



# SPIKOWSKI PLANNING ASSOCIATES

## MEMORANDUM

**TO:** Walter Fluegel, Community Development Director  
**FROM:** Bill Spikowski  
**DATE:** November 2013  
**SUBJECT:** Latest Update to Land Development Code for Fort Myers Beach

Attached to this memo are replacement pages for the Fort Myers Beach Land Development Code to be distributed to interested parties and added to any unsold volumes of the code. These pages include all changes made by the Town Council via Ordinances 11-01, 11-02, 12-02, 12-03, 12-05, 12-07, 13-01, 13-04, 13-06, and 13-08 (through November 4, 2013).

Those holding LDC binders that have been updated through Ordinances 09-08, 10-06, and 10-09 should use the attached pages to replace the obsolete pages in their code binder. Obsolete pages can be discarded.

- **Table of Contents:** replace existing table of contents page
- **Chapter 2:** replace existing pages 1–2 and 23–26 with new pages 1–2 and 23–28
- **Chapter 6:** replace all pages in chapter 6
- **Chapter 10:** replace existing pages 1–2 and 27–28c with new pages 1–2 and 27–28c
- **Chapter 14:** replace existing pages 1–6 with new pages 1–6c
- **Chapter 27:** replace existing pages 7–10 with new pages 7–10
- **Chapter 30:** replace all pages in chapter 30
- **Chapter 34:** replace existing pages 5–6, 69–70, 115-122, and 167–168 with new pages 5–6, 69–70, 115-122, and 167–168

The entire Land Development Code, including these latest revisions, can be downloaded and printed at no cost from this web page: [www.spikowski.com/details/FortMyersBeach-LDC.html](http://www.spikowski.com/details/FortMyersBeach-LDC.html) Replacement pages for previous amendments (through Ordinances 09-08, 10-06, and 10-09) were circulated in December 2010 and are still available from the same web page.

Also available on that web page is a single Adobe PDF file with a compilation of the entire code that can be used for searching for words or other text strings throughout the code using most Adobe Acrobat/Reader software. This compilation of the entire code can be downloaded directly from: [www.spikowski.com/documents-FortMyersBeach/New\\_Chnn-AllChaptersThru13-08.pdf](http://www.spikowski.com/documents-FortMyersBeach/New_Chnn-AllChaptersThru13-08.pdf)



TOWN OF FORT MYERS BEACH, FLORIDA  
**LAND DEVELOPMENT CODE**

<b>CHAPTER 1</b>	<b>General Provisions</b>	Adopted by Town Charter, 12/31/95 Replaced by Ord. No. 02-01, 2/4/02 Amended by Ord. No. 05-07, 4/18/05 Amended by Ord. No. 06-14, 9/18/06
<b>CHAPTER 2</b>	<b>Administration</b>	Adopted by Town Charter, 12/31/95 Replaced by Ord. No. 00-11, 6-29-00 Amended by Ord. No. 02-01, 2/4/02 (§§2-301- 459) Amended by Ord. No. 03-12, 12/15/03 (§§2-420-459) Amended by Ord. No. 05-07, 4/18/05 Amended by Ord. No. 06-14, 9/18/06 Amended by Ord. No. 12-05, 6/18/12
<b>CHAPTER 6</b>	<b>Maintenance Codes, Building Codes, and Coastal Regulations</b>	Adopted by Town Charter, 12/31/95 Replaced by Ord. No. 00-12, 6/29/00 Amended by Ord. No. 02-01, 2/4/02 (§§6-401-474) Amended by Ord. No. 04-09, 6/30/04 (§§6-401-474) Amended by Ord. No. 05-07, 4/18/05 Amended by Ord. No. 06-13, 6/19/06 Amended by Ord. No. 06-18, 12/11/06 Amended by Ord. No. 08-09, 8/18/08 Amended by Ord. No. 10-06, 5/3/2010 Amended by Ord. No. 11-02, 4/18/2011 Amended by Ord. No. 13-01, 1/22/2013 Amended by Ord. No. 13-06, 9/3/2013
<b>CHAPTER 10</b>	<b>Development Orders and Engineering Standards</b>	Adopted by Town Charter, 12/31/95 Replaced by Ord. No. 04-01, 1/5/04 Amended by Ord. No. 05-07, 4/18/05 Amended by Ord. No. 06-14, 9/18/06 Amended by Ord. No. 09-01, 12/21/09 Amended by Ord. No. 12-07, 10/1/12
<b>CHAPTER 14</b>	<b>Environment and Natural Resources</b>	Adopted by Town Charter, 12/31/95 Amended by Ord. No. 98-3, 4/6/98 Replaced by Ord. No. 02-01, 2/4/02 Amended by Ord. No. 02-29, 9/26/02 (§§14-6, 14-78) Amended by Ord. No. 05-24, 6/27/05 (since repealed) Amended by Ord. No. 07-03, 4/2/07 Amended by Ord. No. 13-04, 5/20/2013
<b>CHAPTER 22</b>	<b>Historic Preservation</b>	Adopted by Town Charter, 12/31/95 Replaced by Ord. No. 02-01, 2/4/02
<b>CHAPTER 26</b>	<b>Marine Facilities</b>	Adopted by Town Charter, 12/31/95 Replaced by Ord. No. 02-01, 2/4/02 Amended by Ord. No. 05-07, 4/18/05
<b>CHAPTER 27</b>	<b>Personal Watercraft and Parasailing</b>	Adopted by Ord. No. 96-27, 12/2/96 Replaced by Ord. No. 01-05, 9/24/01 Amended by Ord. No. 07-03, 4/2/07 Amended by Ord. No. 12-02, 6/4/2012
<del><b>CHAPTER 28</b></del>	<del><b>Parasailing</b></del>	Adopted by Ord. No. 97-2, 1/21/97 Amended by Ord. No. 99-4, 4/19/99 Repealed and then integrated into Chapter 27 by Ord. No. 01-05, 9/24/01
<b>CHAPTER 30</b>	<b>Signs</b>	Adopted by Town Charter, 12/31/95 Amended by Ord. No. 99-1, 2/1/99 Amended by Ord. No. 99-11, 9/13/99 Amended by Ord. No. 99-14, 11/15/99 Amended by Ord. No. 03-06, 6/2/03 Amended by Ord. No. 05-07, 4/18/05 Amended by Ord. No. 08-03, 4/7/08 Amended by Ord. No. 11-01, 4/18/2011
<b>CHAPTER 34</b>	<b>Zoning Districts, Design Standards, and Nonconformities</b>	Adopted by Town Charter, 12/31/95 Amended by Ord. No. 96-6, 7/1/96 Amended by Ord. No. 96-20, 9/3/96 Amended by Ord. No. 97-9, 8/11/97 Amended by Ord. No. 97-21, 12/15/97 Amended by Ord. No. 99-16, 12/20/99 Amended by Ord. No. 00-13, 6/29/00 Amended by Ord. No. 02-04, 6/24/02 Replaced by Ord. No. 03-03, 3/3/03 Amended by Ord. No. 03-11, 11/3/03 (§§34-3048, 51) Amended by Ord. No. 04-08, 6/30/04 (§§34-677, 678) Amended by Ord. No. 05-08, 4/18/05 Amended by Ord. No. 05-21, 6/6/05 (§34-636) Amended by Ord. No. 05-22, 9/12/05 (§34-113) Amended by Ord. No. 06-09, 3/20/06 (§34-113, 114) Amended by Ord. No. 06-14, 9/18/06 Amended by Ord. No. 06-18, 12/11/06 (§34-631) Amended by Ord. No. 07-09, 1/23/08 Amended by Ord. No. 07-04, 2/22/08 Amended by Ord. No. 08-11, 9/15/08 Amended by Ord. No. 09-02, 4/6/09 Amended by Ord. No. 09-08, 4/5/2010 Amended by Ord. No. 10-09, 9/20/10 Amended by Ord. No. 12-03, 9/4/2012 Amended by Ord. No. 13-08, 11/4/2013



