waterways. This issue arose during the Shultz B&B rezoning on Third Street; the proposed language matches the Town Council's final decision in that case.
- Clarification has been added for determining which existing lots qualify for this more lenient method of computing lot area.

■ **§ 34-636:** The current code is insufficiently clear as to which regulations apply when an existing two-family or multifamily building is proposed for conversion into ownership of individual dwelling units. The new language provides such regulations in a manner consistent with related situations in this code.

■ **§ 34-638:**

- The changes in (a)(1) provide a process for determine street, side, and rear lots for irregularly shaped lots.
- The change in (d)(1) resolves an inconsistency whereby a "two-family" home is specifically allowed, with no requirement that the lot must remain in single ownership rather than being split into half-lots; however, the corresponding "0' setback" for the common wall of the building was not explicitly allowed.
- The changes in (d)(2) and Table 34-3 would formalize the actions of the Town Council on April 21 and May 5, 2003 (see attached minutes and a memorandum from the Town Attorney). However, the changes proposed by the Town Council to § 34-638(d)(2) have been eliminated from this draft at the suggestion of the LPA; this ordinance would now keep the original language that would allow open porches and balconies to extend 10 feet into the front setback zone.

■ **Table 34-3:**

- The changes in the upper left corner of this table and notes (6) and (8) are closely related to the changes to § 34-638(d)(2).
- The changes in the density column are corrections to typographical errors.
- The increase in the allowable "floor area ratio" for the SANTOS zoning district corrects an apparent error whereby two existing structures in this zoning district are larger than the ratio in the current code would permit.

■ **§ 34-651:** The Bay Beach regulations do not explicitly mention the prior Lee County approval for docks; the new language would recognize that approval.

■ **§ 34-652:** The regulations for the EC (Environmentally Critical) zoning district, would now refer to § 6-366 for details on allowable uses on the beach.

■ **§ 34-662:** A cross-reference has been added.

■ **§ 34-673:** Cross-references have been added.

- **§ 34-674:** The requirements for buildings facing the former “Center Street” were ambiguous as to setbacks to this property. This portion of Center Street is now used as a municipal parking lot but may be reopened to through traffic in the near future.
- **§ 34-676:** Buildings facing the Times Square pedestrian plaza have been required to provide dedicated parking spaces if they add a second story; this requirement would be eliminated by the proposed change. (Third stories are not allowed on these buildings under any circumstances.)
- **§ 34-677:** New language here would clarify the status of agreements that landowners have entered into regarding the “core area overlay district.”
- **§ 34-678:** Ordinance 04-08 modified regulations on outdoor display of merchandise; two minor clarifications are proposed here.
- **§ 34-682:** A minor clarification is proposed here.
- **§ 34-694:**
 - The term “park model” is being replaced by “park trailer” in subsection (b) to match the definitions in the floodplain regulations and the terminology in the remainder of this chapter.
 - Minor changes are proposed in subsection (d) to provide minimum street setbacks; these were inadvertently not addressed in the current code. A grammatical error is also being corrected.
- **§ 34-702:** A minor ambiguity is being corrected.
- **§ 34-994:** The minimum window area for commercial buildings does not need to apply to the side of buildings that abut other buildings, or to the rear of buildings (except where the rear of a building is in clear public view). Clarifying language is being added.
- **§ 34-998:** This section on signs is being eliminated here and moved into Chapter 30.
- **§ 34-1171:** A minor clarification is proposed here.
- **§ 34-1174:** The list of exceptions to street setbacks is being clarified and expanded to reflect other changes to this code.
- **§ 34-1175:** The satellite dish regulations are being modified to reflect the new smaller satellite dishes and to conform with new FCC rules.
- **§§ 34-1351 and 34-1411:** These changes conform these sections to Table 34-1.
- **§ 34-1441:** A reference to relevant state statutes is being added.
- **§ 34-1443:** Subsection (a) is being corrected to eliminate the term “duplex” which is no longer used in this code. Subsection (c)(3) would now include insurance requirements.
- **§ 34-1444:** These changes are needed to reflect recent changes in terminology in Lee County’s code.
- **§ 34-1552:** Ordinance 03-12 established a “special master” to replace the former “hearing examiner” system of code enforcement. The change in this sections reflects the new terminology.
- **§ 34-1575:** Chapter 34’s general regulations on environmentally sensitive areas now contain cross references to Chapters 6 and 10.
- **§§ 34-1617 and 34-1744:** A 3-foot setback requirement is being added for space from utility equipment, fences, and walls to sidewalks, bike paths, and the right-of-way of Estero Boulevard. This will ensure that the use of sidewalks and bikepaths won’t be hindered by structures that are placed too close.
- **§ 34-1745:** This change will resolve a potential conflict between mandatory 8-foot-tall buffer screens in § 34-3005 and maximum heights for fences generally.

- **§ 34-1749:** This change resolves an ambiguity about entrance gates. With the new language, it will be clear that an entrance gate can be built to enclose a private parking lot (such as a condominium lot) or a parking lot that is open to the general public (such as La Playa or Seafarer's Plaza). However, entrance gates cannot be built across public or private streets.
- **§§ 34-1803 and 34-1807:** During this past year, attempts have been made to use the hotel/motel equivalency factors "in reverse" to allow residential densities that exceed what is allowed in the Comprehensive Plan by tearing down existing motels. The town's current position in this matter is reflected by the new language. (The January 6th draft has been simplified further from previous drafts.)
- **§ 34-1831-1834:** Lee County adopted new standards for outdoor artificial lighting in 2003. These sections provide similar standards for Fort Myers Beach. Certain county height regulations have been modified because the tall light poles allowed by Lee County conflict with the sea turtle lighting restrictions in Chapter 14.
- **§ 34-1861:** A minor clarification is proposed here.
- **§ 34-2020:** An ambiguity in parking standards would be eliminated by this change.
- **§ 34-2022:** A minor clarification is proposed here.
- **§ 34-2032:** References to new terminology and to the new lighting standards are being added to this section.
- **§ 34-2051-2054:** Minor clarifications are proposed here.
- **§ 34-2394:** The change in this section reflects the new terminology that replaced the former "hearing examiner" system of code enforcement with a "special master."
- **§ 34-2411:** A minor clarification is proposed here.
- **§ 34-3002:** Cross-references have been added.
- **§ 34-3004:** Cross-references have been updated to reflect Ordinance 04-08.
- **§ 34-3067:** A clarification is proposed for "permanent makeup" to correspond with an interpretation by the Town Council in September 2003.
- **§ 34-3151:** A cross-reference has been added, and the allowable hours for beach rentals has been adjusted to correspond with changes being made to Chapters 14 and 27.
- **§ 34-3237:** A minor clarification is proposed here.
- **§ 34-3238:** Clarifications are proposed here to the detailed buildback regulations.
- **§ 34-3273:** The changes to section are a result of action by the Town Council on April 21 and May 5, 2003 (see attached minutes and a memorandum from the Town Attorney).

- Attachments:**
- *Cross-reference chart of sign types described in Chapter 30*
 - *Minutes of Town Council Meetings on April 21 and May 5, 2003 [partial]*
 - *Memo from Town Attorney dated May 6, 2003*
 - *First Proposed Ordinance dated January 6, 2005, which includes:*
 - Exhibit A – Chapter 1*
 - Exhibit B – Chapter 2*
 - Exhibit C – Chapter 6*
 - Exhibit D – Chapter 10*
 - Exhibit E – Chapter 14*
 - Exhibit F – Chapter 26*
 - Exhibit G – Chapter 27*
 - Exhibit H – Chapter 30*
 - *Second proposed ordinance dated January 6, 2005, which includes:*
 - Exhibit A – Chapter 34*

SIGN TYPE	Defined in 30-2?	Prohibited by 30-5?	Allowable by 30-6(a)?	Allowable with permit by 30-6(b)?	Specific references found in these sections
Abandoned sign	yes	yes			30-5(4)
Animated sign	revised	yes			30-5(5)
Awning sign	new		yes		30-6(a)(2), 30-153
Back-lit awning	new	yes			30-5(6)
Balloon sign	new	yes			30-5(7)
Banner	new	yes			30-5(8), 30-151(e)
Bench sign	new		yes		30-6(a)(1)
Billboard	new	yes			30-5(9)
Building numbers	new		yes		30-6(a)(2-), 30-153
Business affiliation sign	yes		yes		30-6(a)(3)
Business announcement sign	new			yes	30-6(b)(1), 30-151(a)
Business information sign	new name		yes		30-6(a)(4)
Canopy sign	yes	yes			30-5(10)
Construction sign	yes			yes	30-6(b)(2), 30-151(b), 30-151(f)
Development sign	yes			yes	30-6(b)(3), 30-151(c)
Directional sign	yes			yes	30-6(b)(4)
Emitting sign	new	yes			30-5(11)
Figure-structured sign	revised	yes			30-5(12)
Flags or insignias	—		yes		30-6(a)(5)
Garage sale sign	—		yes		30-6(a)(6)
Government sign	yes		yes		30-6(a)(7)
Holiday decorations	yes		yes		30-6(a)(8)

SIGN TYPE	Defined in 30-2?	Prohibited by 30-5?	Allowable by 30-6(a)?	Allowable with permit by 30-6(b)?	Specific references found in these sections
Identification sign	yes			yes	30-6(b)(5), 30-152(b) & (c) residential & institutional 30-153 commercial
Illegal sign	yes				30-56(c)(1) & (c)(4)
Illuminated sign	yes			yes	30-6(b)(7), 30-94(d), 30-95(d)
Instructional sign	—		yes		30-6(a)(9)
Interior sign	—		yes		30-6(a)(10)
Legal notices	—		yes		30-6(a)(11)
Memorial sign or tablet	—		yes		30-6(a)(12)
Menu display box	new			yes	30-6(b)(6)
Monument sign	revised			yes	30-6(b)(5), 30-55(b)(1)c, 30-94(c), 30-96(b), 30-152(b) & (c) residential & institutional 30-153 commercial
Motion picture sign	new	yes			30-5(13)
Nameplate	revised		yes		30-6(a)(13), 30-153
Off-premises sign	yes	yes			30-5(15)
Pennant	yes	yes			30-5(8)
Pole sign	revised	yes			30-5(16)
Political and non-commercial temporary signs	yes		yes		30-6(a)(13-), 30-151(d)
Portable sign	revised	yes			30-5(17)
Posted property sign	yes		yes		30-6(a)(14)
Projecting sign	revised			yes	30-6(b)(5), 30-153
Public information sign	—		yes		30-6(a)(16)

SIGN TYPE	Defined in 30-2?	Prohibited by 30-5?	Allowable by 30-6(a)?	Allowable with permit by 30-6(b)?	Specific references found in these sections
Real estate sign	yes		yes		30-6(a)(17), 30-56(d)(1), 30-151(f)
Roof sign	yes	yes			30-5(19)
Sandwich sign	revised		yes		30-6(a)(18), 30-153
Snipe sign	yes	yes			30-5(24)
Special event sign	revised		yes		30-6(a)(20), 30-151(e)
Special occasion sign	revised		yes		30-6(a)(21), 30-151(g)
Symbols or insignias	—		yes		30-6(a)(22)
Temporary sign	yes				30-151
Vehicle sign	yes	yes			30-5(14), 30-7
Wall sign	revised			yes	30-6(b)(5), 30-153
Warning signs	—		yes		30-6(a)(23)
Waterway signs	—		yes		30-6(a)(24)
Window sign	yes	yes	yes		30-5(26), 30-6(a)(25), 30-153

**FORT MYERS BEACH
TOWN COUNCIL MEETING
APRIL 21, 2003
REGULAR MEETING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

VI. ADMINISTRATIVE AGENDA

I. Discussion of Chapter 34 setback regulations

Town Manager Segal-George announced at the last meeting the Council directed her to ask Bill Spikowski to prepare a memorandum that would compare or contrast the setbacks prior to the adoption of the new Chapter 34. Bill Spikowski has prepared this memo and is present for discussion.

MOTION: Made by Council member Bill Van Duzer and seconded by Council member Howard Rynearson to immediately change back to the prior setback requirements with the adjustment to the new RS/RC/RM zoning designations they have, so that all front setbacks will be 25-feet and all side setbacks (water or non-water) are 7 ½ or 5 feet, as listed. The rear setbacks to remain at 20- feet. This was an error in the manner it was published after it was voted on by the Town Council. (Motion amended) Made by Mayor Daniel Hughes to have an exception pertaining to side setbacks on waterfront lots. The waterfront lots to keep the 10-foot and 20-foot provision on multi-family.

Discussion: Mayor Hughes reviewed the motion for clarification.

Attorney Roosa indicated there are two possibilities. The original motion as made was consistent with what Council member Van Duzer is stating. If this is so, the published ordinance was just a scrivener's error and can be corrected. If the Council will state this was the intent a correction will be made in the ordinance. The ordinance would have been published in error. If this is not the case, an amendment to the ordinance must take place.

Vice Mayor Cain raised the issue of a past discussion on porches. Council member Van Duzer replied he has consistently stated the Town has a system that works using the existing setbacks and existing height restrictions. When he compared these to the floor-area-ratio anything built in the last number of years fit within the floor-area-ratio proposed as presented. Why was this needed? He felt it more simple and easier to go back to the existing setbacks that the Town had and used on a regular basis. Residential design standards were discussed and this is where the idea of porches not encroaching if the setbacks were changed. They wanted them to come closer to the road. He wanted to readdress the residential design standards at a later date. This topic was dropped and he felt it was understood by removing the floor-area-ratio they would go back to the standard setbacks from the past. He commented he felt that the floor-area-ratio was attacking private property rights. Two other Council members at the last meeting agreed they felt this was the original motion.

Mayor Hughes agreed to the rationale for eliminating the FAR that setbacks provided adequate standards. This is not the same as accepting all of the old setback requirements. He has always been in favor of the increased side yard setback. He was in favor of the larger setbacks on all, particularly the 25-foot front yard setback.

Attorney Dick Roosa needed clarification on the motion. Council member Van Duzer stated that it was his intention at the time of the motion they were going back to the old original setbacks used previously.

Council member Thomas concurred with Council member Van Duzer. His interpretation was that he wanted the old setbacks.

Vice Mayor Cain is unsure if a motion is needed based on the information provided. Attorney Roosa added that the motion is to correct the published ordinance.

VOTE: (Amended) Motion fails due to lack of second.

VOTE: Motion passes unanimously.

Council member Van Duzer feels the Council is now back to the point they were suppose to be. He felt a motion should now be brought forward on the side setbacks for waterfront lots, if it is the desire of the Town Council.

Bill Spikowski is not clear on which zoning district this motion applies to and what the new rules will be. He questioned if this pertained to the residential zoning districts of RS/RC/RM? Council member Van Duzer replied this is correct.

Bill Spikowski reviewed for all three zoning districts the front setback would be 25, which was the previous rule under Lee County. All three for the rear setbacks would be 20. What about the side setbacks? The RS-2 zoning districts were also questioned.

Council member Van Duzer would like the RS-2 limited area up around Matanzas be designated the same as before.

Bill Spikowski added that the non-conforming section is different in the old code than new.

Council member Van Duzer reviewed the multifamily buildings before that were 20-foot should stay 20-foot.

Due to much conversation taking place with regard to zoning categories and various setbacks, Bill Spikowski determined he would like to write up this correction and have it available for review at the next meeting.

**FORT MYERS BEACH
TOWN COUNCIL MEETING
MAY 5, 2003
REGULAR MEETING
Town Hall - Council Chambers
2523 Estero Boulevard
FORT MYERS BEACH, FLORIDA**

VI. ADMINISTRATIVE AGENDA

F. LDC Chapter 34- Confirmation of residential setback regulations

Dan Folke has talked with both parties who spoke earlier at Public Comment. He is unsure how many properties exist with this situation. After the Council meeting on April 21st, he forwarded this information to Pam Houck to put them on notice to correct the Scrivener's error. He addressed the issue raised by Elaine Jett and commented that the previous code had a section which allowed a reduced setback for a corner lot on a secondary street. This section was removed from the code because the new reduced setbacks were to be made. With the change made, the Town would need to come back and add in the section pertaining to corner lots or a variance at this time would need to be sought.

Dan further addressed the case on Miramar. The setbacks for the RC district are increasing by 2 ½ feet. He referred to tables as provided to Council. Proposed for a nonconforming lot you would use the setbacks of the RC district (5 feet) because they have been put back to the Lee County rule which is 10% of the lot width or 5 feet. The minimum lot width for RC is 45 feet and if you have a 50-foot lot which is more than 4,000 square foot and deeper than 80 it is conforming and the 7 1/2 foot setback would apply. The rule as distributed on March 3 was a 5-foot setback. This homeowner moved forward with plans and submitted based on the 5-foot setback.

Mayor Hughes questioned if an exception can be made for these situations as noted above? Did they all apply for building permits based on the draft of the ordinance with the setback provisions? Dan replied that some have applied for permits and others have had plans drawn at a considerable expense since the March 3, 2003 meeting.

Council member Rynearson questioned if relief can be given to those who prove work had been completed during the time period from adoption to the change? Attorney Dick Roosa replied if they can identify the class. They must have expended funds to establish an estoppel argument.

Town Manager Segal-George feels if the Council is willing to give this authority to Town staff she and Dan can handle this matter.

Vice Mayor Cain commented if the County ordinance they will revert back to is more strict? Town Manager Segal-George replied in some cases they are more strict. Dan added that all setbacks are increasing by 1/2 foot with the exception of RS waterfront lots. All street setbacks are increasing by at least 5 feet from what is distributed after March 3.

The Town Council provided direction to the Town Manager to deal with each case individually, if property owners had expended funds and had building plans drafted or permitting issues based on the new ordinance.

TOWN OF FORT MYERS BEACH

May 6, 2003

memo

To:

Daniel Hughes, Mayor
Terry Cain, Vice Mayor
Howard Rynearson, Council Member
W. H. "Bill" Van Duzer, Council Member
Bill Thomas Council Member

Marsha Segal-George, Town Manager
John J. Gucciardo, Deputy Town Mgr.

Re: Corrections to Ord. 03-03

Attached are the correct provisions of Ordinance 03-03 for Sections 34-638, 34-3273 and Table 34-3. These corrections reflect the intent of the Town Council at the time of adoption of the ordinance but were inadvertently published in error after the final hearing.

RICHARD V.S. ROOSA
TOWN ATTORNEY

Sec. 34-638. Minimum setbacks.

- (a) **Generally.** [no change]
- (b) **Where to find minimum setback dimensions.** [no change]
- (c) **Additional wetlands buffers.** [no change]
- (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.** [no change]
 - (2) **Exceptions to street setbacks.**

Certain structures are exempt from the street setback requirements as follows:

 - a. **Build-to lines.** [no change]
 - b. **Reserved. 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.** [no change]
 - d. **Bus shelters, bus stop benches, and bicycle racks.** [no change]
 - e. **Telephone booths.** [no change].
 - (3) **Water body setbacks.** [no change]
 - (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.

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. , rear, and water body setbacks shall be as set forth for lots in the RC zoning district (see Table 34-3):
 - c. Rear setbacks shall be 25% of lot depth, or 20 feet, whichever is smaller.
 - d. ~~c.~~ 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.

Table 34-3 — Dimensional Regulations in Conventional Zoning Districts

ZONING DISTRICT	street	side -waterfront lot	side -non-waterfront	rear	water body (1)	Gulf of Mexico (2)	width	depth	ratio	percentage	Density	Height	feet	stories
	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	§ 34-632	(see § 34-631)	
RS Residential Single-family	±0 25	±0 7.5 (8)	7 7.5 (8)	20	25	50	7,500	75	100	—	40%	(3), (4)	25	3
RC Residential Conservation	±0 25	7 7.5	5 7.5	20	25	50	4,000	45	80	—	40%	(3), (4), (5)	25	3
RM Residential Multifamily	±0 25	20 (6)	7 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	—	(3)	35	3
CO Commercial Office	10	10	7	20	25	50	7,500	75	100	1.2	—	(3)	30	3
SANTOS	10	7	5	20	25	50	5,000	50	100	0.5	—	(1), (2), (3)	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 Environmen- tally Critical	20	25	—	25	20	50	(7)	N/A	N/A	.01	—	(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 ~~10-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.

ORDINANCE No. 05-__

AN ORDINANCE AMENDING REGULATIONS IN CHAPTERS 1, 2, 6, 10, 14, 26, 27, AND 30 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; ADOPTING AMENDMENTS TO CHAPTER 1 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED "GENERAL PROVISIONS"; ADOPTING AMENDMENTS TO CHAPTER 2 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED "ADMINISTRATION"; ADOPTING AMENDMENTS TO CHAPTER 6 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED "MAINTENANCE CODES, BUILDING CODES, AND COASTAL REGULATIONS"; ADOPTING AMENDMENTS TO CHAPTER 10 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED "DEVELOPMENT ORDERS AND ENGINEERING STANDARDS"; ADOPTING AMENDMENTS TO CHAPTER 14 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED "ENVIRONMENT AND NATURAL RESOURCES"; ADOPTING AMENDMENTS TO CHAPTER 26 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED "MARINE FACILITIES"; ADOPTING AMENDMENTS TO CHAPTER 27 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED "PERSONAL WATERCRAFT AND PARASAILING"; ADOPTING AMENDMENTS TO CHAPTER 30 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED "SIGNS"; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION 1. AUTHORITY. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. ADOPTION OF AMENDMENTS TO CHAPTER 1 OF THE LAND DEVELOPMENT CODE. Chapter 1 of the Town of Fort Myers Beach land development code is titled "GENERAL PROVISIONS." Chapter 1 is hereby amended as shown in Exhibit A. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following sections of Chapter 1:

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

Sec. 1-15. Variances.

SECTION 3. ADOPTION OF AMENDMENTS TO CHAPTER 2 OF THE LAND DEVELOPMENT CODE. Chapter 2 of the Town of Fort Myers Beach land development code is titled "ADMINISTRATION." Chapter 2 is hereby amended as shown in Exhibit B. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following sections of Chapter 2:

Article I. In General

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

Article II. Concurrency Management System

Sec. 2-52. Appeals.

Article IV. Impact Fees

Sec. 2-306. Computation of amount.

Sec. 2-310. Use of funds.

Article V. Code Enforcement

Sec. 2-427. Penalties and liens.

SECTION 4. ADOPTION OF AMENDMENTS TO CHAPTER 6 OF THE LAND

DEVELOPMENT CODE. Chapter 6 of the Town of Fort Myers Beach land development code is titled “MAINTENANCE CODES, BUILDING CODES, AND COASTAL REGULATIONS.”

Chapter 6 is hereby amended as shown in Exhibit C. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following sections of Chapter 6:

Article I. Property Maintenance Codes

Sec. 6-4. Public rights-of-way and sidewalks.

Sec. 6-11. Refuse containers.

Sec. 6-12. Disposal of swimming pool water.

Sec. 6-13. Stormwater drainage on the beach.

Sec. 6-14. Neighborhood flooding.

Article II. Building Codes

Division 1. Generally

Sec. 6-44. Enforcing officers.

Division 3. Building Code

Sec. 6-111. Adoption; amendments.

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

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

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

Division 4. Existing Buildings Code

Sec. 6-122. Adoption; amendments.

~~Division 5. Plumbing Code~~

~~Division 6. Mechanical Code~~

~~Division 7. Gas Code~~

~~Division 8. Electrical Code~~

~~Division 9. Fire Codes~~

~~Division 5, 10. Contractor Licensing~~

Article III. Coastal Construction Code

Sec. 6-331. Origin.

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

Sec. 6-333. Definitions.

~~Sec. 6-334. Conflicting provisions.~~

~~Sec. 6-334.8. Variances.~~

~~Sec. 6-362. Reserved. Structural requirements for major structures.~~

~~Sec. 6-364. Structural Special requirements near beaches, for nonhabitable major structures.~~

~~Sec. 6-365. Structural requirements for minor structures. Reserved.~~

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

~~Sec. 6-368. References.~~

Article IV. Floodplain Regulations

- Sec. 6-405. Definitions.
- Sec. 6-472. Specific standards.

SECTION 5. ADOPTION OF AMENDMENTS TO CHAPTER 10 OF THE LAND DEVELOPMENT CODE. Chapter 10 of the Town of Fort Myers Beach land development code is titled “DEVELOPMENT ORDERS AND ENGINEERING STANDARDS.” Chapter 10 is hereby amended as shown in Exhibit D. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following sections of Chapter 10:

Article I. In General

- Sec. 10-1. Definitions and rules of construction.
- Sec. 10-7. General requirements.

Article II. Development Orders and Plats

- Sec. 10-154. Additional required submittals.
- Sec. 10-174. Types of development entitled to limited review.
- Sec. 10-213. Technical requirements.

Article III. Engineering and Environmental Design Standards

- Sec. 10-296. Street design and construction standards.
- Sec. 10-329. Excavations.
- Sec. 10-385. Design standards.
- Sec. 10-415. Open space.
- Sec. 10-416. Landscaping standards.
- Sec. 10-421. Plant installation and maintenance standards.

SECTION 6. ADOPTION OF AMENDMENTS TO CHAPTER 14 OF THE LAND DEVELOPMENT CODE. Chapter 14 of the Town of Fort Myers Beach land development code is titled “ENVIRONMENT AND NATURAL RESOURCES.” Chapter 14 is hereby amended as shown in Exhibit E. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following sections of Chapter 14:

Article I. Beach and Dune Management

- Sec. 14-1. Definitions.
- Sec. 14-3. Destruction or diminishment of dune or beach system.
- Sec. 14-5. Beach furniture and equipment.
- Sec. 14-6. Beach raking and wrack line policy.
- Sec. 14-7. Vehicular traffic on the beach.
- Sec. 14-9. Enforcement.
- Sec. 14-10. Restoration standards for dune vegetation alteration violations.
- Sec. 14-12. Insurance.

Article II. Sea Turtle Conservation

- Sec. 14-72. Definitions.
- Sec. 14-75. Existing development.
- Sec. 14-76. New development.
- Sec. 14-78. Additional regulations affecting sea turtle nesting habitat.

Article III. Southern Bald Eagle

- Sec. 14-118. Notification procedure.

Article V. Tree Protection

- Sec. 14-374. Definitions.
- Sec. 14-384. Restoration standards.

Article VI. Mangrove Enforcement

- Sec. 14-453. Enforcement.
- Sec. 14-454. Restoration standards.

SECTION 7. ADOPTION OF AMENDMENTS TO CHAPTER 26 OF THE LAND DEVELOPMENT CODE.

Chapter 26 of the Town of Fort Myers Beach land development code is titled "MARINE FACILITIES." Chapter 26 is hereby amended as shown in Exhibit F. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following sections of Chapter 26:

Article II. Seawalls, Docks, and Other Shoreline Structures

- Sec. 26-41. Definitions.
- Sec. 26-71. Docks and boat ramps.
- Sec. 26-72. ~~Dock boxes~~; Boat lifts and davits.

SECTION 8. ADOPTION OF AMENDMENTS TO CHAPTER 27 OF THE LAND DEVELOPMENT CODE.

Chapter 27 of the Town of Fort Myers Beach land development code is titled "PERSONAL WATERCRAFT AND PARASAILING." Chapter 27 is hereby amended as shown in Exhibit G. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following sections of Chapter 27:

Article I. Definitions and Enforcement

- Sec. 27-45. Definitions.

Article II. Personal Watercraft

- Sec. 27-49. Regulations and locations for personal watercraft rentals.

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.

SECTION 9. ADOPTION OF AMENDMENTS TO CHAPTER 30 OF THE LAND DEVELOPMENT CODE.

Chapter 30 of the Town of Fort Myers Beach land development code is titled "SIGNS." Chapter 30 is hereby amended as shown in Exhibit H. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following sections of Chapter 30:

- Sec. 30-1. Purpose and intent of chapter.
- Sec. 30-2. Definitions and rules of construction.
- Sec. 30-3. Reserved.
- Sec. 30-~~4~~ 3. Applicability of chapter.
- Sec. 30-~~5~~ 4. Prohibited signs.
- Sec. 30-~~6~~ 5. ~~Permitted~~ Allowable signs.
- Sec. 30-~~7~~ 6. Parking of advertising vehicles.
- Sec. 30-51. Violation of chapter; penalty.
- Sec. 30-53. Powers and duties of town manager; ~~building official~~.

- Sec. 30-54. Variances.
- Sec. 30-55. Permits; inspections.
- Sec. 30-56. Non-conforming signs.
- Sec. 30-91. Measurement of sign area.
- Sec. 30-92. Measurement of sign height.
- Sec. 30-93. Location.
- Sec. 30-94. Construction standards; landscaping.
- Sec. 30-96. Maintenance.
- Sec. 30-151. Temporary signs.
- Sec. 30-152. Permanent identification signs in residential areas.
- Sec. 30-153. Permanent identification signs in commercial areas.

SECTION 10. SEVERABILITY. If any one of the provisions of this ordinance should be held contrary to any express provision of law, or contrary to the policy of express law although not expressly prohibited, or against public policy, or for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way shall affect the validity of all other provisions of this ordinance.

SECTION 11. EFFECTIVE DATE. This ordinance shall take effect immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____; upon being put to a vote, the result was as follows:

Bill Thomas	_____
Garr Reynolds	_____
Howard Rynearson	_____
W. H. "Bill" Van Duzer	_____
Don Massucco	_____

DULY PASSED AND ENACTED this ___ day of _____, 2005.

ATTEST:

TOWN OF FORT MYERS BEACH

By: _____
Marsha Segal-George, Town Clerk

By: _____
Bill Thomas, Mayor

Approved as to form by:

Richard V.S. Roosa, Town Attorney

EXHIBIT A

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 1 — GENERAL PROVISIONS

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

(a) *[this subsection unchanged]*

(b) *[this subsection unchanged]*

(c) *[this subsection unchanged]*

(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 master, hearing examiner~~, 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) *[remainder of section unchanged]*

Sec. 1-15. Variances.

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

EXHIBIT B

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 2 — ADMINISTRATION

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.
~~§ 34-208.~~

ARTICLE II. CONCURRENCY MANAGEMENT SYSTEM

Sec. 2-52. Appeals.

Except for challenges to development orders controlled by the provisions of F.S. § 163.3215, any decision made by the director in the course of administering this article may be appealed in accordance with those procedures set forth in ch. 34 for appeals of administrative decisions. ~~In cases of challenges to development orders controlled by F.S. § 163.3215, no suit may be brought and no verified complaint, as explained in F.S. § 163.3215(4), may be filed or accepted for filing until the development order giving rise to the complaint has become final by virtue of its having been issued by the director or by virtue of its having been ordered by the town council on an appeal reversing the director's denial of the development permit or where the town council has granted planned development zoning or an extension of a development order. Once a development order has been granted, the provisions of F.S. § 163.3215 will be the sole means of challenging the approval or denial of a development order, as that term is defined in F.S. § 163.3164(6), when the approval of~~

~~the development order is alleged to be inconsistent with the Fort Myers Beach Comprehensive Plan. An action brought pursuant to F.S. § 163.3215 will be limited exclusively to the issue of comprehensive plan consistency.~~

ARTICLE IV. IMPACT FEES

Sec. 2-306. Computation of amount.

(a) At the option of the fee payer, 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.

(c) If a building permit is requested for a building with mixed uses, as defined in § 2-304, then the fees shall be determined according to the schedule by apportioning the total space within the building according to the space devoted to each principal use. However, A shopping center will be considered a principal use; 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

FORT MYERS BEACH IMPACT FEE SCHEDULE

LAND USE TYPE	Impact Fees (rounded to nearest dollar) ¹						
	Transportation	— — Parks — —		Regional Community	Fire Protection		
Residential:							
Single-family residence	\$2,971	\$2,436	\$461	\$655	\$485	\$560	\$2,232
Multiple-family building (per dwelling unit)	\$2,059	\$1,687	\$341	\$485	\$306	\$269	\$691
Timeshare unit	\$2,237	\$1,834	\$341	\$485	\$306	\$269	\$0
Hotel/motel room	\$2,237	\$1,834	\$230	\$327	\$495	\$308	\$0
Assisted living facility (per dwelling unit) (see § 34-1415 for density equivalents)	\$1,017	\$1,687	\$0	\$0	\$306	\$269	\$0
Commercial (fee per 1,000 sq. ft. except as noted):							
Retail store or shopping center	\$5,063	\$3,992	\$0	\$0	\$621	\$549	\$0
Bank	\$8,038	\$6,063	\$0	\$0	\$621	\$549	\$0
Car wash, self-service (fee per stall)	\$1,683	\$7,749	\$0	\$0	\$621	\$549	\$0
Convenience store with gas pumps	\$11,250	\$8,715	\$0	\$0	\$621	\$549	\$0
Movie theater	\$7,427	\$5,600	\$0	\$0	\$621	\$549	\$0
Restaurant, fast food	\$12,763	\$9,886	\$0	\$0	\$621	\$549	\$0
Restaurant, standard	\$6,504	\$4,905	\$0	\$0	\$621	\$549	\$0
Office (fee per 1,000 square feet):							
General office	\$2,336	\$2,254	\$0	\$0	\$291	\$594	\$0
Medical office	\$7,716	\$6,334	\$0	\$0	\$291	\$594	\$0
Institutional (fee per 1,000 square feet):							
Church	\$1,467	\$1,402	\$0	\$0	\$621	\$549	\$0
Day care center	\$4,107	\$3,900	\$0	\$0	\$621	\$549	\$0
Elementary/secondary school (private)	\$643	\$611	\$0	\$0	\$621	\$549	\$0
Warehouse (fee per 1,000 square feet):	\$1,461	\$1,198	\$0	\$0	\$78	\$123	\$0

¹ In addition to the impact fees listed, an additional 3 percent administrative charge will be levied in accordance with § 2-310(e).

² School impact fees are collected in accordance with Lee County Ordinance No. 01-21, effective December 1, 2001.

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) ~~(f)~~ of this section.

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

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

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

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

documentation shall be prepared and presented by qualified professionals in their respective fields and shall follow best professional practices and methodologies.

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

$$\text{Impact Fee} = \text{VMT} \times \text{NET COST/VMT}$$

Where: $\text{VMT} = \text{ADT} \times \% \text{NEW} \times \text{LENGTH} \div 2$

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

$\div 2$ = 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

$$\text{NET COST/VMT} = \text{COST/VMT} - \text{CREDIT/VMT}$$

$$\text{COST/VMT} = \text{COST/LANE-MILE} \div \text{AVG LANE CAPACITY}$$

COST/LANE-MILE = Average cost to add a new lane to the approved roadway system

$$\text{AVG LANE CAPACITY} = \text{Average daily capacity of a lane at level of service "D"}$$

$$\text{CREDIT/VMT} = \text{\$/GAL} \div \text{MPG} \times 365 \times \text{NPV}$$

$\text{\$/GAL}$ = 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. 2-310. Use of funds.

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

(b) Each fiscal year the town manager shall present to the town council a proposed capital improvement program for transportation, regional parks, and community parks, assigning funds, including any accrued interest, from the appropriate impact fee trust account to specific capital projects. Monies, including any accrued interest, not assigned in any fiscal period shall be retained in each impact fee trust account until the next fiscal period, except as provided by the refund provisions of this article.

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

(d) The town shall remit school impact fees to Lee County at least monthly, less any amounts retained or collected pursuant to § 2-310(e), unless another method is specified in an appropriate interlocal agreement. Lee County will remit these school impacts to the School Board in accordance with Lee County Ordinance 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.

**ARTICLE V.
CODE ENFORCEMENT**

Sec. 2-427. Penalties and liens.

(b) *Penalties.*

- (1) A fine imposed under this section cannot exceed \$250.00 per day for the first violation or \$500.00 per day for a repeat violation. However, if the special master finds a violation is irreparable or irreversible in nature, a fine of up to \$5,000 per violation can be imposed. Further, the fine may include the cost of all repairs incurred by the town in accordance with subsection (a) hereof as well as the costs of prosecuting the case before the special master. For purposes of this article, prosecution costs of include, but are not limited to, recording costs, inspection costs, appearances by the code inspector at hearings, photography costs, and similar items.
- (2) The following factors will be considered by the special master in determining the fine to be imposed:
 - a. The gravity of the violation;
 - b. Any actions taken by the violator to correct the violation; and
 - c. Any previous violations committed by the violator.
- (3) The special master may mitigate the fine imposed under this section.

EXHIBIT C

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 6 — MAINTENANCE CODES, BUILDING CODES, AND COASTAL REGULATIONS

ARTICLE I. PROPERTY MAINTENANCE CODES

Sec. 6-4. Public rights-of-way and sidewalks.

(a) Landowners shall maintain in a clean condition adjoining sidewalks and public rights-of-way that, because of their location and character, appear or are used as if they are an extension of the parcel of land. The landowner shall, at a minimum:

- (1) keep such sidewalks and rights-of-way clear of litter, debris, and weeds;
- (2) maintain trees and shrubs to allow a horizontal clearance of at least 3 feet and a vertical clearance of at least 8 7 feet above any sidewalk, bike path, or street; and
- (3) regularly mow or otherwise maintain unpaved areas in a neat and attractive condition.

(b) Landowners may not plant any tree or shrub closer than 3 feet to any sidewalk or bike path or to the right-of-way of Estero Boulevard. Trees or shrubs may be planted within a right-of-way only with permission of the town.

(c) ~~(b)~~ The display on public property of vehicles for sale, rent, or hire is regulated by Fort Myers Beach Ordinance No. 96-16.

(d) ~~(c)~~ Parking on public rights-of way is regulated by Fort Myers Beach Ordinance No. 96-16.

Sec. 6-11. Refuse containers.

(a) 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.

(b) Any refuse containers that are not movable in accordance with subsection (a) shall be opaquely screened from view from streets and adjoining properties. This screening may be achieved by landscaping or by virtue of the location of the container on the site. Screening may also be achieved by walls or opaque fencing provided the wall or fence does not exceed the maximum height permitted for that location (see §§ 34-1171 et seq. and 34-1744). If the nonmovable refuse container would be visible above the allowable height, it must be replaced with a shorter container.

Sec. 6-12. Disposal of swimming pool water.

Prior to disposal of swimming pool water, chlorine and bromine levels must be reduced by not adding chlorine or bromine for at least five days or until levels are below 0.1 mg per liter.

- (1) The preferred method for disposing of swimming pool water is to discharge the water into roadside swales to allow percolation into the ground without any runoff to canals, beaches, wetlands, other tidal waters, or onto adjoining properties. The discharge of dechlorinated water into roadside swales is permitted by § 10-604 of this code.
- (2) Another acceptable method is to discharge the water into the sanitary sewer system operated by Lee County Utilities.
- (3) Swimming pool water may not be discharged either directly or indirectly to the beach, canals, wetlands, or any other tidal waters.

Sec. 6-13. Stormwater drainage on the beach.

Tidal waters can become polluted and beaches can be eroded when pipes or culverts discharge directly onto the beach. Point sources of 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 the roofs of buildings. Point sources of discharge from private property that were in lawful existence as of [effective date of this section] must be eliminated within 36 months.

Sec. 6-14. Neighborhood flooding.

(a) This code requires stormwater management systems for all new development and most redevelopment (see § 10-321). Development that is not subject to those requirements, such as single-family and two-family dwellings on existing lots, can also flood surrounding lots and streets, especially if the lot is raised higher than adjoining properties or if rainfall is concentrated by gutters and downspouts and discharged without an opportunity for percolation.

(b) To minimize neighborhood flooding from normal daily rainfall, the following requirements apply to single-family and two-family dwellings on lots that have not previously complied with § 10-321:

- (1) When a lot has been filled more than an average of 1 foot above adjoining lots, normal rainfall must be contained within the lot by one or more of the following methods:
 - a. Gutters and downspouts that collect rainwater must discharge into exfiltration trenches (french drains), or into a subsurface drainfield that meets the construction standards of F.A.C. 64E-6.014(5) (the depth, location and setback standards for drainfields need not be met), or onto substantially flat and porous surfaces such as:
 1. Sodded lawns.
 2. Clean (washed) gravel or sand over a well-drained base.
 3. Porous (pervious) paving.
 - b. Roof areas not served by gutters and downspouts must not drain to impervious surfaces, and must not drain to pervious surfaces that are sloped in excess of 5%. Surfaces not meeting these requirements

must be designed to detain or deflect rainfall, for instance through the use of earthen ridges, curbs, or retaining walls that prevent rainfall from running onto adjoining lots or streets.

- (2) Additions to, renovations of, and replacements for single-family and two-family dwellings that include the installation of gutters and downspouts must discharge the downspouts to the same standards as for filled lots.

ARTICLE II. BUILDING CODES

DIVISION 1. GENERALLY

Sec. 6-44. Enforcing officers.

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

DIVISION 3. BUILDING CODE

Sec. 6-111. Adoption; amendments.

The Florida Building Code is following chapters and sections of the 1997 Standard Building Code, as published by 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, 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 104.1.1 is amended to read as follows:

~~104.1.1. When required: [deleted in its entirety]~~

Section 104.1.4 is amended to read as follows: add the following:

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:

~~The building official shall take all actions necessary to process an application for a permit with plans as filed, or as amended, without unreasonable or unnecessary delay. All plans reviewed which are approved by the building official or his designee are a best effort in good faith by the town in determining compliance of the plans with all applicable codes, ordinances, rules or regulations. Any failure on the part of the town to ascertain violations of any applicable codes, ordinances, rules or regulations on the approved plans shall not exonerate the contractor, builder and/or owner for their failure to comply with any and all codes, ordinances, rules or regulations.~~

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 ~~shall be made~~ 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 104.7.2, relating to work commencing before permit issuance, is amended to read as follows: *[deleted in its entirety]*

Section 106.1.2, relating to issuing certificate of occupancy, is amended to read as follows: *[deleted in its entirety]*

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 108, relating to the construction 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:

The following definitions are added: *[deleted in its entirety]*

Chapter 3, Occupancy Classification:

Chapter 4, Special Occupancy:

Chapter 5, General Building Limitations:

Chapter 6, Construction Types:

Chapter 7, Fire Resistant Materials and Construction:

Chapter 8, Interior Finishes:

Chapter 9, Fire Protection Systems:

Chapter 10, Means of Egress:

Section 1005.2 is amended to read as follows:

~~1005.2. Dead-end pockets or hallways. [deleted in its entirety]~~

Chapter 11, Accessibility for People With Physical Disabilities is deleted, and replaced by the 1997 Florida Accessibility Code for Building Construction (see F.S. ch. 553, pt. V, Accessibility By Handicapped Persons):

Chapter 12, Interior Environment:

Section 1203, relating to light and ventilation, is amended as follows: *[deleted in its entirety]*

Section 1203.6 is amended to add the following:

~~**1203.6 Heating facilities.** [deleted in its entirety]~~

Chapter 13, Energy Conservation is deleted, and replaced by the 1997 Florida Energy Efficiency Code for Building Construction (see F.S. ch. 553, pt. VIII, Thermal Efficiency Standards):

Chapter 14, Exterior Wall Coverings:

Chapter 15, Roof and Roof Structures:

The following new subsections are hereby added: *[deleted in its entirety]*

Chapter 16, Structural Loads:

Section 1606, Wind loads: structures must be designed using a fastest-mile wind speed of 110 miles per hour:

Chapter 17, Structural Tests and Inspections:

Chapter 18, Foundations and Retaining Walls:

Chapter 19, Concrete:

Chapter 20, Light Metal Alloys:

Chapter 21, Masonry:

Chapter 22, Steel:

Chapter 23, Wood:

Chapter 24, Glass and Glazing:

Chapter 25, Gypsum Board and Plaster:

Chapter 26, Plastic:

Chapter 27, Electrical Systems:

Chapter 28, Mechanical Systems:

Chapter 29, Plumbing Systems:

Chapter 30, Elevators and Conveying Systems:

Chapter 31, Special Construction:

Chapter 32, Construction in the Public Right of Way:

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.