# FORT MYERS BEACH LAND DEVELOPMENT CODE

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## CHAPTER 2 ADMINISTRATION

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### ARTICLE I. IN GENERAL

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

### ARTICLE II. CONCURRENCY MANAGEMENT SYSTEM

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

### ARTICLE III. DEVELOPMENT AGREEMENTS

- Sec. 2-91. Statutory authority.*
- Sec. 2-92. Applicability of article.*
- Sec. 2-93. Intent of article.*
- Sec. 2-94. Purpose of article.*
- Sec. 2-95. Definitions.*
- Sec. 2-96. Applications for development agreements.*
- Sec. 2-97. Minimum requirements of a statutory development agreement.*
- Sec. 2-98. Notices and hearings.*
- Sec. 2-99. Amendment or cancellation of development agreement by mutual consent.*
- Sec. 2-100. Reservation of home rule authority.*

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

*Sec. 2-102. Appeals.*

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

### ARTICLE IV. IMPACT FEES

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

### ARTICLE V. CODE ENFORCEMENT

#### Division 1. Generally

- Sec. 2-420. Intent and purpose.*

#### Division 2. Special Magistrate

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

#### Division 3. Citations

- Sec. 2-430. Citation procedures; penalties.*
- Sec. 2-431. Conflict.*

#### Division 4. Reduction and/or release of code enforcement liens

- Sec. 2-432. Procedure to obtain reduction and/or release of a code enforcement lien.*
- Secs. 2-433--2-459. Reserved.*

**ARTICLE VI. IMPLEMENTING PUBLIC CAPITAL IMPROVEMENTS**

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

**ARTICLE I. IN GENERAL**

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

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

**Sec. 2-2. Compliance agreements.**

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

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

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

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

the stated time frame, for the violation to be deemed abated.

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

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

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

**ARTICLE II. CONCURRENCY MANAGEMENT SYSTEM**

**Sec. 2-41. Statutory authority.**

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

**Sec. 2-42. Applicability of article.**

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

**Sec. 2-43. Intent of article.**

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

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

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

(d) **Duration of lien.** A lien established in accordance with the provisions of this article may not continue for a period longer than 20 years after the certified copy of an order imposing the fine and/or assessing the costs of prosecution has been recorded, unless within that time an action to foreclose on the lien is commenced as set forth in § 2-427(c) above in a court of competent jurisdiction. In an action to foreclose on the lien or for a money judgment, the prevailing party is entitled to recover all costs, including a reasonable attorney's fee, that it incurs in the action. The town is entitled to collect all costs incurred in recording and satisfying a valid lien. The continuation of the lien effected by the commencement of an action will not be good against creditors or subsequent

purchasers for valuable consideration without notice, unless a notice of lis pendens is recorded.

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

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

- (1) Schedule a hearing where the parties will be given the opportunity to present evidence or argument limited to the specific reasons for which the rehearing was granted; or
- (2) Modify or reverse the prior order, without receiving further evidence, providing the change is based on a finding that the prior decision of the special magistrate resulted from a ruling on a question of law which the special magistrate has been informed was an erroneous ruling.

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

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

**Sec. 2-429. Notices.**

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

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

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

- (1) Such notice will be published once during each week for four consecutive weeks (four publications being sufficient) in a Lee County newspaper of general circulation. The newspaper must meet the requirements prescribed under F.S. ch. 50 for legal and official advertisements. Proof of publication must be made in accordance with F.S. §§ 50.041 and 50.051.
- (2) In lieu of publication as described in subsection (1), such notice may be posted for at least ten days prior to the hearing or prior to the expiration of any deadline contained in the notice, in at least two locations, one of which must be the property upon which the violation is alleged to exist and the other must be at town hall for the Town of Fort Myers Beach. Proof of posting must be by affidavit of the person posting the notice. The affidavit must include a copy of the notice posted and the date and places of its posting.

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

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

**DIVISION 3. CITATIONS**

**Sec. 2-430. Citation procedures; penalties.**

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

(b) **Citation issuance.**

- (1) A code enforcement officer is authorized to issue a citation to a person when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a civil infraction in violation of a duly enacted code or ordinance and that the county court or special magistrate, as applicable, will hear the charge.
- (2) Prior to issuing a citation, a code enforcement officer must provide notice to the person that a violation of a town code or ordinance has been committed and provide a reasonable time within which the violator may correct the violations. Such time period can be no more than 30 days. If upon personal investigation the code enforcement officer finds that the person has not corrected the

violation within the time period, a citation may be issued to the violator. If the code enforcement officer has reason to believe that the violation presents a serious threat to the public health, safety, or welfare, or if the violation is irreparable or irreversible, or if a repeat violation is found, the code enforcement officer is not required to provide a reasonable time in which to correct the violation and may immediately issue a citation to the person who committed the violation.

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

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

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

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

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

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

**Sec. 2-431. Conflict.**

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

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

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

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

- (1) Upon full payment by the violator/property owner of the fine or penalty imposed as a result of a code enforcement action, the town manager or designee is hereby authorized to execute and record, at the property owner's expense, a release of lien.
- (2) Upon request for a reduction or forgiveness of a fine or penalty that constitutes a lien resulting from a code enforcement action, the violator/property owner shall submit a written application to the town manager or designee. The application shall include the following:
  - a. A copy of the order imposing a lien upon the property;
  - b. The code enforcement case number;
  - c. The date upon which the violator/property owner brought the subject property into compliance with the requirements of the town code;
  - d. The factual basis upon which the violator/property owner believes the application for reduction or forgiveness of the lien should be granted;
  - e. The specific terms upon which the violator/property owner believes a satisfaction or release of lien should be granted;
  - f. The reasons, if any, compliance was not accomplished by the violator/property owner prior to the time the order of lien was recorded; and
  - g. The amount of the reduction in penalty or fine requested by the violator/property owner;
  - h. Information concerning any outstanding mortgages on the property, including the date such mortgage or mortgages were

- recorded and whether the mortgage or mortgages are currently in default.
- i. All documents or other evidence that support the applicant's request for a reduction or forgiveness of the lien, which must be included with the application at the time of submittal.
- j. The application shall be executed under oath and sworn to in the presence of a notary public and delivered to the town manager designee.
- (3) The violator/property owner shall submit, at the time of application, an application fee in the amount of \$200.00 to reimburse the town for its administrative costs associated with handling the application and recording the order imposing a penalty or fine and the requested release of lien. The application cost is non-refundable, without regard to the final disposition of the application for reduction, forgiveness, and release of lien.
- (4) Upon receipt of the application for release of lien and the payment provided above, the town manager, or designee, shall confirm through the code enforcement division that the violation which resulted in the order imposing the penalty or fine has been brought into full compliance.
- (5) The town manager, or designee, shall then review and consider the status of the application for release of lien with respect to the following:
  - a. If a property owner acquired the property after the code enforcement lien was recorded, a waiver or reduction of lien may not be granted because the lien should have been identified and satisfied by the property owner at the time of purchase of the property.
  - b. If a title insurance policy was issued at the time the property was purchased and the title insurance policy failed to identify or consider the lien, a waiver or reduction in lien may not be granted. In such cases, the lien should have been discovered by the title insurer and providing a reduction or waiver would place the town in the position of indemnifying the title insurer against its losses, which losses are the result of negligent examination of title by the title insurer.

- c. A request for waiver or reduction in lien may not be granted if the town council has previously reduced the amount of the lien. This statement applies whether or not the request is received from the original applicant for reduction or from a subsequent applicant who acquired the property.
- (6) If the town manager or designee determines that the request falls within any one of the above factual situations, the town manager or designee shall issue a written denial of the request for reduction or forgiveness. If the applicant desires to appeal the town manager's decision to the town council, the applicant may do so by filing a written appeal with the town manager stating the reason(s) why the town council should make an exception to its established guidelines and consider a reduction or forgiveness of the lien. Upon filing of a proper appeal, the town manager shall present the information to the town council at a regular meeting for their consideration and final determination.
  - (7) If the town manager or designee determines that the request does not fall within any of the above factual situations and therefore qualifies for possible reduction or forgiveness, the town manager or designee shall review the request further. The town manager or designee, in formulating a recommendation on whether to reduce the amount of the lien or forgive the lien entirely, shall consider the following factors:
    - a. The gravity of the violation(s);
    - b. The amount of time it took the violator/property owner to come into compliance;
    - c. The accrued amount of the code enforcement lien as compared to the market value of the property;
    - d. Whether there is a prior recorded mortgage on the property and, if so, whether such mortgage is in default and/or whether the principal amount of the mortgage is of such a magnitude that it would not be practical for the town to institute a lien foreclosure action;
    - e. Any previous code violation(s) of applicant/owner;
    - f. Consideration for the future or proposed use of the property for public purpose; and
  - g. The number and status of all other properties owned by the applicant/owner in Lee County, Florida.
- (8) The town manager or designee shall place the application for satisfaction or release of lien upon the agenda of a regularly scheduled town council meeting. The town council may take action based solely upon the sworn application, recommendation of the town manager or designee, and the applicant shall have opportunity to address the town council as to the factors he or she believes warrant reduction or waiver of lien in considering the application for satisfaction or release of lien.
  - (9) The town council may reduce the amount of the lien, waive the full amount of the lien, or continue the lien in its full amount and may accept, modify, or reject the recommendations of the Town Manager or designee.
  - (10) Town council approval of a reduction in the amount of the lien shall be contingent upon payment in full of the reduced amount within thirty (30) days of the town council approval date. If the reduced amount is not paid in full within the thirty (30) day period, the reduction shall become null and void and the full amount of the lien shall be due and payable.
  - (11) When a lien is satisfied as a result of full payment, reduced payment, or waiver as ordered by the town council, the town shall record the satisfaction/release of lien in the Public Records of Lee County, Florida and provide a copy to the property owner.