~~Chapter 35, Reference Standards:~~

~~Appendix A, Weights of Building Materials:~~

~~Appendix B, Recommended Schedule of Permit~~

~~Fees, is deleted in its entirety and replaced with user fees and charges as referenced in Lee County Administrative Code 3-10, Appendix C (external fees and charges manual):~~

~~Appendix C, One and Two Family Dwellings is deleted in its entirety.~~

~~Appendix D, Standards for Demolition:~~

~~Appendix E, Energy Conservation is deleted, and replaced by the 1997 Florida Energy Efficiency Code for Building Construction (see F.S. ch. 553, pt. VIII, Thermal Efficiency Standards):~~

~~Appendix F, Fire District:~~

~~Appendix G, Adobe Construction:~~

~~Appendix H, Manufactured Homes Tie Down Standards:~~

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 ~~112~~--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 Standard 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 ~~130~~. Reserved.

DIVISION 5. PLUMBING CODE

[deleted in its entirety]

DIVISION 6. MECHANICAL CODE

[deleted in its entirety]

DIVISION 7. GAS CODE

[deleted in its entirety]

DIVISION 8. ELECTRICAL CODE

[deleted in its entirety]

DIVISION 9. FIRE CODES

[deleted in its entirety]

**DIVISION 5. 10.
CONTRACTOR LICENSING**

[no further changes to this division]

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 ~~the~~ 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 section and other portions sections of this code, article, 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, ~~seawalls, revetments~~, 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.¹

(a) 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** means the zone of unconsolidated material that extends landward from the mean low-water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.~~

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

...

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

~~**Dune** means a mound or ridge of loose sediments, usually sand-sized, lying landward of the beach, and deposited by any natural or artificial means:~~

~~**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 structures* and *nonhabitable major structure* below).~~

...

~~**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 those structures considered expendable under design wind, wave, and storm forces.~~

~~**Mobile home or manufactured home** means housing which conforms to the Federal Manufactured Housing Construction and Safety Standards pursuant to F.S. § 320.823. However, a mobile home or manufactured home is not a manufactured building as defined in F.S. ch. 553, pt. IV.~~

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

~~**Nonhabitable major structure** includes, but is not limited to, swimming pools; parking garages; pipelines; and public piers, canals, lakes, ditches, drainage structures, and other water-retention structures; water and sewage treatment plants; electrical power plants, transmission and distribution lines, transformer pads, vaults and substations; roads, bridges, streets and highways;~~

~~underground or aboveground storage tanks; communications buildings and towers; and flagpoles and signs over 15 feet in height.~~

...

~~(b) Unless specifically defined in this article, the words or phrases used in this article and not defined in subsection (a) of this section will be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.~~

~~Sec. 6-334. 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.~~

~~Secs. 6-335--6-337. Reserved.~~

~~**Sec. 6-3348. Variances.**~~

~~(a) 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. 6-3359--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.** Structural requirements for major structures:~~

~~(a) *Design and construction generally.* Major structures must conform to the minimum building code standards adopted in § 6-111.~~

~~(b) *Mobile homes and manufactured homes.* Mobile homes and manufactured homes must conform to the Federal Mobile Home Construction and Safety Standards pursuant to F.S. § 320.823, as~~

well as the requirements of subsection (c) of this section:

(c) *Elevation, floodproofing and siting.* Structures must be designed, constructed and located in compliance with the floodplain regulations found in article IV of this chapter:

(d) *Velocity pressure.* Major structures, except mobile homes and manufactured homes, must, at a minimum be designated and constructed in accordance with chapter 16, section 1606 of the 1997 Standard Building Code using a fastest-mile wind speed of 110 miles per hour:

(e) *Foundation design.* Foundation design and construction of a major structure must consider all anticipated loads resulting from a 100-year storm event, including wave, hydrostatic, and hydrodynamic loads acting simultaneously with live and dead loads. Erosion computations for foundation design must account for all vertical and lateral erosion and scour-producing forces, including localized scour due to the presence of structural components. Foundation design and construction must provide for adequate bearing capacity taking into consideration the anticipated loss of soil above the design grade as a result of localized scour. The erosion computations required by this section do not apply landward of the 1991 coastal construction control line:

Sec. 6-363. Reserved.

Sec. 6-364. Structural Special requirements near beaches. for nonhabitable major structures:

(a) *Major structures.* Nonhabitable major structures must satisfy the structural requirements of § 6-362(c) and the applicable provisions of the Standard Building Code as required by article II of this chapter. However, these structures are not required to meet the balance of specific structural requirements set out in § 6-362. Such 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.

Sec. 6-365. Structural requirements for minor structures:

(b) *Minor structures.* Minor structures must satisfy the structural requirements of § 6-362(c) and the applicable provisions of the Standard Building Code as required by article II of this chapter. However, these structures are not required to meet the balance of the specific structural requirements set out in § 6-362. Such 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 elevated walkways, lifeguard support stands, piers, and beach access ramps, and gazebos, and coastal or shore protection structures, all construction must be located a sufficient distance landward of the beach to permit natural shoreline fluctuations and to preserve dune stability. ~~(b) In addition to complying with all other provisions of this code, At a minimum,~~ major structures must ~~shall~~ 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 which 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.

Sec. 6-368. References:

Assistance in determining the design parameters and methodologies necessary to comply with the requirements of this article may be obtained from:

- (1) Shore Protection Manual, U.S. Army Corps of Engineers, fourth edition, 1984.
- (2) U.S. Department of the Army, Coastal Engineering Research Center's Technical Papers and Reports.
- (3) State department of environmental protection, division of beaches and shores, technical and design memoranda.
- (4) Naval Facilities Engineering Command Design Manual, NAVFACDM-26, U.S. Department of the Navy.

Secs. 6-369--6-400. Reserved.

**ARTICLE IV.
FLOODPLAIN REGULATIONS**

DIVISION 1. GENERALLY

Sec. 6-405. Definitions.²

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

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

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

...

Coordinator means ~~the town's Lee County's~~ flood insurance coordinator, who has been designated by the ~~town manager Board of County Commissioners~~ to implement, administer, and enforce ~~these the county's~~ floodplain regulations.

...

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

...

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

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

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

Property Appraiser’s valuation by more than 35 percent shall be subject to peer review by a qualified local appraiser or a new independent appraisal, to be commissioned by the coordinator, with the full cost of the review or new appraisal paid by the applicant to the town prior to initiation of the review process.

...

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

...

[no further changes to this section]

DIVISION 3. STANDARDS

Sec. 6-472. Specific standards.

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

- (1) **Conventional residential construction.** New construction or substantial improvement of any residential structure shall have the lowest floor elevated to or above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided in accordance with standards of subsection

(5) of this section. (See subsection (7) for additional restrictions in V zones.)

- a. When an improvement to an existing residential structure involves reconstruction or includes an addition, and the improvement’s cost exceeds the 50 percent threshold in this article’s definition of “substantial improvement,” then the reconstruction or addition shall be elevated the same as new construction, with its lowest floor elevated to or above the base flood elevation.
- b. Some partial reconstructions or additions to existing residential structures may fall below the 50 percent threshold and are therefore not considered to be “substantial improvements.” In this situation:
 - 1. If the structure was approved **after** 1984 and thus was elevated in accordance with this code, the reconstructed or additional floor space shall also be elevated the same as new construction, with its lowest floor at or above the base flood elevation. Any enclosed space below the base flood elevation shall be subject to the same restrictions that apply to post-1984 structures as found in subsection (5) of this section.
 - 2. If the structure was approved **before** 1984, ~~the reconstructed or any~~ additional floor space must be elevated to or above the elevation of the structure’s existing lowest floor, or to within 2 feet of base flood elevation, whichever is higher. Any enclosed space below the structure’s existing lowest floor shall be subject to the same restrictions that apply to post-1984 structures as found in subsection (5) of this section. For purposes of this subsection only, “existing lowest floor” does not include enclosed space of less than 500 square feet below an elevated structure and does not include any space that has been used to park vehicles.

[no further changes to this section]

EXHIBIT D
FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 10 — DEVELOPMENT ORDERS AND ENGINEERING STANDARDS

**ARTICLE I.
IN GENERAL**

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

(a) *Rules of construction and analogous words and terms.* [no changes]

(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:

County means Lee County, Florida.

[no further changes to this section]

Sec. 10-7. General requirements.

(a) [no changes]

(b) [no changes]

(c) [no changes]

(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, or notice of clearing 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) [no changes]

(f) [no changes]

(g) [no changes]

(h) [no changes]

**ARTICLE II. DEVELOPMENT
ORDERS AND PLATS**

DIVISION 2. DEVELOPMENT ORDERS

Subdivision III. Submittals

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.** [no changes]
- (3) **Boundary survey.** [no changes]
- (4) **Plat.** [no changes]
- (5) **Zoning resolution.** [no changes]

- (6) **Existing conditions and improvements drawing.** [no changes]
- (7) **Proposed development plan drawings.** Proposed development plan drawings showing at a minimum the following:
 - a. **Lot lines.** [no changes]
 - b. **Phasing plan.** [no changes]
 - 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.** [no changes]
 - e. **Access.** [no changes]
 - f. **Streets.** [no changes]
 - g. **Sidewalks.** [no changes]
 - h. **Transit.** [no changes]
 - i. **Parking and service areas.** [no changes]
 - j. **Utilities.** [no changes] location of services shall be shown.
 - k. **Drainage and stormwater management plan.** [no changes]
 - l. **Landscaping and buffering.** [no changes]
 - m. **Irrigation** [no changes] be retained on the development site.
 - n. **Historical and archaeological resources.** [no changes]
 - o. **Excavations.** [no changes]
 - p. **Wetlands.** [no changes]
- (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 ~~ch.~~ 34-1831–1833.
- (9) **Aerial photograph.** [no changes]
- (10) **Traffic impact statement.** [no changes]
- (11) **Traffic impact mitigation plan.** [no changes]
- (12) **Hazardous materials emergency plan.** [no changes]
- (13) **Protected species survey.** [no changes]
- (14) **Protected species habitat management plan.** [no changes]

- (15) **Certificate to dig; historic preservation forms and reports.** [no changes]
- (16) **Historical/archaeological impact assessment.** [no changes]
- (17) **Exotic vegetation removal plan.** [no changes]
- (18) **Calculations and other pertinent materials.** [no changes]
- (19) **Emergency preparedness plan.** [no changes]
- (20) **State permits.** [no changes]
- (21) **Operation and maintenance covenants.** [no changes]
- (22) **Articles of incorporation or other legal documents for assignment of maintenance.** [no changes]
- (23) **Opinion of probable construction costs.** [no changes]

**DIVISION 3.
LIMITED REVIEW PROCESS**

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) Reserved.
- (4) ~~(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, ~~and~~
 - f. ~~No commercial or multifamily development may occur on any of the lots without first obtaining a development order.~~
- (5) Reserved.
 - (6) Reserved. ~~(4) Any single building of two dwelling units or less and any accessory improvements thereto on a single nonconforming lot, as defined in article V of ch. 34.~~
 - (7) Reserved.
 - (8) Reserved.
 - (9) ~~(5)~~ Any improvements for public water access purposes in town-owned or town-maintained rights-of-way.
 - (10) ~~(6)~~ Any development for a fenced or screened outdoor ~~enclosed~~ storage yard 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.
 - (11) ~~(7)~~ The installation of new utility lines in existing right-of-ways or easements.
 - (12) ~~(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.).

DIVISION 5. PLATS

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.

ARTICLE III. ENGINEERING AND ENVIRONMENTAL DESIGN STANDARDS

DIVISION 2. TRANSPORTATION, ROADWAYS, STREETS, and SIDEWALKS

Sec. 10-296. Street design and construction standards.

- (a) *Generally.* [no changes]
- (b) *Right-of-way or easement width.* [no changes]
- (c) *Street design and construction standards.* [no changes]
- (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 ~~less than 4 or~~ fewer dwelling units per acre.

[no further changes to this section]

**DIVISION 3.
SURFACE WATER MANAGEMENT**

Sec. 10-329. Excavations.

- (a) **Applicability.** [no changes]
- (b) **Excavation types and required approvals.** [no changes]
- (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, ~~as described in division 6 of this article:~~ 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 et seq.

DIVISION 5. FIRE SAFETY

Sec. 10-385. Design standards.

- (a) **General design standards.** [no changes]
- (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.

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:
 $F = 18 \text{ multiplied by } C \text{ multiplied by } A.$

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 <u>Florida Standard Building Code, most current adopted edition</u>) of all floors. <u>Area of buildings without walls shall be calculated using building area as defined in the 1988 Standard Building Code.</u>
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 $F = 18 C \text{ multiplied by } A.$
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.** [no changes]
- (d) **Hydrant spacing.** [no changes]

DIVISION 6. OPEN SPACE, BUFFERING, AND LANDSCAPING

Sec. 10-415. Open space.

(a) All development must maintain, at a minimum, the open spaces outlined in the table below: [no changes]

(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 is 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 edge of the primary dune and any~~ 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**. [no changes]

(e) **Protected trees**. [no changes]

(f) **Landscaping of parking and vehicle use areas**. [no changes]

(g) **Perimeter buffers**. [no changes]

Sec. 10-416. Landscaping standards.

(a) **Tree planting required**. [no changes]

(b) **Building edge plantings**. [no changes]

(c) **Landscaping of parking and vehicle use areas**. [no changes]

(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**. [no changes]
- (2) **Buffer requirements**. [no changes]
- (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)**

<i>Buffer types:</i>	A	B	C	D	E	F
<i>Minimum width in feet</i>	5	15	15	15	25	30
<i>Minimum # of trees</i>	4 ³	5 ³	5 ³	5 ³	5 ³	10 ³
<i>Minimum # of shrubs</i>	–	Hedge ²	18	Hedge ²	30	Hedge ²
<i>Wall required¹</i>	No	No	Yes	No	Yes	No

Notes:

¹A 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.

²Hedges 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.

³Trees 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.* [no changes]
- (5) *Easements.* [no changes]
- (6) *Vehicle visibility.* Walls, berms and buffer plantings must not be placed so they violate the vehicle visibility requirements of § 34-3131 ~~662(b)(4)~~.
- (7) *Development abutting natural bodies of water.* [no changes]
- (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 also § 34-638(c)).
- (9) *Use of buffer areas.* [no changes]

Sec. 10-421. Plant installation and maintenance standards.

- (a) *General design criteria for plantings.* [no changes]
- (b) *Installation of plant materials.* [no changes]
- (c) *Maintenance of landscaping.* [no changes]
- (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 and 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). “Tree, Shrub and Other Woody Plant Maintenance – Standard Practices” (ANSI A300-1995, available from the National Arborist Association). 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

EXHIBIT E

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 14 — ENVIRONMENT AND NATURAL RESOURCES

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* has the same meaning given it in § 14-72.~~

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, usually the effective limit of storm waves. Beaches include dunes and dune vegetation.

~~*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 furniture means furniture that is placed on the beach for passive recreational use. Examples include chairs, tables, cabanas, lounges, and umbrellas.

² *Cross reference(s)*—Sea turtle conservation, article II of ch.14; personal watercraft and parasailing, ch. 27; water-oriented rentals activities, div. 41 of ch. 34.

Beach equipment means any man-made apparatus or paraphernalia, except for beach furniture, that is designed or manufactured for use or actually used on the beach or in the adjacent tidal waters. Examples include: sailboats up to 16 feet in length, personal watercraft, canoes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, floatables, tents, vehicles allowed on the beach (see § 14-7), and equipment used by concessionaires such as tables, podiums, booths, or storage boxes.

...

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 morningglory, partridge pea, railroad vine, sea purslane, beach creeper, nicker bean, coin vine, inkberry, lantana, saw palmetto, seashore elder, baycedar, ~~green buttonwood, cabbage palm, cocoplum, and seagrape, and southern wax myrtle.~~

Landward line of dune vegetation means the location furthest from the mean high water line containing, or suitable for, dune vegetation. If no dune vegetation is present, this line shall be assumed to be a straight line between the landward line of dune vegetation on the nearest properties that have dune vegetation.

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.

~~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.

...

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 mow, herbicide, harm, 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.

Sec. 14-5. Beach furniture and equipment.

ALTERNATIVE #1 for 14-5(a):

(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~~ EC zoning district (seaward of the 1978 coastal construction control line) between the hours of 9:00 P.M. until 7:00 8:00 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.~~

(1) Where compliance with the foregoing provisions would cause an undue hardship due to a physical barrier such as a tall seawall, the town manager may, after determining the minimum variance from the requirements of this ordinance to reflect the physical barrier, designate the storage location. (3) Beach furniture and equipment that is removed from allowed to remain on the beach pursuant to a variance must be the maximum distance from the water, at least 10 feet from a sea turtle nest and from a dune or dune vegetation, and 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. Stacking is not required for personal watercraft; all wooden cabanas must be stacked after May 1, 2006.

(2) For special events where beach furniture and equipment must be on the beach earlier than 8:00 A.M., the town's special events permit may authorize a different schedule provided arrangements have been made with the FWC-authorized marine turtle permit holder to monitor the area prior to setup.

ALTERNATIVE #2 for 14-5(a):

(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 8:00 A.M. as follows:~~

(1) From May 1 through October 31, all beach furniture and equipment must be removed from the EC zoning district (seaward of the 1978 coastal construction control line) between the hours of 9:00 P.M. until 8:00 A.M. No exceptions or variances can be made to this rule.

(2) From November 1 through April 30, the beach furniture and equipment must be moved daily either behind the permanent dune line (the farthest landward extent of dunes and dune vegetation); or where no dune line is present and the beach is wide, then 500 200 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 due to a physical barrier such as a tall seawall, the town manager may, after determining the minimum variance from the requirements of this ordinance to reflect the physical barrier, designate the storage location. (3) Beach furniture and equipment that is removed from allowed to remain on the beach pursuant to an administrative variance must be the maximum distance from the water, at least 10 feet from a sea turtle nest and from a dune or dune vegetation, and 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. Stacking is not required for personal watercraft; all wooden cabanas must be stacked after May 1, 2006.

ALTERNATIVE #3 for 14-5(a):

~~(a)~~ *[existing subsection (a) deleted]*

(a) This code regulates the placement and storage of beach furniture and beach equipment.

(1) Beach furniture.

a. During the sea turtle nesting season (from May 1 through October 31), all beach furniture must be removed from the beach between the hours of 9:00 P.M. and 8:00 A.M. The only exception is that until May 1, 2006, cabanas may remain on the beach at night provided they are at least 500 feet from the mean high water line.

b. Before and after the sea turtle nesting season, beach furniture may remain on the beach at night.

(2) Vehicles. Vehicular traffic on the beach is regulated by §§ 14-5(e), 14-6, and 14-7. Vehicles that are not in use may not be stored on the beach at any time.

(3) Concessionaires. A business that rents beach furniture may place one free-standing structure on the beach during its regular business hours only. This structure may be a table, podium, booth, or storage box and it must meet the same requirements as set forth in § 27-51(c), including removal from the beach after business hours to a location behind the landward line of dune vegetation.

(4) Other beach equipment. Unless allowed by a specific provision of this code, beach equipment must be removed from the beach between the hours of 9:00 P.M. and 8:00 A.M. year around and placed behind the landward line of dune vegetation.

(5) Special events. Special events on the beach are regulated by § 14-11. For special events where beach furniture and equipment must be on the beach earlier than 8:00 A.M., the town's special events permit may authorize a different schedule provided arrangements have been made with the FWC-authorized marine turtle permit holder to monitor the area prior to setup.

(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~~ 8:00 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, and 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. A business that rents chairs, umbrellas, cabanas, or similar equipment may place one free-standing structure on the beach during its regular business hours only. This structure may be a table, podium, booth, or storage box and it must meet the same requirements as set forth in § 27-51(c), including removal from the beach after business hours.

[final two sentences would be unnecessary if Alternative #3 is selected]

(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 a 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, trailer, 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. Beach furniture and equipment may be placed on a vehicle or on a wheeled trailer but may not be dragged or pushed by a vehicle.

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. The only exceptions require town approval and the appropriate DEP permit based on is necessary for determinations that health or safety issues have been confirmed that would allow:

- (1) A larger than normal wrack line resulting from extraordinary circumstances may be raked if the wrack line is at least 10 feet landward of the normal high tide line.
- (2) If health or safety issues are present such as a large fish kill or a red tide event, the wrack line may be raked up to 10 feet landward of the normal high tide line.
- (3) 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 requires the appropriate DEP permit and a permit from the town in accordance with the following requirements:

- (1) Application for a permit to mechanically rake an unvegetated portion of the beach shall be submitted to the director, in writing, on a form provided by the director. As part of this application, a site plan will be submitted depicting the property corners, the dimensions of the area to be raked, and the location of existing vegetation and structures. Proof of insurance in accordance with § 14-12 must also be submitted with the application.
- (2) Prior to the granting or denying of the application, the director 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.
- (3) Based upon the information contained in the application and the site inspection, the director shall approve or deny the application.

(4) 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 a FWC-authorized marine turtle permit holder, whichever occurs first (see requirements in § 14-78(b)).
- 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, please contact the FWC, Bureau of Protected Species Management, at (561) 575-5407.
- 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- $PSI = \frac{\text{vehicle weight in pounds (includes person and equipment)}}{\text{divided by the footprint in square inches}}$
- b- EXAMPLE: $404 \text{ lbs. (ATV weight)} + 200 \text{ (person + equipment)} \div 198 \text{ square inches (ATV with 6" x 8.25" footprint x 4 tires)} = 3.1 \text{ PSI}$

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. 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.
7. 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. 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.