**Sec. 2-433–2-459. Reserved**

**ARTICLE VI.  
IMPLEMENTING PUBLIC  
CAPITAL IMPROVEMENTS**

**Sec. 2-460. Applicability.**

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

**Sec. 2-461. Purpose and intent.**

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

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

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

**Sec. 2-462. Procedures.**

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

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

(c) Capital improvements that will be constructed or improved within rights-of-way maintained by Lee County or by the state of Florida shall be submitted

to the engineering departments of those entities with a request for their approval of design and construction methods and materials.

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

**Chapters 3--5 RESERVED**

# FORT MYERS BEACH LAND DEVELOPMENT CODE

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## CHAPTER 6 MAINTENANCE CODES, BUILDING CODES, AND COASTAL REGULATIONS<sup>1</sup>

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### ARTICLE I. PROPERTY MAINTENANCE CODES

#### *Division 1. International Property Maintenance Code*

- Sec. 6-1. Adoption of International Property Maintenance Code.*  
*Sec. 6-2. Amendments.*  
*Sec. 6-3--6-30. Reserved.*

#### *Division 2. Housing Code*

- Sec. 6-31. Adoption; amendments.*  
*Secs. 6-32--6-35. Reserved.*

#### *Division 3. Unsafe Building Abatement Code*

- Sec. 6-36. Adoption; amendments.*  
*Secs. 6-37--6-40. Reserved.*

### ARTICLE II. BUILDING CODES

#### *Division 1. Generally*

- Sec. 6-41. Applicability of article.*  
*Sec. 6-42. Penalty for violation of article; additional remedies.*  
*Sec. 6-43. Conflicting provisions.*  
*Sec. 6-44. Enforcing officers.*  
*Sec. 6-45. Permit fees.*  
*Secs. 6-46--6-70. Reserved.*

#### *Division 2. Lee County's Boards of Adjustment and Appeals*

- Sec. 6-71. Applicability of division.*  
*Sec. 6-72. Intent of division.*  
*Sec. 6-73. Boards established; jurisdiction.*

- Sec. 6-74. Delegation of authority to Lee County's boards of adjustment and appeals.*  
*Secs. 6-75--6-79. Reserved.*  
*Sec. 6-80. Right of appeal; notice of appeal.*  
*Sec. 6-81. Variations and modifications.*  
*Sec. 6-82. Decisions.*  
*Secs. 6-83--6-110. Reserved.*

#### *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.*  
*Secs. 6-115--6-120. Reserved.*

#### *Division 4. Existing Buildings Code*

- Sec. 6-121. Purpose.*  
*Sec. 6-122. Adoption; amendments.*  
*Secs. 6-123--6-130. Reserved.*

#### *Division 5. Contractor Licensing*

- Sec. 6-231. Contractor licenses required.*  
*Sec. 6-232. Contractors required to be state-certified.*  
*Sec. 6-233. Contractor categories licensed by Lee County.*  
*Sec. 6-234. Delegation of authority to the Lee County Construction Licensing Board.*  
*Sec. 6-235. Owner-builder exemption.*  
*Sec. 6-236. Other exemptions.*  
*Sec. 6-237 Penalties.*  
*Secs. 6-238--6-330. Reserved.*

### ARTICLE III. COASTAL CONSTRUCTION CODE

#### *Division 1. Generally*

- Sec. 6-331. Origin.*  
*Sec. 6-332. Intent of article; applicability of article.*  
*Sec. 6-333. Definitions.*  
*Sec. 6-334. Variances.*  
*Secs. 6-335--6-360. Reserved.*

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

**Division 2. Coastal Construction Standards**

- Sec. 6-361. Generally.*
- Sec. 6-362--6-363. Reserved.*
- Sec. 6-364. Special requirements near beaches.*
- Sec. 6-365. Reserved.*
- Sec. 6-366. Location of construction near beaches.*
- Sec. 6-367. Public access.*
- Secs. 6-368--6-400. Reserved.*

**ARTICLE IV.  
FLOODPLAIN REGULATIONS**

**Division 1. Generally**

- Sec. 6-401. Title.*
- Sec. 6-402. Scope.*
- Sec. 6-403. Intent.*
- Sec. 6-404. Coordination with the Florida Building Code.*
- Sec. 6-405. Warning.*
- Sec. 6-406. Disclaimer of liability.*
- Secs. 6-407--6-410. Reserved.*

**Division 2. Applicability**

- Sec. 6-411. General.*
- Sec. 6-412. Areas to which these regulations apply.*
- Sec. 6-413. Basis for establishing flood hazard areas.*
- Sec. 6-414. Submission of additional data to establish flood hazard areas.*
- Sec. 6-415. Other laws.*
- Sec. 6-416. Abrogation and greater restrictions.*
- Sec. 6-417. Interpretation.*
- Secs. 6-418--6-420. Reserved.*

**Division 3. Duties and Powers of the Floodplain Administrator**

- Sec. 6-421. Designation.*
- Sec. 6-422. General.*
- Sec. 6-423. Guidance documents.*
- Sec. 6-424. Application and permits.*
- Sec. 6-425. Substantial improvement and substantial damage determinations.*
- Sec. 6-426. Modifications of the strict application of the requirements of the Florida Building Code.*
- Sec. 6-427. Notices and orders.*
- Sec. 6-428. Inspections.*
- Sec. 6-429. Other duties of the Floodplain Administrator.*
- Sec. 6-430. Floodplain management records.*
- Secs. 6-431--6-440. Reserved.*

**Division 4. Permits**

- Sec. 6-441. Permits required.*
- Sec. 6-442. Floodplain development permits or approvals.*
- Sec. 6-443. Buildings, structures and facilities exempt from the Florida Building Code.*
- Sec. 6-444. Application for a permit or approval.*
- Sec. 6-445. Validity of permit or approval.*
- Sec. 6-446. Expiration.*
- Sec. 6-447. Suspension or revocation.*
- Sec. 6-448. Other permits required.*
- Secs. 6-449--6-450. Reserved.*

**Division 5. Site Plans and Construction Documents**

- Sec. 6-451. Information for development in flood hazard areas.*
- Sec. 6-452. Additional analyses and certifications.*
- Sec. 6-453. Submission of additional data.*
- Secs. 6-454--6-460. Reserved.*

**Division 6. Inspections**

- Sec. 6-461. General.*
- Sec. 6-462. Development other than buildings and structures.*
- Sec. 6-463. Buildings, structures and facilities exempt from the Florida Building Code.*
- Sec. 6-464. Buildings, structures and facilities exempt from the Florida Building Code, lowest floor inspection.*
- Sec. 6-465. Buildings, structures and facilities exempt from the Florida Building Code, final inspection.*
- Sec. 6-466. Manufactured homes.*
- Secs. 6-467--6-470. Reserved.*

**Division 7. Variances and Appeals**

- Sec. 6-471. General.*
- Sec. 6-472. Appeals.*
- Sec. 6-473. Limitations on authority to grant variances.*
- Sec. 6-474. Historic buildings.*
- Sec. 6-475. Functionally dependent uses.*
- Sec. 6-476. Considerations for issuance of variances.*
- Sec. 6-477. Conditions for issuance of variances.*
- Secs. 6-478--6-480. Reserved.*

**Division 8. Violations**

- Sec. 6-481. Violations.*
- Sec. 6-482. Authority.*
- Sec. 6-483. Unlawful continuance*
- Secs. 6-484--6-490. Reserved.*

**Division 9. Definitions**

- Sec. 6-491. Scope.*
- Sec. 6-492. Terms defined in the Florida Building Code.*
- Sec. 6-493. Terms not defined.*
- Sec. 6-494. Definitions.*
- Secs. 6-495--6-500. Reserved.*

- Sec. 6-527. Other development in coastal high hazard areas (Zone V).*
- Sec. 6-528. Nonstructural fill in coastal high hazard areas (Zone V).*

**Division 10. Flood Resistant Development**

**Subdivision I. Buildings and Structures**

- Sec. 6-501. Design and construction of buildings, structures and facilities exempt from the Florida Building Code.*
- Sec. 6-502. Buildings and structures seaward of the coastal construction control line.*

**Subdivision II. Subdivisions**

- Sec. 6-503. Minimum requirements.*
- Sec. 6-504. Subdivision plats.*

**Subdivision III. Site Improvements, Utilities and Limitations**

- Sec. 6-505. Minimum requirements.*
- Sec. 6-506. Sanitary sewage facilities.*
- Sec. 6-507. Water supply facilities.*
- Sec. 6-508. Limitations on placement of fill.*
- Sec. 6-509. Limitations on sites in coastal high hazard areas (Zone V).*

**Subdivision IV. Manufactured Homes**

- Sec. 6-510. General.*
- Sec. 6-511. Foundations.*
- Sec. 6-512. Anchoring.*
- Sec. 6-513. Elevation.*
- Sec. 6-514. General elevation requirement.*
- Sec. 6-515. Elevation requirement for certain existing manufactured home parks and subdivisions.*

*Sec. 6-516. Enclosures.*

*Sec. 6-517. Utility equipment.*

**Subdivision V. Recreational Vehicles and Park Trailers**

- Sec. 6-518. Temporary placement.*
- Sec. 6-519. Permanent placement.*

**Subdivision VI. Tanks**

- Sec. 6-520. Underground tanks.*
- Sec. 6-521. Above-ground tanks, not elevated.*
- Sec. 6-522. Above-ground tanks, elevated.*
- Sec. 6-523. Tank inlets and vents.*

**Subdivision VII. Other Development**

- Sec. 6-524. General requirements for other development.*
- Sec. 6-525. Concrete slabs used as parking pads, enclosure floors, landings, decks, walkways, patios and similar nonstructural uses in coastal high hazard areas (Zone V).*
- Sec. 6-526. Decks and patios in coastal high hazard areas (Zone V).*

**ARTICLE I. PROPERTY MAINTENANCE CODES**

**DIVISION 1. INTERNATIONAL PROPERTY MAINTENANCE CODE**

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

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

**Sec. 6-2. Amendments.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Disclose, in writing, the existence and the nature of the proceeding to the prospective transferee.
- (2) Deliver to the prospective transferee a copy of the pleadings, notices, and other materials relating to the code enforcement proceeding received by the transferor.
- (3) Disclose, in writing, to the prospective transferee that the new owner will be responsible for compliance with the applicable code and with orders issued in the code enforcement proceeding.
- (4) File a notice with the code official of the transfer of the property, with the identity and address of the new owner and copies of the disclosures made to the new owner, within 5 days after the date of the transfer.
- (5) A failure to make the disclosures described in paragraphs (1), (2), and (3) before the transfer creates a rebuttable presumption of fraud. If the property is transferred before the hearing, the proceeding shall not be dismissed, but the new owner shall be provided a reasonable period of time to correct the violation before the hearing is held.