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. These vehicles must travel below the previous night's mean high tide line and avoid riding on vegetation. Vehicular travel in the Critical Wildlife Area at Mulholland Point (Little Estero Island) should be severely limited to avoid disturbing wildlife and vegetation.
- (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 (4) above.

- (7) *Sea turtle nesting season.* See § 14-78(b) for additional restrictions during the sea turtle nesting season.

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 master, ~~hearing examiner~~, 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 master, ~~hearing examiner~~, 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 master, ~~hearing examiner~~, 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 master, ~~hearing examiner~~.

(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. Temporary irrigation must be turned off within 50 feet of a sea turtle nest.
- (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. 14-12. Insurance.

(a) No person shall operate mechanical beach raking equipment 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 or use of beach raking equipment. At a minimum, the policy shall provide coverage of not less than \$500,000 per occurrence and \$1,000,000 aggregate. The policy shall list the Town of Fort Myers Beach as an additional insured, shall provide that coverage not be canceled or materially altered except after 30 days' written notice has been received by the town, and shall 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 beach raking equipment.

Secs. 14-13 ~~12~~--14-70. Reserved.

**ARTICLE II.
SEA TURTLE CONSERVATION**

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:

...

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

...

~~***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.~~

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

...

~~***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.~~

Mechanical beach raking has the same meaning given it in § 14-1.

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 including lighted signs occurring after January 31, 1998.

...

Sec. 14-75. Existing development.

Existing development must ensure that sea turtle nesting habitat is not directly or indirectly illuminated by artificial 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.~~ Existing development must incorporate and follow the measures outlined in § 14-79 to reduce or eliminate interior light emanating from doors and windows visible from the beach, a dune, or other sea turtle nesting habitat.

Sec. 14-76. New development.

New development must comply with the following requirements:

- (a) Artificial lighting must conform to the general requirements 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 1991 coastal construction control line, as defined in § 6-333 (CCCL), ~~a copy of a DEP-~~ approved lighting plan is required for all new development.
 - (2) ~~For new development~~ Landward of the 1991 CCCL, a lighting plan is required for all commercial ~~and industrial~~ development; and for all multi-story developments in multi-family zoning districts.
 - (3) The location, number, wattage, elevation, orientation, fixture cut sheets, and ~~all~~ types of all proposed exterior artificial light sources, including landscape lighting, must be included on the lighting plan. An approved lighting plan is required before a building permit will be issued and final inspections for a certificate of occupancy or certificate of compliance will be performed by the town.
 - (4) Tinted glass, or any window film applied to window glass which meets the definition for tinted glass in § 14-72, must be installed on all windows and glass doors visible from the beach and must be so indicated on the building permit plans.

- (5) Exterior light fixtures visible from the beach must meet all of the following criteria to be considered appropriately designed:
 - a. Completely shielded downlight-only fixtures or recessed fixtures having 25-watt yellow bug type bulbs and non-reflective interior surfaces are used. Other fixtures that have appropriate shields, louvers, or cutoff features may also be used, if they comply with § 14-75.
 - b. All fixtures are mounted as low as possible through the use of low-mounted wall fixtures, low bollards, and ground level fixtures.
 - c. All exterior lighting must be installed in such a manner and be so shielded that the cone of light will fall substantially within the perimeter of the property. Through the use of shielding and limitations on intensity, artificial light traveling outward and upward producing a sky glow must be reduced to the greatest extent possible without unduly interfering with the purpose of the exterior lighting.
 - d. If ceiling fans are placed on balconies or porches that are visible from the beach, no lighting may be installed on the fans.
 - e. Artificial lighting, including but not limited to uplighting, is not permitted in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process (see § 34-652).
- (6) Parking lot lighting must use:
 - i. Poles no higher than twelve feet in height;
 - b. Shoebox-style fixtures containing high pressure sodium or low pressure sodium bulbs 150 watts or less; and
 - c. Opaque shields with a non-reflective black finish on the inside that completely surround each fixture and extend below each fixture at least 12 inches.
- (7) Low profile artificial lighting is encouraged, such as step lighting or bollards with louvers and shields that are no taller than 48 inches with bulbs of 35 watts or less. Opaque shields must surround 180 degrees of each fixture to keep direct light off the beach.

(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. 14-78. Additional regulations affecting sea turtle nesting habitat.

(a) ~~*Fires.*~~ ~~Fires that directly or indirectly illuminate sea turtle nesting habitat~~ are prohibited on the beach during the sea turtle nesting season.

(b) *Driving on the beach.* [no changes to this subsection]

(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. This screening must be completed by May 1, 2005.

ARTICLE III. SOUTHERN BALD EAGLE ³

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.

ARTICLE V. TREE PROTECTION ⁴

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.

...

Indigenous vegetation means those plants which are characteristic of the major plant communities, as listed in § 10-413 ~~10-701~~.

...

(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. 14-384. 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 special master, 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: *[no changes to subsection (1)]*
- (2) Massing of replacement stock shall be subject to agreement of the parties or, if appropriate, then by approval of the court or the special master, 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) *[no further changes to this section]*

**ARTICLE VI.
MANGROVE ENFORCEMENT ⁵**

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, special master, 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 special master 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 special master, 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 special master, hearing examiner.

(b) The restoration plan shall include the following minimum planting standards: *[no further changes to this section]*

EXHIBIT F

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 26 — MARINE FACILITIES¹

ARTICLE II. SEAWALLS, DOCKS, AND OTHER SHORELINE STRUCTURES

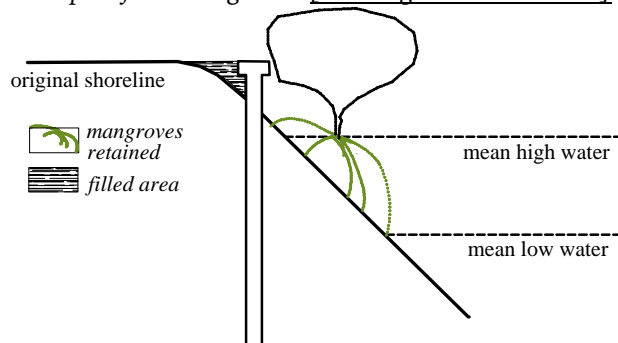
DIVISION 1. GENERALLY

Sec. 26-41. Definitions.

Multi-slip dock ~~has the meaning provided in § 34-2.~~ 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.

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.

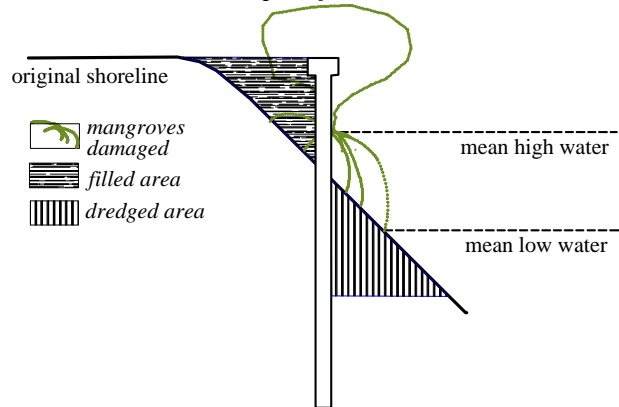
Example of retaining wall [drawings are not to scale]:



Cross reference(s)--Coastal construction code, § 6-331 et seq.; marina design, § 10-257; wetlands protection, § 14-291 et seq.; mangrove enforcement, § 14-451 et seq.; zoning regulations pertaining to marine facilities, § 34-1861 et seq.

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:



Tie-up area means the water adjacent to a dock, boat ramp, boat lift, davit, or boathouse designed to be occupied by moored watercraft.

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.* [no changes]
- (b) *Length of docks.* [no changes]
- (c) *Maximum dimensions of docks.* [no changes]
- (d) *Setbacks.* [no changes]
- (e) *Location.* [no changes]
- (f) *Minimum water depths.* [no changes]
- (g) *Sec. 26-72: 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 be 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.

EXHIBIT G
FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 27 — PERSONAL WATERCRAFT AND PARASAILING

**ARTICLE I. DEFINITIONS
AND ENFORCEMENT**

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 the soft sand portion of land lying seaward of a seawall or line of permanent vegetation and seaward of the mean high water line.

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

...

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

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

...

FWCE means the Florida Fish & Wildlife Conservation Commission or its successor.

...

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

**ARTICLE II.
PERSONAL WATERCRAFT**

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 8:00 A.M., or after completion of daily monitoring for turtle nesting activity by a FWCE-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, but under no circumstances may a person place or arrange any personal watercraft vessel or associated equipment in any manner which blocks pedestrian traffic on the beach. Between the hours of 9:00 P.M. and 7:00 8:00 A.M. ~~from May 1 until October 31~~, all personal watercraft and associated beach equipment must be removed from the beach in accordance with § 14-5. 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.~~
 - c. ~~Where compliance with the foregoing provisions 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 FWCE 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 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 must be kept at least 10 feet from a sea turtle nest and from a dune or dune vegetation at all times. The structure must ~~and~~ never be left on the beach before or after regular business hours and must be removed from the beach between the hours of 9:00 P.M. and 8:00 A.M. in accordance with § 14-5.
 - (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.

EXHIBIT H

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 30 — SIGNS

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- Sec. 30-1. Purpose and intent of chapter.*
Sec. 30-2. Definitions and rules of construction.
Sec. 30-3. Reserved.
Sec. 30-4. ~~3.~~ Applicability of chapter.
Sec. 30-5. ~~4.~~ Prohibited signs.
Sec. 30-6. ~~5.~~ Permitted Allowable signs.
Sec. 30-7. ~~6.~~ Parking of advertising vehicles.
Secs. 30-8. ~~7.~~–30-50. Reserved.
Sec. 30-51. Violation of chapter; penalty.
Sec. 30-52. Reserved.
*Sec. 30-53. Powers and duties of town manager.
building official.*
Sec. 30-54. Variances.
Sec. 30-55. Permits; inspections.
Sec. 30-56. Non-conforming signs.
Secs. 30-57–30-90. Reserved.
Sec. 30-91. Measurement of sign area.
Sec. 30-92. Measurement of sign height.
Sec. 30-93. Location.
Sec. 30-94. Construction standards; landscaping.
Sec. 30-95. Sign identification and marking.
Sec. 30-96. Maintenance.
Secs. 30-97–30-150. Reserved.
Sec. 30-151. Temporary signs.
Sec. 30-152. Permanent identification signs in residential areas.
Sec. 30-153. Permanent identification signs in commercial areas.
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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 ~~the Fort Myers Beach sign code~~ 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) ~~The Fort Myers Beach sign code~~ This chapter provides minimum standards to safeguard life, safety, property, and public welfare ~~by reviewing design and~~ by regulating size, construction, location, electrification, operation, and maintenance of all signs and sign structures exposed to public view within the town. The visual appearance and traffic safety of the town cannot be achieved by measures less restrictive than the procedures and standards of this chapter.

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.

Abandoned sign. A sign which no longer advertises or identifies a legal business establishment, product, or activity. See § 30-~~5.4(4)~~.

~~*Advertising message.* Copy on a sign describing commodities, products or services being offered to the public.~~

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., an attraction or reader board with changeable letters, is not an alteration.

Animated sign. Any sign which has any visible moving part, any flashing or osculating lights, any intermittent or alternating lights that cause visible messages to change, any visible mechanical movement of any description, or any other apparent visible movement achieved by any means. Electronic message boards and electronic changing message centers are considered to be animated signs. See § 30-5.4(5).

Awning sign. Any sign consisting of letters which are painted or installed on a lawful awning, but not including a back-lit awning. See §§ 30-6(a) and 30-153.

Back-lit awning. An awning with a translucent covering material and a source of illumination contained within its framework. See §§ 30-5 and 30-153.

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. See § 30-5.

Banner. A temporary sign of flexible plastic, cloth, or any other fabric that is hung between light poles or buildings so that it is in prominent view of motorists or pedestrians. See §§ 30-5 and 30-151.

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. See § 30-6(a).

Billboard. A sign that directs attention to a business, commodity, service, or entertainment conducted, sold, or offered at a location other than

the premises on which the sign is located. See § 30-5.

~~*Building frontage.* The linear dimensions of a building which faces upon a public street projected along the street property line. Where a building faces two or more streets, the frontage containing the principal street address shall be designated as the building frontage.~~

Building numbers. The building number assigned by Lee County as the official building address, painted or affixed to a building, mailbox, or similar structure. See §§ 30-6(a) and 30-153.

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

~~*Bulletin board.* A sign which identifies an institution or organization on the premises on which it is located and which contains the names of individuals connected with it and general announcements or events or activities occurring at the institution or similar messages. It shall not be interpreted to include movie theaters or other similar commercial activities.~~

Business affiliation sign. Signs displayed upon the premises denoting professional and trade associations with which the occupant is affiliated, including each credit card accepted by the occupant. See § 30-6(a).

Business announcement sign. A temporary sign announcing a project to be under construction, or an intended use of the premises, that will occur within 60 days after erection of the sign. See § 30-6(b).

~~*Building identification 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,” and emergency information such as sign being located on the same site as the structure.~~ See § 30-6(a).

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, or on, or below a canopy. See § 30-5.

~~**Changeable copy sign (manual).** A sign on which copy is changeable manually in the field, i.e. reader boards with changeable letters or changeable pictorial panels.~~

~~**Changing sign (automatic).** See *Electronic changing message center.*~~

~~**Commercial advertising sign.** Any structure, poster board, bulletin board, neon sign, screen, surface or wall with characters, letters or illustrations affixed thereto, thereon or thereunder, by any method or means whatsoever, where the matter displayed would be used for the purpose of publicly advertising the legal or exact firm or organization name or the name of the business carried therein or thereon.~~

Construction sign. A non-permanent sign identifying the persons, firms, or businesses directly connected with a construction project. See §§ 30-6(b) and 30-151.

~~**Convenience sign.** A sign which conveys information such as “no parking,” “entrance,” “service entrance,” “restroom,” “manager,” “exit,” and the like, but does not contain brand, trade, or business identification, and is designed to be viewed on-site or adjacent to the site by pedestrians and motorists.~~

Development sign. A sign designed and intended to advertise and promote the sale or rental or lease of lots or homes in any residential development, and also in commercial areas for sale or rental or lease of units in the development. See §§ 30-6(b) and 30-151.

Directional sign. Any sign which serves solely to designate the location of or direction to any place or area. See §§ 30-6(a) and (b) and 30-151.

Double-faced sign. A single plane with items of information identical on both sides and mounted as a single structure. See § 30-94.

~~**Electronic changing message center.** See animated sign.~~

~~**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. See § 30-5.~~

Erect. To build, construct, attach, hang, place, suspend or painting of wall signs.

Face of sign. The entire area of a sign on which copy could be placed.

~~**Figure-structured sign.** A sign which consists of sculptured, inflated, or otherwise constructed in the caricature or shape of an animal (including human beings) or vegetable, whether fictional or real, any body form, impression or frame. Or cylindrical or other form, sculptured or otherwise constructed, emblematic or symbolic of a personage or the characteristic or quality of either; which is used commercially to attract or draw attention to a business or commercial establishment. See § 30-5.~~

~~**Free-standing sign.** Any sign which is permanently affixed in or upon the ground, supported by one or more structural members, with air space between the sign and the ground space.~~

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. See § 30-6(a).

Grade. The level of the site at the property line located at the closest distance to the sign.

~~**Ground sign.** Any sign which is neither attached to nor part of a structure and which is permanently affixed in or upon the ground where the sign support is no greater than 1/3 of the height of the sign off the ground. An illustration would be as follows: a 4-foot by 6-foot sign could be placed a maximum of 16 inches off the ground. Permitted ground signs must also be monument signs as defined in this chapter.~~

~~*Height of sign.* See § 30-92, pertaining to measurement of sign height.~~

~~*Holiday decorations.* Signs or displays including lighting which are a non-permanent installation celebrating national, state, and local holidays or holiday seasons. See § 30-6(a).~~

~~*Identification sign.* Any sign where the matter displayed is used only to indicate the name, address, number of building, logo, trademark, and business activity or character of the primary land use. Identification signs may be awning signs, monument signs, nameplates, projecting signs, sandwich signs, wall signs, or window signs. See §§ 30-6(b), 30-152, and 30-153.~~

~~*Illegal sign.* Any sign placed without proper approval or permits as required by the Fort Myers Beach code at the time of sign placement. Illegal sign shall also mean any sign placed contrary to the terms or time limits of any permit and any non-conforming sign which has not been brought into compliance with the provisions of this chapter. See § 30-56(c).~~

~~*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. See §§ 30-6(b) and 30-94(d).~~

~~*Licensed contractor.* A person holding a valid contractor's license issued by the Lee County construction board. See §§ 6-231-237.~~

~~*Light bulb string.* A display consisting of a row or rows of bare light bulbs.~~

~~*Maintain.* To preserve from decline, keep in an existing state or retain in possession or control.~~

~~*Marquee.* A permanent roof-like structure extending from part or all of a building face and constructed of some durable material which may or may not project over a public right-of-way.~~

~~*Marquee sign.* A sign, painted on or attached to or supported by a marquee.~~

~~*Menu display box.* A small plaque or display case that displays a restaurant's menu near its entrance for the convenience of potential patrons who arrive on foot. See § 30-6(b).~~

~~*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. See §§ 30-6(b), 30-152, and 30-153. A ground sign having a horizontal dimension greater than its vertical 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. See § 30-5.~~

~~*Multiple-occupancy complex.* 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.~~

~~*Nameplate.* A non-illuminated identification sign giving only the name, address, and/or occupation of an occupant or group of occupants. See §§ 30-6(a) and 30-153. See identification sign.~~

~~*Neon sign.* A sign with tubing that is internally illuminated by neon or other electrically charged gas.~~

~~*Non-conforming sign.* A sign which was validly installed under laws or ordinances in effect at the time of its installation, but which is in conflict with the provisions of this chapter. the Fort Myers Beach sign code.~~

~~*Off-premises sign.* Any sign normally used for promoting a business, individual, products, or service available somewhere on the premises other than the premises where the sign is located. See § 30-5.~~

~~*Pennant.* Any flag-like piece of cloth, plastic, or paper attached to any staff, cord, building, or other structure at only one or two edges with the remainder hanging loosely. See § 30-5.~~

Plane. Any surface capable of carrying items of information, such as a rectangle, square, triangle, circle, or sphere; or any area enclosed by an imaginary line describing a rectangle, square, triangle, or circle, which includes freestanding letters, numbers, or symbols.

~~Pole or post 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 18 inches from the ground to the bottom of the sign, made up of a single, double or multiple structure or pole, that is not a solid monument style support, and is in excess of 2 feet in height. A free-standing sign that meets this chapter's requirements for a monument sign is not considered to be a pole sign. See § 30-5.~~

Political and non-commercial temporary signs. Any sign designed for the purpose of supporting or opposing a candidate, proposition, or other measure at an election or for any other noncommercial expression not related to the advertisement of any product or service or the identification of any business. See §§ 30-5 and 30-151.

Portable sign. Any movable sign not permanently attached to the ground or a building (except for sandwich signs). Examples of portable signs include trailer signs, beacon lights, balloon signs, and vehicles whose primary purpose is advertising. See § 30-5. For purposes of this code, sandwich signs are not considered portable signs and are regulated separately (see § 30-6(a)).

Posted property sign. Signs used to indicate “no trespassing,” “beware of dog,” “no dumping,” “towing,” and other similar warnings. See § 30-6(a).

Premises. Any property owned, leased, or controlled by the person actively engaged in business and so connected with the business as to form a contiguous component or integral part of it, or owned, leased, or controlled by a person for living accommodations.

Projecting sign. A sign which projects more than 18 inches above, below, or outward from, and is supported by a wall, or parapet, or ceiling of a building, with the display surface of the sign in a plane perpendicular to or approximately perpendicular to the wall. See §§ 30-6(b) and 30-153.

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. Any non-permanent sign pertaining to the sale, exchange, lease, rental, or availability of land, buildings, condominium and similar units, or apartments. See §§ 30-6(a), 30-56, and 30-151. Such signs may include building name and address, price and amenities, identity of seller or broker, and similar information.

Roof sign. Any sign erected upon a roof, ~~parapet or roof-mounted equipment. See § 30-5. structure and extending above a roof, parapet or roof-mounted equipment structure of building or structure.~~ Signs placed flat against the steep slope of a mansard roof will not be considered roof signs.

Sandwich 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 signs are not considered portable signs and are regulated separately. See § 30-6(a) and 30-153. A sandwich sign, or “A” frame sign, single or double-faced, which are portable and readily movable from place to place. No more than 6 square feet per side; no more than one per business location.

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 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.

Site. All the contiguous ground area legally assembled into one development location.

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 where such sign may or may not apply to the premises. See § 30-5.

Special event sign. Any temporary or non-permanent sign advertising or pertaining to any civic, patriotic or special event, defined as 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, of general public interest. Special events and special event signs are governed by Ordinance Nos. 98-1, 00-16, and future amendments. See § 30-6(a) and 30-151.

Special occasion sign. Temporary outdoor on-site signs that address grand openings, sale events, shopping center craft shows, carnivals, parking lot sales, annual and semi-annual promotions, or similar events. It does not include signs for special events as defined in the Special Events Ordinance (Nos. 98-1, 00-16, and future amendments). See § 30-6(a) and 30-151.

Statutory graphic. Graphics required by a law of the Town of Fort Myers Beach, the county, or the United States government.

Temporary sign. Any sign which is installed for a period not to exceed 60 days, in any consecutive 12 month period, unless otherwise limited or authorized herein. This chapter provides for six types of temporary signs: business announcement signs, construction signs, development signs, political and non-commercial signs, special event signs including banners, and special occasions signs. See § 30-151.

Town. ~~The incorporated areas within the Town of Fort Myers Beach:~~

Under-canopy or Under-marquee sign. A sign suspended below the ceiling of a canopy or marquee:

Upper level sign. ~~Any sign mounted on a building that is placed in whole or in part between thirty (30) inches above the second floor line and the top of a parapet or roof line:~~

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. See §§ 30-5 and 30-76.