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

If the structure is vacant and unfit for human habitation and occupancy, and is not in danger of structural collapse, the code official is authorized to post a placard of condemnation on the

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

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

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

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

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

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

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

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

(q) **Section 110.1 General**, is hereby amended to read as follows:

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

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

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

(s) **Section 111.1 Application For Appeal**, is hereby amended to read as follows:

Any person directly affected by a decision of the code official or a notice or order issued pursuant to this code shall have the right to appeal to the town council, provided that a

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 302.10 Exterior Storage.**

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

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

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

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

**303.3 Disposal of swimming pool water.**

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

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

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

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

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

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

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

**308.4 Additional regulations for rubbish and garbage containers.**

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

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

Every common hall and stairway in residential occupancies, other than in one- and two-family dwellings, shall be lighted at all times with at least a 60-watt standard incandescent light bulb for each 200 square feet (19 m<sup>2</sup>) of floor area or equivalent illumination, provided that the spacing between lights shall not be greater than 30 feet (9144 mm). In other than residential occupancies, means of egress, including exterior means of egress, stairways shall be illuminated at

all times the building space served by the means of egress is occupied with a minimum of 1 footcandle (11 lux) at floors, landings, and treads, provided, however, that during sea turtle nesting season (May 1 through October 31), the provisions of Chapter 14, Article IV of this code shall supersede the foregoing requirements.

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

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

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

**602.7 Screening of Mechanical Equipment.**

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

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

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

**Sec. 6-3-6-30. Reserved.**

## DIVISION 2. HOUSING CODE

### Sec. 6-31. Adoption; amendments.

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

#### Chapter 1, Administration.

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

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

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

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

**Exception: Section 103.5** is deleted.

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

#### 104 Inspections

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

may be in effect at the time such warrant is sought.

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

#### Chapter 2, Definitions.

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

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

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

#### Chapter 3, Minimum Standards for Basic Equipment and Facilities.

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

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

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

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

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

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

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

**DIVISION 3. UNSAFE BUILDING ABATEMENT CODE**

**Sec. 6-36. Adoption; amendments.**

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

**Chapter I, Administration.**

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

**Chapter II, Definitions.**

**Chapter III, Inspection and Notice of Noncompliance.**

**Chapter IV, Appeals.**

**Chapter V, Rules of Procedure for Hearing Appeals.**

**Chapter VI, Implementation.**

**Chapter VII, Recovery of Cost of Repair or Demolition.**

Exception: If the building official proceeds to demolish the building or structure as set forth herein, the town council shall, by proper resolution, assess the entire cost of such demolition and removal against the real property upon which such cost was incurred, which assessment, when made, shall constitute a lien upon the property superior to all others except taxes. The lien shall be filed in the public land records of the county. The resolution of assessment and lien must indicate the nature of the assessment and lien, the lien amount, and an

accurate description of the property affected. The lien becomes effective on the date of filing such notice of lien and shall bear interest from such date at the rate of ten percent per annum. If the resulting lien is not satisfied within two years after the date it is filed, then the town may:

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

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

**ARTICLE II.  
BUILDING CODES**

**DIVISION 1. GENERALLY**

**Sec. 6-41. Applicability of article.**

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

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

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

- (1) *Criminal penalties.* Such person shall be subject to punishment as provided in § 1-5.
- (2) *Civil penalties.* The town council may institute in any court, or before any administrative board of competent jurisdiction, action to prevent, restrain, correct or abate any violation of this article or of any order or regulations made in connection with its administration or enforcement, and the court or administrative board shall adjudge such relief by way of injunction, or any other remedy allowed by law, or otherwise, to include mandatory injunction as may be proper under all the facts and circumstances of the case in order to fully effectuate the regulations adopted under this article, or any amendment thereto, and any orders and rulings made pursuant thereto.

**Sec. 6-43. Conflicting provisions.**

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

provide an equivalent degree of lifesafety and an equivalent method of construction.

**Sec. 6-44. Enforcing officers.**

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

**Sec. 6-45. Permit fees.**

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

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

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

**Sec. 6-71. Applicability of division.**

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

**Sec. 6-72. Intent of division.**

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

**Sec. 6-73. Boards established; jurisdiction.**

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

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

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

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

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

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

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

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

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

**Sec. 6-81. Variations and modifications.**

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

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

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

**Sec. 6-82. Decisions.**

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

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

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

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

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

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

**DIVISION 3. BUILDING CODE**

**Sec. 6-111. Adoption; amendments.**

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

**Chapter 1, Administration.**

**Sections 103.1 through 103.6** relating to powers and duties of the building official are added as follows:

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

**103.2 Right of entry.**

**103.2.1** Whenever necessary to make an inspection to enforce any of the provisions of this code, or whenever the building official has reasonable cause to believe that there exists in any building or upon any premises any condition or code violation which makes such building, structure, premises, electrical, gas, mechanical, or plumbing systems unsafe, dangerous, or hazardous, the building official may enter such building, structure, or premises at all reasonable times to inspect the same or to perform any duty imposed upon the building official by this code. If such building or premises are occupied, he must

first present proper credentials and request entry. If such building, structure, or premises are unoccupied, he must first make a reasonable effort to locate the owner or other persons having charge or control of such and request entry. If entry is refused, the building official has recourse to every remedy provided by law to secure entry.

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

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

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

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

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

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

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

**Section 104.1.4** is amended to read as follows:

**104.1.4. Minor repairs.**

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

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

**104.1.6.1** A permit issued shall be construed to be a license to proceed with the work but shall not be construed as authority to violate, cancel, alter or set aside any of the provisions of this code, nor shall such issuance of a permit prevent the building official from thereafter requiring a correction of errors in plans or in construction or of violations of this code. Although a permit

issued to an owner is transferable to another owner, actual notice of the transfer of permit shall be given to the building official prior to the transfer. Building permits shall be issued following the approval of site and construction plans. Building permits on multifamily projects shall be issued on each individual building or structure. Multitenant occupancies, including but not limited to shopping malls, may be permitted on an individual building or structure (shell); however, individual permits shall be used separately for tenant spaces.

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

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

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

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

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

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

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

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

**Chapter 16, Structural Design.**

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

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

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

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

**Chapter 33, Site Work, Demolition and Construction.**

**Section 3311.5** is added, to read as follows:

**3311.5 Trash containers.**

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

**Chapter 34, Existing Buildings.**

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

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

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

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

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

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

**3401.5 Special historic buildings**

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

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

provisions is to be complied with in providing an equivalent level of safety.

**Florida Building Code, Existing Building, Chapter 2.**

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

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

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

**Florida Building Code, Residential, Section R322.**

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

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

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

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

- c. Not temperature-controlled.
- (3) Have access to enclosed areas intended for building access or storage by no more than one standard 36-inch exterior door, or one windowless 72-inch double exterior door, in any exterior wall.
- (4) Have access to enclosed areas intended for parking of vehicles by no more than one standard two-car garage door.
- (5) Have construction documents include an agreement, signed by the owner, acknowledging the limitations on allowable uses of the enclosed areas and the conditions of the building permit, using a form provided by the Floodplain Administrator. This agreement shall be recorded in the official record books in the office of the clerk of the circuit court to provide additional notice of these limitations to future purchasers.

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

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

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

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

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

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

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

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

**DIVISION 4.  
EXISTING BUILDINGS CODE**

**Sec. 6-121. Purpose.**

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

**Sec. 6-122. Adoption; amendments.**

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

**Chapter 1, Administration.**

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

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

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

**Chapter 2, Definitions and Abbreviations.**

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

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

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

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

**Chapter 4, Means of Egress.**

**Chapter 5, Fire Protection.**

**Chapter 6, Light, Ventilation and Sanitation.**

**Chapter 7, Building Services.**

**Chapter 8, Maintenance.**

**Appendix A, Rehabilitation Guidelines.**

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

## DIVISION 5. CONTRACTOR LICENSING

### Sec. 6-231. Contractor licenses required.

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

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

- (3) Locally licensed contractors holding an active Lee County certificate of competency; or
- (4) Restricted specialty contractors holding an active Lee County restricted certificate of competency.

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

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

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

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

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

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

- |   |  |
|---|--|
| (15) Dredging contractor                  | (13) Glazing and window installation contractor                                |
| (16) Drywall contractor                   | (14) Mechanical contractor   |
| (17) Excavation contractor                | (15) Mobile home alteration and repair<br>(including aluminum work) contractor |
| (18) Fence erection contractor            | (16) Paint and roof painting contractor  |
| (19) Finish carpentry contractor          | (17) Paving and sealing contractor   |
| (20) Garage door contractor               | (18) Plastering, lathing, stucco, and drywall<br>contractor                    |
| (21) Glass and glazing contractor         | (19) Plumbing contractor   |
| (22) Guniting contractor                  | (20) Pool contractor – Class A   |
| (23) Gutter and downspout contractor      | (21) Pool contractor – Class C   |
| (24) Insulation (building) contractor     | (22) Remodeling contractor   |
| (25) Insulation (all types) contractor    | (23) Residential contractor  |
| (26) Irrigation sprinkler contractor      | (24) Roofing contractor  |
| (27) Journeyman air conditioning          | (25) Roof painting contractor  |
| (28) Journeyman electrician               | (26) Roof spraying contractor  |
| (29) Journeyman mechanical                | (27) Seawall and dock contractor   |
| (30) Journeyman plumber                   | (28) Sign contractor – electrical  |
| (31) Mariciting contractor                | (29) Sign contractor – non-electrical  |
| (32) Marine contractor                    | (30) Solar water heating contractor  |
| (33) Masonry contractor                   | (31) Tile contractor   |
| (34) Master electrical contractor         | (32) Tile, terrazo, river rock, and marble<br>contractor                       |
| (35) Painting contractor                  | (33) Waterproofing contractor  |
| (36) Paver block contractor               | (34) Underground utility contractor  |
| (37) Paving contractor                    |  |
| (38) Pile driving contractor              |  |
| (39) Plastering/stucco contractor         |  |
| (40) Reinforcing steel contractor         |  |
| (41) River rock contractor                |  |
| (42) Sandblasting contractor              |  |
| (43) Sign contractor – limited            |  |
| (44) Sign contractor – restricted         |  |
| (45) Structural steel erection contractor |  |
| (46) Terrazo contractor                   |  |
| (47) Tile and marble contractor           |  |

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

- (1) Air conditioning contractor – Class A
- (2) Air conditioning contractor – Class B
- (3) Air conditioning contractor – Class C
- (4) Alteration and repair (non-structural) contractor
- (5) Building contractor
- (6) Cement, concrete and masonry contractor
- (7) Cement finishing contractor
- (8) Demolition contractor
- (9) Dredging and landfilling contractor
- (10) Exposed aggregate contractor
- (11) Flooring contractor
- (12) General contractor

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

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

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

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

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

**Sec. 6-235. Owner-builder exemption.**

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

- (1) One-family or two-family residences on the owner’s property for the occupancy or use of the owners and not offered for sale or lease; and
- (2) Commercial buildings on the owner’s property at a cost not to exceed \$25,000 for the occupancy or use of the owners and not offered for sale or lease.