~~**Visibility triangle.** A triangular-shaped portion of land established at street intersections or street and driveway intersections in which nothing is erected; placed, planted or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection:~~

Wall sign. Any sign attached to or painted on the wall of a building or structure and extending no more than 18 inches outward from the wall in a plane parallel or approximately parallel to the plane of said wall. See § 30-6(b), 30-91, and 30-153.

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. See § 30-5, 30-6(a), and 30-153.

~~(c) No lighting is authorized by this chapter that is otherwise prohibited in the sea turtle lighting restrictions in ch. 14. [this subject is addressed by §§ 30-93(c) and 30-94(d)]~~

~~**Cross-reference--Definitions and rules of construction generally, 1-2.**~~

Sec. 30-3. Reserved.

Sec. 30-4.3. Applicability of chapter.

~~(a) Ordinance 96-20 adopted the Fort Myers Beach core area overlay zoning district. Certain signage is addressed at §§ 34-1143(e) and 34-1145(g) and with greater specificity within the design guidelines for the core area adopted as section 1 of the administrative code. This chapter is to be read in coordination with the rules and regulations which govern the Fort Myers Beach overlay zoning district:~~

~~(a) (b) **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 from the building official as required by this chapter.

(b) ~~(c)~~ *Exceptions.*

- (1) This chapter shall not apply to any sign erected by the federal, state, or Town of Fort Myers Beach government or to the placement of temporary signs up to 8 square feet 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 operations shall not be considered as creating a sign insofar as requiring the issuance of a sign permit, but such signs which are subject to the following operations must be in conformance with all other building, sign, structural, and electrical codes and regulations of the Town of Fort Myers Beach:
 - a. *Change of copy.* Changing of the advertising copy of a message on an existing approved ~~changeable copy signs; whether electrical, illuminated, electronic changing message center or non-illuminated message;~~ which are specifically designed for the use of replaceable copy, e.g., reader boards with changeable letters. ~~A change of copy for a billboard shall not require a permit.~~
 - 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. 4 Prohibited signs.

No commercial advertising signs by whatever name designated, shall be erected in the town of Fort Myers Beach, except those expressly authorized by the provisions of this chapter. The following specific types of signs are expressly prohibited, but this enumeration shall not be construed to limit the general prohibition set forth in this subsection:

- (1) ~~*On-site signs and off-site*~~ *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) *Lights and signs that resemble any traffic control device,* official traffic control signs or emergency vehicle markings.
- (3) *Signs and other advertising matter as regulated by this chapter 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) *Abandoned signs.*
- (5) ~~*Animated signs.*~~ *Animated signs,* except those displaying only cycling time or temperature.
- (6) ~~*Back-lit awnings.*~~ *Signs which visible smoke, vapor, particles or odor, or which produce noise or sounds capable of being heard, even though the sounds produced are not understandable sounds;*
- (7) *Balloons or balloon signs.*
- (8) *Banners, pennants, or other flying paraphernalia,* except:
 - a. an official federal state, county, or Town of Fort Myers Beach flag, ~~or~~
 - b. one symbolic flag not to exceed 15 square feet in area for each institution or business, ~~except~~
 - c. holiday decorations and (see § 30-6(a),
 - d. banners of special events (see § 30-151).
- (9) ~~(10)~~ *Billboards.* ~~*Bench signs,*~~ except as permitted in § 30-5(a)(1) of this code.
- (10) *Canopy signs.*

- (11) ~~*Emitting signs. Changing sign (automatic) off-site and on-site.*~~
- (12) *Figure-structured signs* as defined in this chapter.
- (13) ~~*Motion picture signs, mechanisms* in conjunction with any outdoor advertising structure, accessory sign or advertising statuary used in such a manner as to permit or allow the images to be visible from any public street or sidewalk.~~
- (14) *Vehicle signs.* The parking of advertising vehicles is prohibited as more fully described in § 30-76. This prohibition is not intended to apply to standard advertising or identification practices where such signs or advertising devices are painted on or permanently attached to a business or commercial vehicle.
- (15) *Off-premises signs.*
- (16) *Pole signs.*
- (17) *Portable signs* (except as allowed in § 30-65(a)).
- (18) ~~*Reserved. Projecting signs* (except as allowed in DOWNTOWN zoning district, § 34-998).~~
- (19) ~~*Roof signs.* (except as allowed in DOWNTOWN zoning district, § 34-998).~~
- (20) *Signs with any lighting or control mechanism* which causes radio or 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, except "posted property" signs, which are erected or maintained upon trees* or painted or drawn upon rocks or other natural features.
- (23) ~~*Any Signs which are is placed on any curb, sidewalk, post, pole, electrolier, 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.~~
- (24) *Snipe signs.*
- (25) *Unshielded illuminated devices* that produce glare or are a hazard or a nuisance to motorists or occupants of adjacent properties.
- (26) *Window signs* which identify or advertise activities, services, goods, or products available within the building, and which collectively cover more than 30 per-cent of the window glass surface area.
- (27) *No commercial signage is allowed on inland waterways except for directional signs* (see § 30-6(a)).
- (28) ~~*Upper level signs.*~~

Sec. 30-6.5. Permitted Allowable signs.

Permitted Allowable signs are classified into two categories: signs not requiring a sign permit and signs that do require a sign permit.

(a) **Signs not requiring a sign permit:**

- (1) **Bench signs**, limited to existing signs, as of May 19, 2003, which are located at public transit stops, within public beach accesses, and all other existing bench signs sponsored by non-profit, charitable organizations. Signage may not exceed a 2-foot by 4½-foot sponsorship plaque. Bench signs located on property zoned commercial, placed a minimum of 25 feet from public right-of-way, and whose advertisement is not visible from a public right-of way are also permitted. All other bench signs are prohibited.
- (2) **Awning signs**. Awning signs consisting of one line of letters, which are painted, placed or installed upon the hanging border, or only, of any awning legally permitted, erected and maintained in accordance with the Town of Fort Myers Beach laws. An identification maintained in accordance with the Town of Fort Myers Beach laws: an identification emblem, insignia, initial, or other feature not exceeding an area of eight square feet may be painted, placed, or installed elsewhere on any awning, provided that any sign emblem, insignia or other such similar item shall comply with other provisions of this chapter. Larger signs on awnings are also permitted if they meet this chapter's requirements for projecting signs; see § 30-153.
- () **Building numbers**. Posted building numbers must be between 3 and 8 inches high for detached dwellings and for individual businesses, institutional, and multifamily buildings. Numbers on buildings that are set back more than 50 feet from the street must be between 8 and 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. See also § 6-11 of this code.
- (3) **Business affiliation signs**. Signs displayed by businesses, upon the premises, denoting professional and trade associations with which the business is affiliated, required requiring statutory signs, and other signs pertaining to public safety and law

- enforcement provided such graphics do not contain lettering more than two inches high.
- (4) **Business information signs**. Business information signs provided that such signs are posted on the entrance doors or within a window.
- (5) **Flags or insignias of governmental or nonprofit organizations**. Flags or insignias of a governmental, religious, charitable, or fraternal organization, except when displayed in connection with a commercial promotion.
- (6) **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.
- (7) **Governmental and public safety signs**. Governmental signs for control of traffic and other regulatory purposes, street signs, danger signs, railroad crossing signs, signs of public service companies indicating danger, 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.
- (8) **Holiday decorations**. Signs of a primarily decorative nature, clearly incidental and customary and commonly associated with any national, local, or religious, provided that such signs shall be displayed for a period of not more than 60 consecutive days and such signs shall not be displayed for more than 60 days in any one year. Such signs may be of any type, number, area, height, illumination or animation and shall be not otherwise prohibited by § 30-5, provided that:
 - a. the decorations contain no advertising other than the name of the business,
 - b. the decorations are set back ten feet from all boundary lines of the lot, provided that and
 - c. clear visibility shall be maintained on a corner lot in accordance with § 30-93.
- (9) **Instructional signs** or symbols located on and pertaining to a parcel of private property, not to exceed four square feet in area per sign.
- (10) **Interior signs**. Signs located within the interior of any building or stadium, 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 ~~and~~

development code and the Florida Building Code.

- (11) **Legal notices.** Legal notices and official instruments.
- (12) **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.
- (13) **Nameplates.** Any sign not exceeding 1½ square feet in area per sign and not exceeding 2 in number per lot, except that special permission may be obtained ~~from the building official~~ for additional signs under proven special circumstances. Such signs shall not be illuminated, and they shall not project over any public right-of-way.
- () **Political and non-commercial temporary signs.** See § 30-151.
- (14) **Posted property signs.** Posted property signs, not to exceed 1½ square feet in area per sign and not exceeding 2 in number per lot, except that special permission may be obtained ~~from the building official~~ for additional signs under proven special circumstances. Such signs shall not be illuminated, and they shall not project over any public right-of-way.
- (15) **~~Reserved. Promotional signs.~~** ~~Promotional signs, not exceeding four square feet in area, provided that such signs are posted only during such drive or no more than 30 days before the event and are removed no more than 2 days after the event. See § 30-151(e).~~
- (16) **Public information signs.** Any sign used for public information or direction erected either by or at the direction of a public body.
- (17) **Real estate, open house, and model signs.** Real estate, open house, and model signs, subject to § 30-151(f).
- (18) **Sandwich Signs.**
 - a. **In General.** Sandwich signs are permitted within the outer perimeter of the DOWNTOWN zoning district as shown on Figure 34-6 of this code, whether the subject property is classified in the DOWNTOWN zone or in a Commercial Planned Development zone, and all other commercial zoning districts, despite the general prohibition in § 30-54 of this chapter of portable

signs which are readily movable from place to place.

- 1. A business may place no more than one a single- or double-faced sandwich sign on the same premises, or when there is no location available on premises due to the street setback of the building, the sign may be placed on a sidewalk directly in front of the premises, provided it does not unreasonably obstruct or interfere with use of the sidewalk or access to parking spaces.
 - 2. Sandwich signs must be placed indoors after business hours, may not be illuminated, and may not exceed 24 inches in width and a total of 6 square feet per side.
 - 3. Sandwich signs must be professionally made and maintained in an attractive manner. Sandwich signs which are structurally unstable or deteriorating are not permitted.
 - 4. Multiple occupancy complexes ~~with less than 10 occupants~~ may display no more than 2 sandwich signs at one time, ~~and except that~~ multiple occupancy complexes with more than 10 occupants may display up to 3 sandwich signs at one time.
 - 5. This entire subsection has the potential for substantial adverse impact upon the community and shall expire on May 31, 2005, if not modified or readopted prior to that date.
- b. **Pre-existing off-premises signs.** Sandwich signs for the ~~Heavenly Biscuit restaurant (located on the corner of Mango Street and Estero Boulevard); and SeaGrape Plaza shopping center;~~ shall be considered legal non-conforming.
- 1. These signs shall maintain their legal non-conforming status with the continued permission of the property owner where the sign is located or until such time as they loose status in accordance with § 30-56(c) of this chapter.

2. This entire subsection has the potential for substantial adverse impact upon the community and shall expire on May 31, 2005, if not modified or readopted prior to that date.
- (19) **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.
- (20) **Special event signs.** See § 30-151.
- (21) **Special occasion signs.** See § 30-151.
- (22) ~~(20)~~ **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 16 square feet in area.
- (23) ~~(21)~~ **Warning signs.** Signs warning the public of the existence of danger, but containing no advertising material, of a size as may be necessary, to be removed upon subsidence of danger.
- (24) ~~(22)~~ **Waterway signs.** Directional signs along inland waterways.
- (25) ~~(23)~~ **Window signs.** Interior window signs which identify or advertise activities, services, goods, or products available within the building.

(b) **Signs requiring a sign permit.** No sign that meets or exceeds one or more of the following criteria shall be erected prior to issuance of a sign permit in accordance with § 30-55.

- (1) **Business announcement signs,** see § 30-151(a).
- (2) **Construction signs,** see § 30-151(b).
- (3) **Development signs,** see § 30-151(c).
- (4) **Directional signs (on-site only),** § 30-152(d).
- (5) **Identification signs (residential and commercial), whether wall signs, monument signs, or projecting signs,** see §§ 30-152 and 30-153.
- (6) **Menu display boxes.** One menu display box may be permitted outdoors adjacent to a public entrance of an establishment that serves prepared food to the public. Menu

display boxes cannot exceed 4 square feet in area and 4 inches deep, and menu lettering cannot exceed 2 inches in height.

- (7) ~~(6)~~ **Any illuminated sign** if the source of the illumination has not been previously approved.
- (8) ~~(7)~~ **Any sign not specifically exempted** from requiring a sign permit as delineated under § 30-~~65~~(a).

Sec. 30-~~7.6~~ Parking of advertising vehicles.

(a) No person shall park any vehicle, trailer, or boat on a public right-of-way, public beach, or public property so as to be clearly visible from a public right-of-way, which has attached thereto or located thereon any sign or advertising device for the primary purpose of providing advertisement of products or directing people to a business or activity located on the same or nearby property or any other premises.

(b) This section is not intended to prohibit any form of public vehicular signage such as a sign attached to a bus. Neither shall this section prohibit a sign lettered or attached to a motor vehicle in such a manner as to primarily identify the vehicle with the business it serves and which is less than 6 square feet of total surface area. This section shall not be interpreted as prohibiting company names which are customarily and normally on interstate or local delivery trucks.

(c) The parking of vehicles or the use of any other device or contrivance visible from a public or private street or right-of-way for advertising or commercial purposes, shall be deemed to be prohibited by this section.

Secs. 30-~~87~~–30-50. Reserved.

Sec. 30-51. Violation of chapter; penalty.

(a) The town manager 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. Penalties may be assessed against any owner, agent, lessee, tenant, or 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.~~ shall be subject to the following penalties:

- ~~(1) Criminal penalties, upon conviction:~~
 - a. A fine not to exceed \$500.00 per day.
- ~~(2) Civil penalties:~~
 - a. The town shall be entitled to injunctive relief to enjoin and restrain any person from violating the provisions of this chapter, and
 - b. Prosecution before the hearing examiner pursuant to a current executed interlocal agreement between the Town of Fort Myers Beach and Lee County.
 - c. Any other relief available pursuant to law.

~~(b) In addition to the criminal penalties and enforcement procedures provided in subsection (a) of this section, the violation of any of the regulations, restrictions and limitations promulgated under the provisions of this chapter may be restricted by injunction, including a mandatory injunction, and otherwise abated in any manner provided by law, and each suit or action may be instituted and maintained by the Council of the Town of Fort Myers Beach or by any citizen of the Town of Fort Myers Beach or by any person affected by the violation of these regulations, restrictions or limitations. No sign or sign structure shall hereafter be erected, constructed, reconstructed, altered or relocated except in conformity with the provisions of this chapter.~~

~~(c) No person shall erect on any premises owned or controlled by him any sign which does not comply with the provisions of this chapter.~~

~~(d) No person shall erect on any premises owned or controlled by him any sign which is in a dangerous or defective condition. Any such sign shall be removed or repaired by the owner of the sign or the owner of the premises, or as otherwise provided for in this chapter.~~

Sec. 30-52. Reserved.

Sec. 30-53. Powers and duties of town manager building official:

(a) *Generally.* The town manager building official is hereby authorized and directed to administer and enforce the regulations and

~~procedures and set forth in this chapter. The building official is further empowered 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 building official, 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. Issuance of the permit shall in no way prevent the town manager building official 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 by the building official except in compliance with this chapter and any other applicable ordinances and laws, ~~decisions of the zoning board, board of adjustments, construction board, or Town of Fort Myers Beach council,~~ or court decisions.
 - (2) **Revocation of permits and certificates.** The town manager building official may revoke a sign permit or certificate of compliance in those cases where an administrative determination has been duly made that false statements or misrepresentations existed as to material facts in the application or plans upon which the permit or approval was based.
 - (3) **Suspension of permits and certificates.** The town manager building official may suspend a sign permit or certificate of compliance where an administrative determination has been duly made that an error or omission on the part of either the permit applicant or a government agency existed in the issuance of the permit or certificate. A new permit or certificate shall be issued in place of the

incorrect permit or certificate after correction of the error or omission.

- (4) **Cease and desist orders.** The town manager ~~building official~~ shall have the authority to issue cease and desist orders in the form of written official notices given to any person.
- (5) **Complaints.**
 - a. Complaints on any violations of this chapter shall be filed with the town manager ~~building official~~.
 - b. Upon inspection, where it is found that any sign or sign structure is in violation of this chapter, the town manager ~~building official~~ should take the appropriate action as set forth in this code.

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, it shall be unlawful for any person to erect, construct, replace, 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 sign ~~from the building officials~~.
 - (2) In addition to any other permit required by this code, a sign permit shall be obtained prior to placing, changing, altering, or displaying any sign unless specifically exempted by this code. No sign permit shall be required where the only work to be performed is the repair, maintenance, or maintenance of a lawful non-conforming sign, or the replacement or repair of a destroyed sign except when such sign is required to be removed by this code.
 - (3) When a sign permit has been issued, it shall be unlawful to change, modify, alter, or otherwise deviate from the terms or conditions of the permit without prior approval of the town manager ~~building official~~. A written record of such approval shall be entered upon the original permit

application and maintained in the files of the town manager ~~building official~~. All such approvals shall be consistent with the terms of this chapter.

(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 ~~building official~~ a sign permit application, which shall include:

- (1) A completed application form containing but not limited to:
 - 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. For off-site signs only, the name, address, telephone number and signature of the owner of the premises granting permission for the construction, operation, maintenance or displaying of the sign structure, including:~~

- ~~1. Proof of ownership of the property upon which the sign is to be erected, on the subject parcel, or~~
- ~~2. A copy of the executed lease or agreement permitting the sign to be erected on the subject parcel, or~~
- ~~3. A signed statement from the property owner of the subject property granting permission for the erection of the sign and recognizing that a lien may be filed against the subject property if the sign is required to be removed for violation of this chapter.~~

~~c. d. Information as to the type of sign to be erected, e.g., ground-mounted, monument, projecting, or wall-sign; illuminated or non-illuminated; temporary or permanent.~~

~~d. e. The approximate value of the sign to be installed, including the installation cost, some representation as to design and copy with regard to the sign requested.~~

- (2) A *site location plan* including the following:
 - a. Location by street number and legal description (tract, block, and lot) of the building, structure, or lot to which or upon which the sign is to be installed; or

- 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, when such signs are on the same premises.
 - c. A sea turtle lighting plan is required for all new lighted signs that are visible from the beach, including signs that are within buildings.
- (3) *Bond or other security for certain type signs.* Town of Fort Myers Beach shall adopt a bond or other security schedule for certain type signs requiring a bond or other security as specified in this chapter. Such signs include, but are not limited to certain temporary signs and such others as the Town Council deems necessary. If the signs are not removed within a specified time period, the signs will be removed by the Town of Fort Myers Beach and the bond will be forfeited.
 - (4) *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 to be established by the town.
 - (5) Such other information as the building official may require which is necessary to secure full compliance with this chapter, the Florida Building Code and any other applicable ordinance.
 - (6) *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, or to which it relates.
 - (7) Plans indicating the scope and structural detail of the work to be done, including details of all connections, supports, and footings and materials to be used.
 - (8) 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, if required by the building official.
 - (9) 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.
 - (10) ~~A sea turtle lighting plan is required for all new lighted signs that are visible from the beach.~~
 - (11) If applicable, an application, and required information for such application, for an electric permit for all electric signs, if the sign is to be illuminated. Electrical work must be UL-approved or installed by a licensed electrician.
 - (12) *Sign contractor's license.* Certain types of signs are required to be installed or erected only by a licensed contractor. No person shall perform any work or service in connection with the erection, construction, enlargement, alteration, repair, moving, improvement, maintenance, conversion, or manufacture of any such sign in the Town of Fort Myers Beach unless such person shall first have obtained a contractor's license from in accordance with §§ 6-231-237, the building official and paid the license fees provided by the Town of Fort Myers Beach, or shall be represented by a duly licensed agent or subcontractor. 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 insofar as this chapter has not specifically directed the placement of a sign.
 - (13) *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, building official.
 - (14) *Inspections.* All signs for which a permit is required by this chapter are subject to inspection ~~by the building official.~~ 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.

- (15) *Identification number.* New signs permitted after the effective date of this chapter (September 13, 1999) will carry a sign permit number on the right corner of the permitted sign. The town will begin a process of photographing all signs within the town by digital camera and such record will be kept in town hall.

Sec. 30-56. Non-conforming signs.

For further clarification, see land development code §§ 34-3201 through 34-3277.

(a) *Status.* Every sign, as of the effective date of the chapter (September 13, 1999) which is a permitted legally existing sign shall be deemed a legal non-conforming sign. A permitted sign means a sign that was constructed or is in place with a valid permit from the Town of Fort Myers Beach. All non-conforming signs shall be subject to the provisions of this section. All existing signs which are not legal non-conforming signs must comply with the terms of this chapter.

- (1) A non-conforming sign may not be enlarged or altered in a way which increases its nonconformity.
- (2) Nothing in this section shall relieve the owner or user of a legal non-conforming sign or owner of the property on which the legal non-conforming sign is located from the provisions of this chapter regarding safety, maintenance, and repair of signs. Any repair or refurbishing of a sign that exceeds 50 percent of the replacement value of the sign in its preexisting state shall be considered as an act of placing a new sign and not an act of customary maintenance. It shall be the responsibility of the permittee to provide the ~~town division of community development~~ with adequate proof of the cost of such work in the form of an itemized statement of the direct repair cost whenever such information is requested ~~by the division~~.
- (3) If any non-conforming sign is destroyed to an extent exceeding 50 percent or more of its replacement value at the time of destruction, the sign shall not be replaced or repaired, in part or full, except upon full compliance with this chapter.

(b) *Designation of historically significant and/or landmark signs.* Pursuant to the Fort Myers Beach Comprehensive Plan, the town’s vision for preserving its history is set out in chapter 13. This historic preservation element has two major goals. The first is to preserve “the best of the old” as the community evolves and redevelops over time. The second goal is to share the legacy left by previous residents with today’s visitors and the broader community and to do so in a way that preserves the local culture and environment and enriches visitors’ experiences. The local planning agency is designated to serve as the historic preservation board by this code.

- (1) A sign may be nominated for designation as historically significant or having landmark status to the local planning agency.
- (2) A nomination letter would be prepared documenting the historical background of the sign and listing reasons for possible landmark status. The historic preservation element sets out historic and archaeological criteria that should be incorporated into a nomination letter.
- (3) The local planning agency will hold a public hearing on any nomination requests received and will use the historic preservation element as a guideline for approving or denying such requests.
- (4) The town council will serve as the appeal board for signs that are denied historical and/or landmark status
- (5) A sign that is designated as historical or having landmark status will receive a legal non-conforming status for as long as the sign remains. If the sign is destroyed in any way, it may be re-constructed to its legal non-conforming historical and/or landmark status. Similarly, if the underlying business is sold, or “copy” or “use” is changed, the sign continues to hold its legal non-conforming designation and remains as a historical or landmark designated sign.

(c) *Loss of legal nonconformity.*

- (1) A legal non-conforming sign shall become an illegal sign which must comply with this chapter if:
 - a. More than 50 percent of the sign is removed or unassembled for a period of more than six months.
 - b. The sign is altered or relocated in any manner which increases its

- c. Any change of use or change of ownership of a sign loses legal non-conformity and must comply with current regulations.
- d. Repair or refurbishing exceeds 50 percent of the value of the sign in its preexisting state.
- e. The sign is replaced.
- (2) When a sign face remains blank, which as defined as void of advertising for a period of 12 months it loses its non-conforming status and must be treated as a sign which must comply with all the requirements of this chapter. Signs displaying an “available for lease” message or similar message and partially obliterating signs which do not identify a particular product, service, or facility are considered to be blank signs.
- (2) A non-conforming sign that has lost its legal non-conforming status shall be immediately brought into compliance with this chapter, or the sign shall be removed.
- (3) The existence of an illegal sign or a legal non-conforming sign does not constitute a hardship warranting the issuance of a variance from the provisions of this chapter.

(d) **Time for compliance.** All signs shall be brought into compliance with the standards of this section according to the following schedule which follows:

- (1) **Real estate signs** shall be removed or made lawful hereunder within 24 months after the effective date of this chapter (September 13, 1999).
 - a. The town finds that in view of the inexpensive nature of these signs and the administrative burden which would be imposed by elaborate procedural prerequisites prior to removal, any procedure other than summary removal of these signs when unlawfully erected and maintained would defeat the purpose of regulating such signs. Therefore, the town manager building official is hereby authorized summarily to remove such signs when unlawfully erected and maintained, subject to the provisions contained in subsection (3) of this section.

- b. After summary removal of a sign pursuant to this section, the town manager building official shall notify, either in person or by first class postage, prepaid, the occupant of the property from which the sign was removed, and if the sign identified a party other than the occupant of the property, the party so identified. The notice shall advise that the sign has been removed, and shall state that the sign may be retrieved within 30 days of the date of the notice and that if the sign is not retrieved within 30 days it will be disposed of by the town. If the sign is removed from public property, the party, if any identified on the sign shall be notified; if no party is identified on the sign, then no notice prior to disposition is required. The town shall dispose of all unclaimed signs after the expiration of the 30-day period.
- (2) **Signs damaged in a natural disaster.** Signs damaged in a natural disaster may be repaired or replaced and may remain in place until September 13, 2007, if the applicant signs an affidavit acceptable to the town acknowledging that the sign must be removed or brought into conformance with this chapter prior to that date. In accordance with the application and permit provisions of § 30-55 of this chapter, temporary sign permits conforming to the standards in § 30-151(a)(2) may be issued for properties associated with such damaged signs for one period not to exceed 180 calendar days. One additional temporary sign permit may be issued for an additional period not to exceed 180 days on a showing of continued hardship.
- (3) ~~(2)~~ **Other non-conforming signs.** Any other non-conforming sign shall be brought in compliance with this chapter upon any alteration (but not routine maintenance) of the sign, or 8 years after the effective date of this chapter (September 13, 1999), whichever comes first.
- (4) ~~(3)~~ **Other unlawful signs.** Signs which are or have been erected or maintained unlawfully but do not fall under the provisions set forth in subsection (1) of this section shall be subject to the following procedures:
 - a. The town manager building official shall prepare a notice which shall describe the sign and specify the violation involved,

- and which shall state that, if the sign is not removed or the violation is not corrected within 15 days, the sign shall be removed in accordance with the provisions of this section.
- b. All notices ~~mailed by the building official~~ shall be sent by certified mail, return receipt requested. ~~Any time periods provided in this section shall be deemed to commence on the date of the receipt requested.~~ Any time periods provided in this section shall be deemed to commence on the date of receipt of the certified mail.
 - c. The notice shall be mailed to the owner of the property on which the sign is located as shown on the last equalized assessment roll. If the owner of the sign and the occupant of the property are known, or with reasonable care should be known, the notice shall be mailed to or delivered to the owner of the sign and the occupant of the property.
 - d. Failing determination of the sign owner or user or owner of the property on which the sign is located, the notice may be affixed in a conspicuous place to the sign or to the business premises with which the sign is associated. ~~The town manager building official shall require new sign permits to be issued for each existing sign so classified and shall be attached to the Town of Fort Myers Beach's copy of the permit application.~~
 - e. Any person having an interest in the sign or the property may appeal the determination of the ~~administrator~~ town manager ordering removal or compliance by filing a written notice of appeal with the town within 15 days after the date of receiving the notice.
 - f. Upon completion of the notification procedures and after the expiration of the 15-day appeal period, if no appeal has been filed, the town manager building official shall have the authority to remove or contract with a contractor to remove the unlawful sign. All costs associated with the removal of the unlawful sign shall be assessed against the property owner. Each such assessment shall be a lien against the property until paid.
- (5) ~~(4)~~ **Emergency work.** When it is determined ~~by the building official~~ that a sign would cause an imminent danger to the public safety, and contact cannot be made with a sign owner or building owner, no written notice shall have to be served. In this emergency situation, the town manager building official may correct the danger, with all costs being assessed against the property owner.
 - (6) ~~(5)~~ **Assessment of costs.**
 - a. As soon after the offending condition is corrected or removed ~~by the building official~~ and the expense thereof can finally be determined, the town manager building official shall render a statement to the property owner or permittee or person having possession or right to use, by regular United States mail, addressed to the last known address of any such persons, informing the person of the sums due the town.
 - b. If such sums are not paid within 45 days, the town shall, by resolution, levy a special assessment lien in the amount of all sums due the town, plus interest on the amount at a rate of 12 percent per annum, plus all expenses which may be incurred incident to the enforcement of such lien, including any court costs or attorney's fees, until final payment of all sums have been made.
 - c. Liens shall be recorded in the official records of the Town of Fort Myers Beach and shall remain in full force and effect until finally paid. The Town of Fort Myers Beach shall furnish releases of the subject upon proper satisfaction having been made. The lien may be enforced in the manner provided by the general law of the state for the enforcement of liens or the foreclosure of mortgages.

Secs. 30-57–30-90. Reserved.

Sec. 30-91. Measurement of sign area.

(a) The sign area shall be measured from the outside edges of the sign ~~or the sign frame; whichever is greater, excluding the area of the and supporting structures, except where the supporting structure is a building wall, provided that the supporting structures are not used for advertising purposes and are of an equal to or less than the permitted sign area.~~ In the case of ~~wall signs that use individual letters or symbols without a border, background, or frame, or supporting structure other than the building itself, the sign area shall be the sum of the areas within the perimeter of each letter or symbol in the sign. surface shall include such reasonable and proportionate space as would be required if a border or frame were used.~~

(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 surface are shall comprise the square footage within the perimeter of a regular geometric form enclosing the outer edges of all the separate signs or sign elements.

(c) Where signs are installed back-to-back, one face only is considered as the sign area. If unequal in size, the larger face will be counted.

Sec. 30-92. Measurement of sign height.

The height of a sign shall be considered to be the vertical distance measured from the crown of the adjacent street, road.

Sec. 30-93. Location.

(a) **Visibility triangle.** No sign shall be erected which 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 3 feet to any sidewalk or bike path or to any street right-of-way unless at least 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.

- (2) A sea turtle lighting plan is required for all new lighted signs 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) ~~(b)~~ **Clearance from high voltage power lines.** Signs shall be located in such a way that they maintain a clearance of ten feet to all overhead electrical conductors and a three foot clearance on all secondary voltage service drops.

Sec. 30-94. Construction standards; landscaping.

(a) **Generally.** All signs shall comply with the appropriate detailed provisions of the Florida Building Code relating to design, structural members, illumination, and connections. ~~Illuminated signs shall also comply with provisions of the National Electrical Code, and~~ 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 building official may request wind load calculations for signs ~~less than 24 square feet~~ prior to issuance of issuing a permit.
- (2) A wall must be designed for and have sufficient strength to support any sign which is attached thereto.

(c) **Materials for monument ground signs.**

- (1) All monument signs ground sign structures 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. Town of Fort Myers Beach building department.

(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, National Electric Code as adopted in § 6-191. 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 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.

(h) **Landscaping.**

- (1) Approved landscaping, which includes xeriscape, shall be functional and decorative. It should be designed for minimal maintenance and capable of withstanding vandalism. It may be of many materials, including flowers, shrubs, trees, rockwork, brickwork, or other constructional elements in an attractive combination and appropriate to the specific location. The support structure

of the sign may, if properly designed, be included as part of the landscaping.

- (2) The least dimension of the landscaped area shall be the greatest dimension of the sign, and the sign shall not extend beyond the landscaped area. The area enclosed by the sign shall be landscaped with shrubs and ground cover.

Sec. 30-95. Sign identification and marking.

(a) Unless specifically exempted from permit requirements of this chapter, all signs shall be photographed and filed with permit numbers in town hall. Within 1 year of the effective date of this chapter (September 13, 1999), the town will use a digital camera to record all signs within the town. In the interim, all signs permitted under this chapter will display the sign permit number issued for that sign at the right lower corner of the sign so that it is easily visible for inspection.

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 ground 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) **Business announcement signs.**

- (1) A temporary sign announcing a project to be under construction or an intended use of the premises within 60 days of erection of the sign may in the immediate future shall be permitted in accordance with the following:
 - a. One ground-mounted sign is allowed per street frontage per project. The sign shall be confined to the site of the project.
 - b. Sign area shall not exceed 16 square feet, and signs (including supports) shall not exceed 8 feet in height above the crown of any abutting street.
 - c. A sign announcing a project to be under construction or an intended use of the premises in the immediate future may include only the project name, the nature of development (e.g., professional office, ~~villas, townhouse~~ condominium, etc.), the name of the owner or agent, and one telephone number. Such sign may be posted for a 180-day period, at the end of which time continued use of the sign shall be subject to approval by the town manager. ~~building official~~. Such sign shall be removed upon issuance of a certificate of occupancy for the project.
- (2) Temporary announcement signs for a new business, or a business in a new location with no permanent signs, may be permitted up to 16 square feet in sign area ~~or the maximum permitted sign area for any one ground-mounted permanent sign, whichever is lesser~~, for a period of not more than 60 days or until installation of permanent signs, whichever occurs first. The temporary sign shall not exceed 8 feet in height. No temporary announcement sign shall be permitted if the sign would exceed either the number or size of permanent signs otherwise permitted by this chapter for the occupant or location.
- (3) Permits are required for business announcement signs (see § 30-6(b)).

(b) **Construction signs.**

- (1) One construction sign shall be permitted per construction project on each street frontage. The sign shall be erected no more than five days prior to any construction of the project shall be confined to the site of construction, and shall be removed prior to issuance of a certificate of occupancy.
- (2) Construction signs may denote the architect, engineer, contractor, subcontractor, owner, future tenant financing agency, or other persons performing services or labor or supplying materials to the premises.
- (3) Maximum size limitations for construction signs shall be as follows:
 - a. For all residences and nonresidential developments, one non-illuminated ~~wall or ground-mounted~~ sign not exceeding 16 square feet in sign area and 8 feet in height, including supports, may be erected on each street frontage.
 - b. All construction signs must be located within the property line.
 - c. Permits are required for construction signs (see § 30-6(b)).

(c) **Development signs.**

- (1) A development sign may be permitted in any residential development wherein more than 20 percent of the lots, homes, or living units remain unsold, subject to the following regulations:
 - a. One non-illuminated development sign not exceeding 16 square feet in sign area may be permitted for each street entrance into the subject subdivision or development.
 - b. The sign shall be located within the confines of the property being developed.
 - c. Permits for such signs shall be issued for one year and may be renewed annually until 20 percent or less of the total lots, homes or living units remain unsold.
- (2) One non-illuminated development sign per street frontage may be permitted in any commercially zoned district to promote the sale or rental or lease of units within the development. The maximum size shall be 16 square feet and the maximum height shall be ten feet plus 10 feet, including supports.
- (3) Permits are required for development signs (see § 30-6(b)).

(d) ***Temporary Political and non-commercial temporary signs.*** Temporary political and non-commercial signs shall only be erected in accordance with the following standards:

- (1) *Area and height.* Temporary political signs shall have a maximum sign face area of 4 square feet and if mounted on the a ground sign, a maximum height of 3 feet.
- (2) *Timing and removal.* For signs pertaining to any matter relating to an election: a period beginning 25 days prior to the election to which they relate and ending 5 days after said election.

(e) ***Special event signs. Promotional signs.*** Except as provided in § 30-65(a), ~~no signs shall be posted person, civic club or other organization shall post any sign~~ for special events ~~or promotions~~ until ~~such person, civic club or organization obtains a special events permit has been obtained from the town from the building official~~ and a bond or other security deposit acceptable to the Town of Fort Myers Beach is posted to insure the proper maintenance or removal of the sign in accordance with § 30-55(b)(3), and the following regulations.

- (1) Special event Promotional signs may be erected within 14 days prior to a proposed event and must be removed within 2 days after the event.
- (2) Special event Promotional signs shall not exceed 16 square feet in area and 8 feet in height including supports.
- (3) In addition, banners may be strung for special events if approved as part of a special events after obtaining the proper permit. ~~The~~ Banners may be placed up to two weeks before the event and must be taken down no later than one week after the event.

(f) ***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 for sale will be allowed one non-illuminated ground sign, perpendicular to the roadway, that is 24 inches in height and 24 inches in width. Lots may have one sign for each street frontage. Waterfront (canal, bay, lagoon, or beach) properties may have more than one additional monument sign which is 12 inches in height and 24 inches in width on water frontage visible from the water.

- (2) The sign face will 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 on the 24-inch by 24-inch sign face.
- (3) No riders (such as name of agent, "sold," "sale pending," "pool," "price reduced," etc.) shall be attached.
- (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.* One ground-mounted "open house" sign per property per street frontage. Sign area shall not exceed four square feet, and the sign shall be placed upon the property to be sold or leased. The sign shall be displayed only when the premises are actually available for inspection by a prospective buyer or tenant.
- (8) *"Model" signs.* New developments may place the words "Model Open" within the 16 square foot temporary construction sign permitted for the project under § 30-151**(b)**, "Construction Signs."

(g) ***Special occasion signs.*** In addition to signs permitted in § 30-6(a), temporary outdoor on-site signs shall be allowed to address grand openings, sale events, ~~or special occasions such as car, boat or craft shows, carnivals~~, parking lot sales, annual and semi-annual promotions, ~~or other~~ similar events, provided that:

- (1) A special occasion sign permit is issued by the town manager; building official;
- (2) The permit shall be for the duration of the event only, with a maximum of 3 consecutive days;
- (3) No business shall be permitted more than two such permits in a calendar year;
- (4) Signs shall be located on-site only and in such a manner as to not create any traffic or pedestrian hazard;
- (5) No animated or portable signs shall be permitted; and
- (6) Signs shall be constructed and secured in accordance with all applicable standards.

Sec. 30-152. Permanent identification signs in residential areas.

Permanent identification signs in residential areas shall be subject to the following:

(a) **Definition.** For purposes of this section, the term “subdivision” shall be interpreted to include mobile home and recreational vehicle developments, condominiums, and multiple family buildings containing five or more dwelling units.

(b) **Residential development identification signs.**

(1) **Entrance signs.** Permanent wall or monument ground-mounted signs for identification purposes only, giving only the name of the condominium, subdivision, or residential development, may be permitted at each main entrance into such subdivision or development, ~~subject to the following regulations:~~ a. Subdivision or residential development entrances which contain a boulevard entrance, i.e., a median strip separating the entrance and exit lanes, may be permitted:

- a. 1. A single monument ground-mounted sign located in the median strip of the entrance, provided that it is set back a minimum of 15 feet from the right-of-way of the public access road and a minimum of five feet from the edge of the pavement of the entrance and exit lanes, or
- b. 2. Two single-faced signs equal in size and located on each side of the entranceway.

~~(2) **Internal subdivision signs.** Permanent wall or ground-mounted signs for identification purposes may be permitted at one main entrance into each internal subdivision or development, subject to the following:~~

- ~~a. Subdivision entrances which contain a boulevard entrance, i.e. a median strip separating the entrance and exit lanes, would be permitted:~~
 - ~~1. A single ground-mounted sign located in the median strip of the entrance and exit lanes would be permitted:~~
 - ~~2. Two single-faced signs equal in size and located on each side of the entranceway.~~

~~(2) (3) **Limitations.**~~

- a. The subdivision shall have a homeowners’ 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 24 square feet. Monument signs are limited in height and exposure of sign supports as provided in § 30-153. ~~The maximum height for all identification signs shall be determined by the permitted dimensions of a ground mounted, monument sign; where the sign support is not greater than 1/3 of the height of the sign. For example, a ground-mounted monument sign which is 4 feet in height may be no more than 16 inches above the crown of the road.~~
- ~~c. The face of each permitted internal identification sign shall not exceed 24 square feet in area.~~
- ~~d. Except when permitted in the entrance median strip, the sign shall be located within the property line.~~
- ~~c. e. 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. f. The sign should be incorporated into accessory entrance structural features such as a project wall or landscaping.~~

(c) **Schools, churches, day care centers, parks, recreational facilities, and libraries.** A school, church, day care center, park, recreational facility, library, or any other similar use ~~permitted by right or by special exception in accordance with the town’s zoning regulations~~ shall be permitted one monument ground-mounted or wall-mounted identification sign and one directory sign within the property line, with subject to the following limitations: (1) maximum sign area shall be of 24 square feet per sign face. Monument signs are limited in height and exposure of sign supports as provided in § 30-153.

- (1) Signs shall be located within the property line.
- (2) The maximum height for all identification signs shall be determined by the permitted dimensions of a ground mounted, monument sign, where the sign support is not greater

than 1/3 of the height of the sign. For example, a ground mounted, monument sign which is 4 feet in height, may be no more than 16 inches above the crown of the road.

~~(d) On-site directional signs:~~

- ~~(1) Permitted signs.~~ Permanent wall or ground-mounted signs, for directional purposes only, may be permitted within any residential development which consists of several distinctly separate subdivisions, clusters or other sub-units of development.
- ~~(2) Location.~~ On-site directional signs may be permitted within any such residential development along any interior collector street at intersections with other interior streets.
- ~~(3) Limitations:~~
 - ~~a.~~ The development shall have a homeowners association or similar entity responsible for maintenance of the sign.
 - ~~b.~~ The face of each permitted directional sign shall not exceed 4 square feet in area.
 - ~~c.~~ Maximum permitted height shall be a 3-foot by 4-foot monument style sign.
 - ~~d.~~ Signs shall be located within the property line.
 - ~~e.~~ The signs may be illuminated.

Sec. 30-153. Permanent signs in commercial areas:

In order to provide fair, equal and adequate exposure to the public, and to prevent any single property owner from visually dominating neighboring properties with signs, all nonresidential uses shall be limited to a total permissible sign area in accordance with the provisions of this section:

(a) Each business shall be allowed 32 square feet of signage for each frontage providing vehicle access:

(b) ~~Nonresidential subdivisions and multiple-occupancy complexes.~~

- (1) ~~Identification sign.~~ A nonresidential subdivision or a multiple-occupancy complex shall be permitted ground-mounted identification signage along any street which provides access to the property as follows:
 - a. ~~One 32-square-foot identification sign for buildings with less than 10 occupants.~~
 - b. ~~One 64-square-foot identification sign or two 32-square-foot identification signs for buildings with more than ten occupants.~~
 - c. ~~Identification signs must contain the address in a minimum of 8 inch letters.~~
 - d. ~~In the absence of free-standing identification signage each business shall have the address prominently displayed on the building in 8 inch letters minimum, 24 square foot maximum.~~
 - e. ~~The maximum height for all identification signs shall be determined by the permitted dimensions of a ground mounted, monument sign, where the sign support is not greater than 1/3 of the height of the sign. For example, a ground mounted, monument sign which is 4 feet in height, may be no more than 16 inches above the crown of the road.~~
 - f. ~~The identification sign may be illuminated with a steady light, but the sign shall not be animated. See ch. 14 of this code for sea turtle lighting restrictions.~~
 - g. ~~Identification signs shall be located within the property line.~~
 - h. ~~No sign permitted by this subsection shall contain any advertising message concerning any business, goods, products, services or facilities which are not manufactured, produced, sold,~~

provided or located on the premises upon which the sign is erected or maintained:

(c) ~~Individual occupants within multiple-occupancy complex.~~ Individual offices, institutions, or business establishments located within a multiple-occupancy complex shall not be permitted individual ground-mounted identification signs, but may display wall-mounted, marquee, or canopy signs as follows:

- (1) ~~Sign content.~~ No sign permitted by this subsection shall contain any advertising message concerning any business, goods, products, services or facilities which are not manufactured, produced, sold, provided, or located on the premises upon which the sign is erected or maintained.

(d) ~~Individual office, institution, or business establishments.~~ The following regulations shall apply for any office, institution, or business establishment which is not located within a multiple-occupancy complex:

- (1) ~~One 32-square-foot sign.~~
- (2) ~~The maximum height for all identification signs shall be determined by the permitted dimensions of a ground mounted, monument sign, where the sign support is not greater than 1/3 of the height of the sign. For example, a ground mounted, monument sign which is 4 feet in height, may be no more than 16 inches above the crown of the road.~~
- (3) ~~Identification signs may be illuminated, but shall not be animated.~~
- (4) ~~Wall-mounted, marquee, or canopy signs may be displayed provided the total sign area of such signs plus any permitted ground-mounted identification sign does not exceed 32 square feet.~~
- (5) ~~Identification signs shall be located within the property line.~~

(e) ~~Emergency medical facilities.~~ Emergency medical facilities shall be allowed the same size identification sign as permitted for individual establishments not located within a multiple occupancy complex (see subsection (d) of this section). In addition one additional illuminated monument sign, not to exceed 3 feet by 4 feet, to identify emergency entrances, shall be permitted.

(f) ~~Motion picture theaters.~~ Motion picture theaters shall be allowed one sixty-four (64) square-foot illuminated sign.

Sec. 30-153. Permanent identification signs in commercial areas.

(a) **Generally.** In order to provide fair, equal, and adequate exposure to the public, and to prevent businesses from visually dominating neighboring properties, permanent identification signs for all commercial uses, and for other uses not regulated by § 30-152, must be in accordance with this section and with the remainder of this chapter.

(1) **Size.** Identification signage is limited to 16 square feet per establishment, or 32 square feet for buildings containing only a single establishment. Motion picture theaters are permitted one identification sign of 64 square feet.

- a. Multiple-occupancy complexes, as defined in this chapter, are permitted additional signage up to 32 square feet to identify the complex and/or its occupants.
- b. Sign area and height are measured in accordance with §§ 30-90–91.

(2) **Type of signs.** Identification signs may use any combination of the following types of signs:

- i. Wall signs, including nameplates and window signs, see subsection (b).
- b. Projecting signs, including awning signs, see subsection (c).
- c. Monument signs, see subsection (d).
- d. Sandwich signs, see subsection (e).

(3) **Lighting.** Preferred methods for lighting identification signs are individual letters and symbols that are internally lit or a steady external light. External lighting must use fully shielded fixtures. If visible from the beach, external lighting must also comply with § 14-76(5).

- 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).



Figure 30-1

- b. 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; opaque background panel must be used so that 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 30-2

- c. Signs and sign lighting may not be animated.
 - d. See §§ 30-93(c) and 30-94(d) and ch. 14 of this code for sea turtle lighting restrictions.
- (4) **Location.** Identification signs must be located within the property line and set back at least 3 feet from any public right-of-way or easement, except that:
- a. Wall signs and projecting signs may extend over public sidewalks provided they maintain a minimum clear height above sidewalks of 8 feet and do not extend closer than 2 feet to an existing or planned curb.
 - b. Sandwich signs may be placed only in accordance with § 30-6(a).
- (5) **Advertising.** Identification signs may not contain any advertising message concerning any products or services which are not sold, provided, or located on the same premises.
- (6) **Building numbers.** Each building or multiple-occupancy complex must be clearly posted with the building’s street number (see § 30-6(a)).

(b) **Wall signs.** Wall signs are attached to or painted on the wall of a building or structure and extend no more than 18 inches outward from the wall in a plane approximately parallel to the plane of said wall.

- (1) Figure 30-3 illustrates desirable and undesirable placement of signs on facades.
- (2) Figure 30-4 shows examples of wall signs that are placed flat against a principal facade in compliance with this chapter.
- (3) Nameplates and window signs are special types of walls signs that may be installed without a sign permit provided they comply with the special requirements of § 30-6(a).

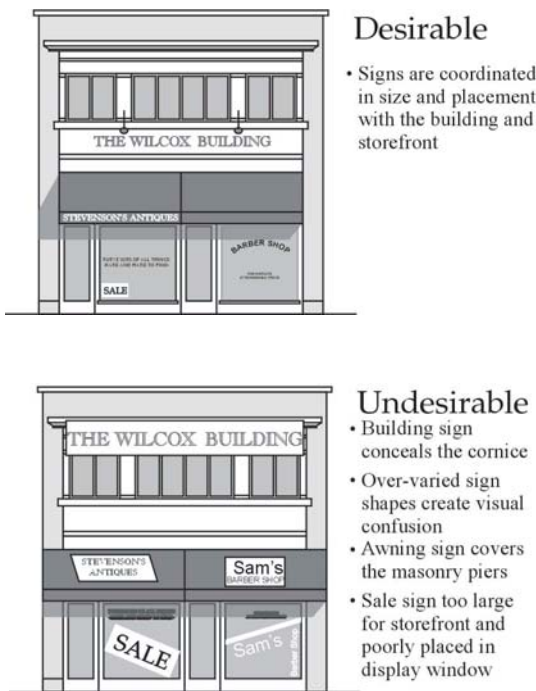


Figure 30-3

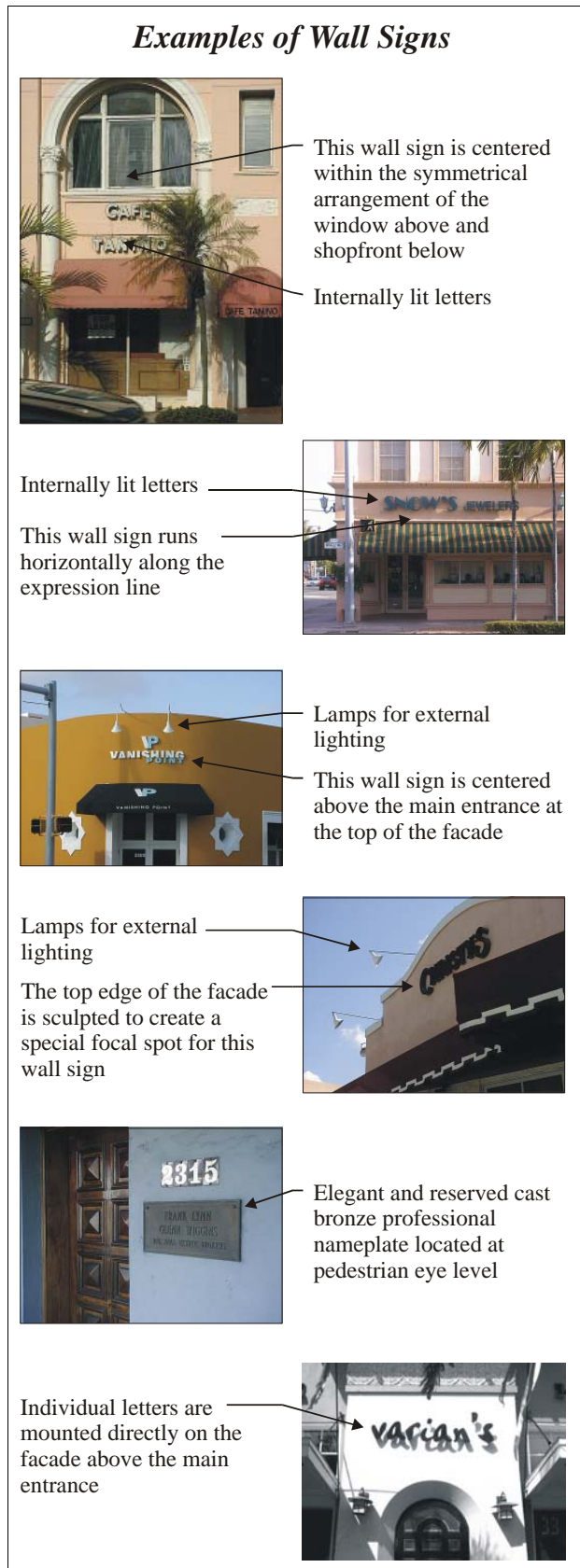


Figure 30-4

(c) **Projecting signs.** Projecting signs are signs which project more than 18 inches above, below, or outward from, and are supported by a wall, parapet, or outdoor ceiling of a building.

- (1) Figure 30-5 shows examples of projecting signs that project out from and/or extend above a principal facade.
- (2) Projecting signs on buildings that are required to meet the commercial design standards in § 34-991–1010 must obtain a compliance determination in accordance with § 34-992(d) prior to obtaining a regular sign permit.
- (3) Awning signs as defined in this chapter are special types of projecting signs that may be installed without a compliance determination or a sign permit provided they comply with the requirements found in § 30-6(a).

Examples of Projecting Signs



Discreetly located external lighting
Sign painted on the face of a canvas awning over entry



Small projecting signs can be combined with flat wall signs



Signs projecting above the roof stand out against the sky, adding an architectural flair to a shop's identity



Vertical projecting signs are visible down the street



A projecting sign extending from the corner of a building is highly visible along two streets
A second lower sign catches the eye of pedestrians passing in front of the entrance



Signs suspended from The ceilings of colonnades are highly visible to pedestrians

Figure 30-5

(d) **Monument signs.** Monument signs are free-standing 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.

- (1) Sign supports can be exposed above the ground no more than 1/3 of the greatest vertical dimension of the sign.
- (2) The maximum height of a monument sign is 5 feet above the crown of the adjacent street.
- (3) No part of a monument sign may be closer than 3 feet from any right-of-way.
- (4) Clear visibility must be maintained on corner lots in accordance with § 30-93.
- (5) Buildings that are required to meet the commercial design standards in § 34-991-1010 cannot install monument signs. For all other buildings, Figure 30-6 shows recent local examples of monument signs.

(e) **Sandwich signs.** Sandwich signs are easily moveable sign not attached to the ground that are supported by their own frames which generally form the cross-sectional shape of an A. Sandwich signs may be installed without a sign permit provided they comply with the special requirements of § 30-6(a). No other sandwich signs are allowed.

Examples of Monument Signs



Background can use attractive natural materials

Monument signs can reflect merchandise being sold or the architecture of the building



Signs can reflect logos of chain stores while having a design suitable to its context

Monument signs can incorporate landscaping and decoration that match the business



Monument signs are also suitable for lodging establishments

Figure 30-6

ORDINANCE No. 05-__

AN ORDINANCE AMENDING ZONING REGULATIONS IN CHAPTER 34 OF THE TOWN OF FORT MYERS BEACH LAND DEVELOPMENT CODE; PROVIDING AUTHORITY; ADOPTING AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE WHICH IS TITLED “ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES”; PROVIDING SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

IT IS HEREBY ORDAINED BY THE TOWN OF FORT MYERS BEACH AS FOLLOWS:

SECTION 1. AUTHORITY. This Ordinance is enacted pursuant to the provisions of Chapter 95-494, Laws of Florida, Chapters 163 and 166, Florida Statutes, and other applicable provisions of law.

SECTION 2. ADOPTION OF AMENDMENTS TO CHAPTER 34 OF THE LAND DEVELOPMENT CODE. Chapter 34 of the Town of Fort Myers Beach land development code is titled “ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES.” Chapter 34 is hereby amended as shown in Exhibit A. Entirely new language is indicated with underlining. Language being repealed from the existing code is indicated with ~~strike-throughs~~. Existing language being retained is either omitted entirely or is shown without underlining or strike-throughs. This ordinance amends the following sections of Chapter 34:

Article I. In General.

Sec. 34-1. Purpose and intent of chapter.

Sec. 34-2. Definitions.

Article II. Zoning Procedures.

Sec. 34-84. General procedures for actions on specific zoning applications.

Sec. 34-87. Variances.

Sec. 34-88. Special exceptions.

Sec. 34-90. Land development code interpretations.

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

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

Sec. 34-202. General submittal requirements for applications requiring public hearing.

Sec. 34-203. Additional requirements for certain applications requiring public hearing.

Sec. 34-214. Application for an amendment.

Sec. 34-216. Public hearings.

Sec. 34-217. Effect of planned development zoning.

Sec. 34-220. Duration of rights conferred by adopted master concept plan.

Sec. 34-265. Requests for interpretation of this code.

Sec. 34-268. Administrative setback variances..

Article III. Zoning District Regulations.

Sec. 34-613. Designation of district boundaries.

Sec. 34-614. Official zoning map.

Sec. 34-615. Current zoning map.

Sec. 34-616. Historic zoning map.

Sec. 34-6176. Rules for interpretation of district boundaries.

Sec. 34-621. Allowable uses of land described.

Sec. 34-631. Building heights.
Sec. 34-632. Density.
Sec. 34-636. Conversion of existing two-family and multifamily dwelling units. ~~Reserved.~~
Sec. 34-638. Minimum setbacks.
Sec. 34-651. BB (Bay Beach) zoning district.
Sec. 34-652. EC (Environmentally Critical) zoning district.
Sec. 34-662. Build-to lines and setback lines.
Sec. 34-673. Allowable uses.
Sec. 34-674. Building placement.
Sec. 34-676. Circulation and parking.
Sec. 34-677. Additional requirements.
Sec. 34-678. Outdoor display and sales of merchandise and food.
Sec. 34-682. District map and applicability.
Sec. 34-694. Regulations for existing mobile homes and recreational vehicles.
Sec. 34-702. Applicability.
Sec. 34-994. Exterior walls.
Sec. 34-998. Reserved. ~~Signage.~~

Article IV. Supplemental Regulations.

Sec. 34-1171. Applicability of division.
Sec. 34-1174. Location and setbacks generally.
Sec. 34-1175. Satellite dishes and amateur radio antenna/towers.
Sec. 34-1351. Automobile repair
Sec. 34-1411. Assisted living facilities.
Sec. 34-1441. Purpose and intent.
Sec. 34-1443. Commercial antennas mounted on alternative support structures.
Sec. 34-1444. Commercial antennas mounted on communication towers.
Sec. 34-1552. Determination of paraphernalia.
Sec. 34-1575. Coastal zones.
Sec. 34-1617. Exemptions from property development regulations.
Sec. 34-1744. Location and height of fences and walls.
Sec. 34-1745. Buffer for commercial uses.
Sec. 34-1749. Entrance gates.
Sec. 34-1803. Allowable intensity.
Sec. 34-1807. Conversions of existing buildings.
Sec. 34-1831. Purpose and applicability of division.
Sec. 34-1832. Definitions.
Sec. 34-1833. Technical standards for lighting.
Sec. 34-1834. Permits for lighting.
Sec. 34-1861. Boats, floating structures, floating equipment, and live-aboards.
Sec. 34-2020. Required parking spaces.
Sec. 34-2022. Seasonal parking lots.
Sec. 34-2032. Performance standards, creation of nuisance.
Sec. 34-2051. Property development regulations.
Sec. 34-2052. Parking.
Sec. 34-2053. Expansion of existing place of worship.
Sec. 34-2054. Living quarters.
Sec. 34-2394. Enforcement and penalties.
Sec. 34-2411. Location and construction.
Sec. 34-3002. Mobile vendors and transient merchants prohibited.

- Sec. 34-3004. Outdoor display of merchandise for sale or rent.
- Sec. 34-3067. Definitions.
- Sec. 34-3151. Water-oriented rental establishments..

Article V. Nonconformities.

- Sec. 34-3237. Pre-disaster buildback.
- Sec. 34-3238. Post-disaster buildback.
- Sec. 34-3273. General requirements for residential uses on nonconforming lots.

SECTION 3. SEVERABILITY. If any one of the provisions of this ordinance should be held contrary to any express provision of law, or contrary to the policy of express law although not expressly prohibited, or against public policy, or for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separate from the remaining provisions of this ordinance, and in no way shall affect the validity of all other provisions of this ordinance.

SECTION 4. EFFECTIVE DATE. This ordinance shall take effect immediately upon its adoption.

The foregoing ordinance was enacted by the Town Council upon a motion by Council Member _____ and seconded by Council Member _____; upon being put to a vote, the result was as follows:

Bill Thomas	_____
Garr Reynolds	_____
Howard Rynearson	_____
W. H. "Bill" Van Duzer	_____
Don Massucco	_____

DULY PASSED AND ENACTED this __ day of _____, 2005.

ATTEST:

TOWN OF FORT MYERS BEACH

By: _____
Marsha Segal-George, Town Clerk

By: _____
Bill Thomas, Mayor

Approved as to form by:

Richard V.S. Roosa, Town Attorney

EXHIBIT A

FORT MYERS BEACH LAND DEVELOPMENT CODE

CHAPTER 34 — ZONING DISTRICTS, DESIGN STANDARDS, AND NONCONFORMITIES

ARTICLE I. IN GENERAL

Sec. 34-1. Purpose and intent of chapter.

(a) *[this subsection unchanged]*

(b) *[this subsection unchanged]*

(c) *[this subsection unchanged]*

(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).
- (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. 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:

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 ~~others~~, and which may include facilities for overnight care. See division 7 of article IV of this chapter.

Duplex: ~~See *Dwelling unit, types*.~~

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. ~~homes for the aged.~~

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.

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. ~~This definition excludes provisions specifically indicated as requiring a special exception and variances from impact fees.~~ 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).

**ARTICLE II.
ZONING PROCEDURES**

DIVISION 2. TOWN COUNCIL

Sec. 34-84. General procedures for actions on specific zoning applications.

- (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) **Prior hearings.** *[this subsection unchanged]*
- (3) **Decisions and authority.**
 - a. *[this subsection unchanged]*
 - b. *[this subsection unchanged]*
 - c. The town council has the authority to attach special conditions and requirements 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 or requirements must be reasonably related to the action requested.

- d. *[this subsection unchanged]*
- (4) **Denials.** *[this subsection unchanged]*
 - a. *Denial with prejudice.*
- (5) **Rehearings.** *[this subsection unchanged]*
- (6) **Special master.** *[this subsection unchanged]*
- (7) **Judicial review.** *[this subsection unchanged]*

Sec. 34-87. Variances.

- (1) **Function.** *[this subsection unchanged]*
- (2) **Considerations.** *[this subsection unchanged]*
- (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 ~~exceptional or extraordinary~~ conditions justifying the variance or circumstances 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~~ situation of the specific piece of property; or the intended use of the property; for which the variance is sought are is 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 and requirements necessary for the protection of the health, safety, comfort, convenience and welfare of the general public. Such special conditions or requirements shall be reasonably related to the variance requested.
- (5) 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.** *[this subsection unchanged]*
- (2) **Considerations.** *[this subsection unchanged]*
- (3) **Findings.** Before granting any special exceptions, the town council ~~must~~ shall find that the applicant has ~~proved entitlement to the special exception by demonstrating compliance 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 and requirements necessary for the protection of the health, safety, comfort, convenience, or welfare of the general public. Such special conditions or requirements shall be reasonably related to the special exception requested.

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).

DIVISION 3. LOCAL PLANNING AGENCY

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

(a) The term of office of a member of the local planning agency shall be staggered three years or until a successor has been appointed and has qualified, except that the respective terms of the members first appointed shall be two for one year, three for two years, and two for three years.

(b) Appointments shall be made annually at the first meeting of the council in ~~May~~ January. Vacancies in the local planning agency shall, within thirty days, be filled by the council for the remainder of the term created by such vacancy.

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) *[this subsection unchanged]*
- (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. *[this subsection unchanged]*
 - b. *[this subsection unchanged]*
 - c. In reaching its recommendations, the local planning agency shall have the authority to recommend special conditions and requirements to be attached to any request for a planned development, special exception, or variance.

**DIVISION 4.
APPLICATIONS AND PROCEDURES**

Subdivision I. General Procedures

Sec. 34-202. General submittal requirements for applications requiring public hearing.

- (a) *All applications. [this subsection unchanged]*
- (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. *b. Agent authorization.* ~~If the owner authorizes an agent to represent the owner in all matters pertaining to the application, the owner must provide the agent with a notarized statement evidencing the agent’s authority to act on the owner’s behalf and encumber the property with conditions applicable to the approval requested in the application. An agent The applicant may authorize additional 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. However, an agent cannot transfer authority to bind the property with respect to conditions. This later authority will only be recognized by the town when it is provided directly to the agent by the owner.~~
 - (2) *[this subsection unchanged]*
 - (3) *[this subsection unchanged]*
 - (4) *[this subsection unchanged]*
 - (5) *[this subsection unchanged]*
- e. *Contract purchaser/vendee authorization.* ~~If a contract purchaser or vendee is the applicant, a notarized statement from the property owner must be submitted authorizing the contract purchaser/vendee to act as an agent of the property owner for purposes of application submittal and agreement to conditions applicable to approval of the request.~~

Sec. 34-203. Additional requirements for certain applications requiring public hearing.

- (a) *[this subsection unchanged]*
- (b) *[this subsection unchanged]*
- (c) *[this subsection unchanged]*
- (d) *[this subsection unchanged]*
- (e) *[this subsection unchanged]*
- (f) *[this subsection unchanged]*
- (g) *[this subsection unchanged]*
- (h) ***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.

**Subdivision II.
Additional Procedures for Planned
Development Zoning Districts**

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, or for the reaffirmation of a previously vacated master concept plan (for plans approved prior to December 2, 1991); will require only 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. 34-216. 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) *[this subsection unchanged]*
- (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. *[this subsection unchanged]*
 - 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. *[this subsection unchanged]*
- (3) *[this subsection unchanged]*
- (4) *[this subsection unchanged]*

(b) **Hearing before the town council.** *[this subsection unchanged]*

Sec. 34-217. Effect of planned development zoning.

(a) **Compliance with applicable regulations.**
[this subsection unchanged]

(b) **Applicability of development regulations.**
[this subsection unchanged]

(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.

~~(c) The obligation to enforce the conditions attached to the master concept plan remains with the original applicant until all of the subject property is developed and certified for use and occupancy, or until a subsequent owner assumes that obligation for all or part of the subject property. Completion or vacation of a phase of the development, or~~

~~conveyance of a lot, development parcel, or outparcel, will relieve the original applicant only as to that phase, lot, development parcel, or outparcel; and then only when notice is filed in accordance with § 34-215. The obligation to enforce the conditions attached to a reaffirmed master concept plan will lie with whomever files the unified control documentation for that reaffirmation.~~

(d) *[this subsection unchanged]*

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) *[this subsection unchanged]*
- (3) *[this subsection unchanged]*
- (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) ~~(4)~~ 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) ~~(5)~~ Phasing plans may be amended in accordance with § 34-214.

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. 34-268. 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) *[this subsection unchanged]*

(c) *[this subsection unchanged]*

ARTICLE III. ZONING DISTRICT REGULATIONS

DIVISION 1. MAPPING OF ZONING DISTRICTS

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~~ are shown on the interim zoning map contained in Exhibit A of ~~the amending~~ 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 ~~are~~ indicated on the current zoning maps that were being maintained for the town by Lee County.
- (2) ~~Within one year after approval of the amending ordinance,~~ On May 17, 2004, the town council ~~shall~~ approved by Resolution 04-16 adopting a new official zoning map of the town as described in § 34-614 that reflected ~~reflects~~ 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, ~~and~~ 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, ~~or~~ 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 ~~section~~ maps which ~~are~~ shall be 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 ~~shall~~ 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 ~~shall~~ also reflected ~~past~~ 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 ~~its new~~ 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 ~~shall~~ not affect any rights that landowners may have under explicit terms of this code (see § 34-616).

(b) *District boundaries.* [*this subsection unchanged*]

(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.** *[this subsection unchanged]*

(e) **Errors.** *[this subsection unchanged]*

(f) **Public availability.** *[this subsection unchanged]*

(g) **Records management.** *[this subsection unchanged]*

Sec. 34-615. Current zoning map.

(a) **Description.** The current zoning map of the town consists of ~~scaled~~ computer-generated ~~section~~ 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.** *[this subsection unchanged]*

(c) **Public availability.** *[this subsection unchanged]*

(d) **Changes.**

- (1) No changes or amendments to the ~~existing~~ 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. 34-6176. Rules for interpretation of district boundaries.

(a) *[this subsection unchanged]*

(b) When a parcel is split by two or more zoning districts, the property development regulations for the largest proportional district prevail. ~~However, permitted uses and accessory uses are restricted to the uses permitted in the respective districts.~~ 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.

~~Secs. 34-617-34-618. Reserved.~~

**DIVISION 2. ALLOWABLE LAND USES
IN EACH ZONING DISTRICT**

Sec. 34-621. Allowable uses of land described.

(a) *Applicability.* *[this subsection unchanged]*

(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.
- (I) *Parentthesized number.* The use is limited as set forth in the referenced footnote.

Table 34-2 — Use Sub-Groups Permitted in Each Zoning District ¹

	<i>Residential</i>	<i>Lodging</i>	<i>Office</i>	<i>Retail</i>	<i>Marine</i>	<i>Civic</i>
	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	(R) =	(R) =	(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.

- (1) *Measured in stories*, the height includes 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.
- (2) *Measured in feet*, the height is the vertical distance between the base flood elevation (BFE), as established by the maps described in § 6-408, 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.
- (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.

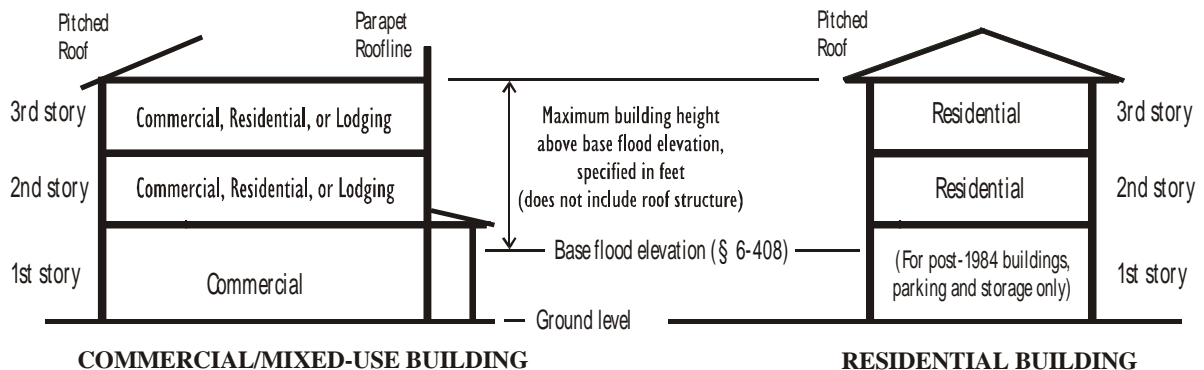
- chapter.
- c. For planned development zoning districts, see division 6 of this chapter.

(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, towers, flagpoles, 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 250 square feet would require a variance from this code.



Roofed towers, Figure 34-1-b



- (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) *[this subsection unchanged]*
 - (5) *[this subsection unchanged]*
 - (6) *[this subsection unchanged]*
- (c) *[this subsection unchanged]*.

Sec. 34-632. Density.

Residential density cannot exceed the maximum levels established in the Fort Myers Beach Comprehensive Plan. Residential uses are not allowed in the “Marina” or “Tidal Waters” categories on the Comprehensive Plan’s future land use map.

- (1) *[this subsection unchanged]*
- (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 canals 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 has never been in separate ownership from an adjoining lot; or
- 3. Any lot that was created after December 31, 1995, as described in § 34-3272.

- (4) *[this subsection unchanged]*
- (5) *[this subsection unchanged]*
- (6) *[this subsection unchanged]*

Sec. 34-636. Conversion of existing two-family and multifamily dwelling units. Reserved.

When an existing building’s dwelling units are proposed for subdivision onto separate lots or into condominium ownership, the following requirements apply:

- (1) The number of dwelling units cannot be increased beyond the number lawfully existing at the time of conversion.
- (2) 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 during the conversion on a square-foot for square-foot basis to provide larger but fewer dwelling units within the same interior square footage.
- (3) The entire building must comply with the floodplain elevation requirements for new buildings as provided in ch. 6 of this code.
- (4) The entire building must meet the coastal construction requirements that apply to new structures, as provided in article III of ch. 6 and in state regulations. Due to these requirements, habitable major structures and most minor structures must be located landward of the 1978 coastal construction control line.
- (5) The individual dwelling units must be separated by walls with not less than 1-hour fire resistance.
- (6) The conversion must meet all other requirements of this code, including the uses permitted by Table 34-2.

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) *[this subsection unchanged]*

(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 previously platted 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. *[this subsection unchanged]*
- b. *[this subsection unchanged]*
- c. *[this subsection unchanged]*
- d. *[this subsection unchanged]*
- e. *[this subsection unchanged]*
- 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. *[this subsection unchanged]*
- b. *[this subsection unchanged]*
- c. *[this subsection unchanged]*
- d. *[this subsection unchanged]*
- e. *[this subsection unchanged]*
- (3) *[this subsection unchanged]*
- (4) *[this subsection unchanged]*

DIVISION 4. CONVENTIONAL ZONING DISTRICTS

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) *[this subsection unchanged]*
- (b) *[this subsection unchanged]*
- (c) *[this subsection unchanged]*
- (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 ~~that~~ active recreation that requires requiring 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.

(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) *[this subsection unchanged]*

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)	width	depth	ratio	percentage	feet	stories		
RS Residential Single-family	±0 <u>25</u>	±0 <u>7.5</u> (8)	7 <u>7.5</u> (8)	20	25	50	7,500	75	100	—	40%	(3), (4)	25	3
RC Residential Conservation	±0 <u>25</u>	7 <u>7.5</u>	5 <u>7.5</u>	20	25	50	4,000	45	80	—	40%	(3), (4), (5)	25	3
RM Residential Multifamily	±0 <u>25</u>	20 (6)	7 <u>20</u> (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	—	(3) =	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	0.5 <u>0.6</u>	—	(1), (2) (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 ~~±0-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 II. Generally

Sec. 34-662. Build-to lines and setback lines.

(a) ***Build-to and setback lines distinguished.***
[this subsection unchanged]

(b) ***General requirements for build-to lines.***
[this subsection unchanged]

- (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).

***Subdivision II.
DOWNTOWN Zoning District***

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.***[this subsection unchanged]

(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.

~~3. Minimum (rear) setbacks of 25 feet shall also be observed 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.~~

- 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 (see also § 34-674(b)(1)c).
 - 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. 34-676. 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) ~~Times Square and Bayfront pedestrian plazas (see Figure 34-6), multiply by 0% for~~

~~existing building space~~ and multiply by 50% for ~~new building space~~. No parking spaces may be provided in the ~~Times Square or Bayfront pedestrian plazas~~, 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) ~~(3)~~ All other streets in the DOWNTOWN district, and all land on Crescent Street regardless of zoning district, multiply by 67%.

- (b) *[this subsection unchanged]*
- (c) *[this subsection unchanged]*
- (d) *[this subsection unchanged]*
- (e) *[this subsection unchanged]*
- (f) *[this subsection unchanged]*

Sec. 34-677. Additional requirements.

(a) **Commercial design standards.**
[this subsection unchanged]

(b) **Open space and buffers.**
[this subsection unchanged]

(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.** *[this subsection unchanged]*
- (b) **Purpose.** *[this subsection unchanged]*
- (c) **Allowable locations for outdoor activities.**
[this subsection unchanged]
- (d) **Types of outdoor displays.** *[this subsection unchanged]*

(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 ~~or 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.

(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).

**Subdivision III.
SANTINI Zoning District**

Sec. 34-682. District map and applicability.

The area indicated on Figure 34-10 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 34-10.
- (2) *[this subsection unchanged]*
- (3) *[this subsection unchanged]*

**Subdivision IV.
VILLAGE Zoning District**

Sec. 34-694. Regulations for existing mobile homes and recreational vehicles.

- (a) *[this subsection unchanged]*

(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) *[this subsection unchanged]*
- (2) *[this subsection unchanged]*
- (3) *[this subsection unchanged]*
- (4) Permits shall also be issued for reroofing and roof repairs for any existing mobile home, park ~~trailer, model,~~ or recreational vehicle, regardless of lot size.
- (c) *[this subsection unchanged]*

(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) *[this subsection unchanged except for the following]*
 - 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) *[this subsection unchanged except for the following]*
 - e. ~~Additions may not be constructed.~~
 - 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, CWO0-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. *[this subsection unchanged]*
 - b. *[this subsection unchanged]*
 - c. *[this subsection unchanged]*
 - 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. *[this subsection unchanged]*
 - f. Transient recreational vehicles cannot be placed closer than 20 feet to any publicly maintained street.

**Subdivision V.
CB Zoning District**

Sec. 34-702. Applicability.

- (a) *[this subsection unchanged]*
- (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 housing 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) *[this subsection unchanged]*
- (d) *[this subsection unchanged]*

**DIVISION 7.
COMMERCIAL DESIGN STANDARDS**

Sec. 34-994. Exterior walls.

- (a) **Generally.** *[this subsection unchanged]*
- (b) **Finish materials for walls.** *[this subsection unchanged]*
- (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. 34-998. Reserved. Signage.
[this section is being eliminated; its substance has been incorporated into § 30-153]

**ARTICLE IV.
 SUPPLEMENTAL REGULATIONS**

**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 chapter.

Sec. 34-1174. Location and setbacks generally.

(a) *Permitted locations.* *[this subsection unchanged]*

(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 wall as provided for in division 17, ~~for~~
- (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) ~~as set forth in this subsection.~~ (1) Accessory uses, buildings, and structures may be located on through lots as follows. a. For purposes of this subsection only, secondary street is defined as the street opposite the street which provides principal vehicular access as determined by the prior development pattern of that block. b. on through lots, accessory

uses, buildings, and structures may be placed closer to the secondary 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.

~~(2) In the following cases, accessory uses, buildings, and structures may be closer to the street than the principal building, but shall not be closer than the minimum setbacks for streets as set forth in § 34-638:~~

- ~~a. Swimming pools, tennis courts, shuffleboard courts, and other similar recreation facilities 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;~~
- ~~b. Outdoor display of merchandise, where permitted, subject to the provisions of division 36 of this article, and ch. 30, pertaining to signs;~~

~~(c) *Setback from bodies of water.* [this subsection unchanged]~~

~~(d) *Setbacks from side and rear property lines.* [no changes to this subsection]~~

~~(e) *Administrative setback variances.* [this subsection unchanged]~~

~~(f) *Prohibited locations.* [this subsection unchanged]~~

~~(g) *Signs.* Signs are subject only to the setback requirements as set forth in ch. 30;~~

~~(g) ~~(h)~~ *Fences.* [this subsection unchanged]~~

Sec. 34-1175. Satellite dishes and amateur radio antenna/towers.

~~(a) *Satellite dishes.* Satellite dishes shall be permitted as accessory uses subject to the following:~~

- ~~(1) Dishes shall comply with the minimum side and rear property line setbacks for the zoning district in which located; and~~
- ~~(2) Satellite dishes shall not be placed closer to the street right-of-way than the principal building;~~

(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.* [this subsection unchanged]

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.

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 ~~by right or by special exception~~, as specified in Tables 34-1 and 34-2 in § 34-622 ~~the district use regulations~~, 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.** [this subsection unchanged]

(c) **Parking.** [this subsection unchanged]

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. 34-1443. 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, ~~duplex~~, 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) *[this subsection unchanged]*

(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 ~~communication towers~~ required by Lee County through its land development code.

**DIVISION 12.
DRUG PARAPHERNALIA**

Sec. 34-1552. Determination of paraphernalia.

In determining whether an object is drug paraphernalia, the special master, hearing examiner, court, jury, or other enforcing authority shall consider, in addition to all other logically relevant factors, the following:

- (1) *[remainder of section unchanged]*

**DIVISION 13.
ENVIRONMENTALLY SENSITIVE AREAS**

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 as established by the state department of environmental protection, as such line existed in 1988. 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) For purposes of this section, minor structures mean:~~

- ~~(1) pile-supported elevated dune and beach walk-over structures;~~
- ~~(2) beach access ramps and walkways;~~
- ~~(3) stairways;~~
- ~~(4) fences, and~~
- ~~(5) pile-supported viewing platforms, boardwalks, and lifeguard support stands.~~

~~(b)~~ (e) 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)~~ (d) 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)~~ (e) 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.

**DIVISION 14. ESSENTIAL SERVICES,
ESSENTIAL SERVICE EQUIPMENT, AND
ESSENTIAL SERVICE BUILDINGS**

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.

**DIVISION 17. FENCES, WALLS,
AND ENTRANCE GATES**

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.** *[this subsection unchanged]*

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. 34-1749. 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) *[this subsection unchanged]*

**DIVISION 19. HOTELS, MOTELS,
AND BED-AND-BREAKFAST INNS**

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)

NOTE: The equivalency factors in this table cannot be used in reverse to convert existing hotel/motel units to dwelling units; see § 34-1807.

- (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.* [this subsection unchanged]

(c) *Bed-and-breakfast inns.* [this subsection unchanged]

Sec. 34-1807. Conversions of existing buildings.

Conversion of an existing hotel/motel building to dwelling units, or conversion of an existing residential building into hotel/motel guest units, must comply with the following:

- (1) The proposed use must be permitted in the property's zoning district and must comply with all other regulations in that district; and
- (2) The proposed use must comply with the density limitations of the Fort Myers Beach Comprehensive Plan as they would apply to the same parcel if it were vacant.

Any hotel or motel proposing to convert to timeshare or dwelling units, or any residential building proposing to convert to timeshare or hotel/motel 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. If the existing hotel/motel, timeshare, or residential building being converted exceeds the density or intensity limits of the comprehensive plan or this code, the conversion must use the *pre*-disaster buildback regulations found in § 34-3237 or the *post*-disaster buildback regulations found in § 34-3238 in order to rebuild at up to the existing density or intensity. Interior square footage, as defined in § 34-3238(2)d. for residential and in § 34-3238(2)e for hotel/motel and timeshare, may be exchanged during this process on square-foot for square-foot basis:

DIVISION 22. LIGHTING STANDARDS RESERVED

Sec. 34-1831. Purpose and applicability of division.

(b) **Purpose.** The purposes of this division are:

- (a) 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.

(c) **Applicability.** All new luminaires, regardless of whether a development order is required, must comply with the provisions and standards of this division.

(d) **Exemptions.** The following are generally exempt from the provisions of this division:

- (a) 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.

<u>Use/Task</u>	<u>Minimum</u>	<u>Maximum</u>
	<u>(1)</u>	<u>(average) (1), (2), (3), (4)</u>
<u>PARKING LOTS – MULTI-FAMILY:</u>		
<u>Medium vehicular/pedestrian activity</u>	<u>0.8</u>	<u>3.2</u>
<u>Low vehicular/pedestrian activity</u>	<u>0.3</u>	<u>1.2</u>
<u>PARKING LOTS – COMMERCIAL/ INSTITUTIONAL/ MUNICIPAL:</u>		
<u>Medium activity, e.g., major shopping districts, cultural/civic/ recreational facilities</u>	<u>0.8</u>	<u>3.2</u>
<u>Low activity, e.g., neighborhood retail, offices, employee parking, school/church parking</u>	<u>0.3</u>	<u>1.2</u>
<u>NON-RESIDENTIAL WALKWAYS & BIKEWAYS</u>	<u>0.3</u>	<u>1.5</u>
<u>CANOPY OVER FUEL PUMPS</u>	<u>6.0</u>	<u>30.0</u>

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 _____ feet measured from the ground level directly below the luminaire to the bottom of the lamp itself. Light poles located within 50 feet of a residentially zoned property or use may not exceed _____ feet. Poles used to illuminate pedestrian walkways may not exceed _____ 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 roof, or _____ feet above ground, whichever is lower.
 - 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 34-1835-1860. Reserved.

DIVISION 21. MARINE FACILITIES, AND LIVE-ABOARD VESSELS*

 *Cross reference(s)-~~Marina design, § 10-257; 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) [this subsection unchanged]

(b) [this subsection unchanged]

(c) [this subsection unchanged]

(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 ~~such~~ 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.

DIVISION 26. PARKING

Sec. 34-2020. Required parking spaces.

(a) [this subsection unchanged]

(b) [this subsection unchanged]

(c) [this subsection unchanged]

(d) **Minimum parking standards.**

(1) **RESIDENTIAL USES.** [this subsection unchanged]

(2) **COMMERCIAL USES.** [this subsection unchanged]

(3) **MISCELLANEOUS USES.** [this subsection unchanged]

(4) **COMBINED USES.** The number of parking spaces required for combined uses shall be 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 or more individual business establishments are located and which 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, 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, 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, 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, 8 spaces per 1,000 square feet.

Sec. 34-2022. Seasonal parking lots.

(a) Temporary use permits (see §§ 34-3041, and 34-3050) may be issued for seasonal parking lots. Approval of seasonal parking lots can be for a single period of up to 8 months long, commencing on November 15 and continuing until July 15 (subsection 34-2022(b)); or for a single period of up to 3 years on a year-around basis (subsection 34-2022(c)). For the purposes of this section, temporary use permits for seasonal parking lots may also be issued for all or part of such time period and shall not be limited to 30 days as set forth in § 34-3041(d).

(b) *[this subsection unchanged]*

(d) *[this subsection unchanged]*

**DIVISION 26-A.
PERFORMANCE STANDARDS**

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 22 of this article.

**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 commercial property development regulations of their its 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 following sections of division 26 of this article; pertaining to parking requirements, 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. 34-2054--34-2080. Reserved.

DIVISION 32-A. SHORT-TERM RENTALS

Sec. 34-2394. Enforcement and penalties.

(a) *[this subsection unchanged]*

(b) *[this subsection unchanged]*

(c) For properties on the registry of pre-existing weekly rentals (see § 34-2392), the following additional requirements shall apply:

(1) *[this subsection unchanged]*

(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 master: ~~hearing examiner~~:

a. *[remainder of section unchanged]*

DIVISION 33. SIGNS

Sec. 34-2411. Location and construction.

All ~~on-site and off-site~~ 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 36. STORAGE FACILITIES AND OUTDOOR DISPLAY OF MERCHANDISE

Sec. 34-3002. Mobile vendors and transient merchants prohibited.

(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. 34-3004. 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.

(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) § 34-677(c)(1)); and
- (8) On public property in parts of the DOWNTOWN zoning district (in accordance with § 34-678(f) § 34-677(c)(2)).

(c) [this subsection unchanged]

(d) [this subsection unchanged]

DIVISION 38-A. TATTOO STUDIOS AND BODY-PIERCING SALONS

Sec. 34-3067. Definitions.

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.

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.** [this subsection unchanged]

(c) **Location.** [this subsection unchanged].

(d) **Setbacks.** [this subsection unchanged]

(e) **Time limitations.** The rental activity may not occur between the hours of 9:00 P.M. and 8:00 A.M. after sunset or before sunrise, 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~~ 7:00 A.M. from May 1 until October 31. See also §§ 14-5, 14-78, and 27-49(9).

(g) **Signage.** [this subsection unchanged]

ARTICLE V. NONCONFORMITIES

DIVISION 2. NONCONFORMING BUILDINGS

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. ~~These excluded spaces are not limited by the floor area ratios in Table 34-3.~~
 - 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. ~~These excluded spaces are not limited by the floor area ratios in Table 34-3.~~
 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 size of the new building may ~~instead~~ 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.
 - c. Rear setbacks shall be 25% of lot depth, or 20 feet, whichever is smaller.
 - d. c. Certain nonconforming lots may qualify for an administrative setback variance (see § 34-268).
- (4) *[remainder of section unchanged]*

DIVISION 4. NONCONFORMING LOTS

Sec. 34-3273. General requirements for residential uses on nonconforming lots.

Nonconforming lots may be developed subject to the following provisions:

- (1) *[this subsection unchanged]*
- (2) *[this subsection unchanged]*
- (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. ~~, rear, and water body setbacks shall be as set forth for lots in the RC zoning district (see Table 34-3):~~