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

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

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

**Sec. 6-236. Other exemptions.**

The licensing provisions of this article do not apply to:

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

perform, then the employee is not exempt if the employee:

- a. Holds himself or his employer out to be licensed or qualified by a licensee to perform services outside the scope of the employer’s license;
- b. Leads the consumer to believe that the employee has an ownership or management interest in the company; or
- c. Performs any of the acts which constitute contracting for services outside the scope of the employer’s license.

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

- (2) An authorized employee of the United States, the state, the county, the town, or any political subdivision of the state, if the employee does not hold himself out for hire or otherwise engage in contracting except in accordance with his employment.
- (3) Contractors and employees working on bridges, roads, streets, highways, or railroads, including services incidental thereto, that are under the responsible charge of a professional engineer, duly licensed general contractor, the county, or the state.
- (4) A registered professional engineer or architect acting within the scope of his practice or any person exempted by the law regulating engineers and architects, including a person doing design work as specified in F.S. § 481.229(1)(b). However, an engineer or architect cannot act as a contractor unless properly licensed in accordance with this article.
- (5) An architect or landscape architect licensed under F.S. ch. 481 or a professional engineer licensed under F.S. ch. 471 who offers or renders design-build services. However, a state-certified general contractor must perform the construction services under the design-build contract.

**Sec. 6-237. Penalties.**

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

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

## ARTICLE III. COASTAL CONSTRUCTION CODE

### DIVISION 1. GENERALLY

#### Sec. 6-331. Origin.

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

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

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

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

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

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

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

#### Sec. 6-333. Definitions.<sup>2</sup>

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

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

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

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

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

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

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

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

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

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

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

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

**Sec. 6-334. Variances.**

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

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

**DIVISION 2.  
COASTAL CONSTRUCTION STANDARDS**

**Sec. 6-361. Generally.**

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

**Sec. 6-362. Reserved.**

**Sec. 6-363. Reserved.**

**Sec. 6-364. Special requirements near beaches.**

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

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

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

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

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

**Sec. 6-365. Reserved.**

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

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

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

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

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

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

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

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

- (1) Walkovers must be placed perpendicular to the dune or no more than 30 degrees from perpendicular. New walkovers cannot be placed closer than 150 feet to the nearest walkover.
- (2) Walkovers must be supported on posts embedded to a sufficient depth to provide structural stability. These posts may not be encased in concrete.
- (3) Walkovers cannot exceed 4 feet in width when serving single-family homes or 6 feet in width otherwise.

- (4) Walkovers must be elevated at least 2 feet above the highest point of the dune and dune vegetation and must extend to the seaward toe of any existing dune and dune vegetation.
- (5) Walkovers must be constructed in a manner that minimizes short-term disturbance of the dune system. Any dune vegetation destroyed during construction must be replaced with similar native vegetation that is suitable for beach and dune stabilization.
- (6) Walkovers may not be constructed during the sea turtle nesting season (May 1 through October 31).

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

**Sec. 6-367. Public access.**

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

- (1) Of substantially similar quality and convenience to the public;
- (2) Approved by the town council;
- (3) Consistent with the Fort Myers Beach Comprehensive Plan; and
- (4) Approved by the Florida Department of Environmental Protection whenever changes are proposed seaward of the 1991 coastal construction control line.

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

## ARTICLE IV. FLOODPLAIN REGULATIONS

### DIVISION 1. GENERALLY

#### Sec. 6-401. Title.

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

#### Sec. 6-402. Scope.

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

#### Sec. 6-403. Intent.

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

- (1) Minimize unnecessary disruption of commerce, access and public service during times of flooding;
- (2) Require the use of appropriate construction practices in order to prevent or minimize future flood damage;
- (3) Manage filling, grading, dredging, mining, paving, excavation, drilling operations, storage of equipment or materials, and other development which may increase flood damage or erosion potential;

- (4) Manage the alteration of flood hazard areas, watercourses, and shorelines to minimize the impact of development on the natural and beneficial functions of the floodplain;
- (5) Minimize damage to public and private facilities and utilities;
- (6) Help maintain a stable tax base by providing for the sound use and development of flood hazard areas;
- (7) Minimize the need for future expenditure of public funds for flood control projects and response to and recovery from flood events; and
- (8) Meet the requirements of the National Flood Insurance Program for community participation as set forth in the Title 44 Code of Federal Regulations, Section 59.22.

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

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

#### Sec. 6-405. Warning.

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

**Sec. 6-406. Disclaimer of Liability.**

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

**Secs. 6-407—6-410. Reserved.**

**DIVISION 2. APPLICABILITY**

**Sec. 6-411. General.**

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

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

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

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

The Flood Insurance Study for Lee County, Florida and Incorporated Areas dated August 28, 2008, and all subsequent amendments and revisions, and the accompanying Flood Insurance Rate Maps (FIRM), and all subsequent amendments and revisions to such maps, are adopted by reference as a part of these regulations and shall serve as the minimum basis for establishing flood hazard areas. There are no designated or undesignated Floodways within the town limits. The Flood Insurance Study and Flood Insurance Rate Maps that establish flood hazard areas are on file at Town Hall. These flood insurance rate maps show base flood elevations and coastal high-hazard areas (Zone V) for the entire town and are available for inspection at town hall and at the Lee County Department of Community Development office, 1500 Monroe Street, Fort Myers, or can be viewed online at the FEMA Map Service Center [msc.fema.gov](http://msc.fema.gov), or can be purchased by calling 1-800-358-9616. The individual map panels are numbered as follows:

<i>General area shown</i>	<i>Panel number</i>
Bowditch	120673 0553F
Bowditch – Lovers Lane	120673 0554F
Lovers Lane – Gulfview Avenue	120673 0558F
Gulfview Avenue – Mound Road	120673 0566F
Mound Road – Buccaneer Drive	120673 0567F
Buccaneer Drive – Big Carlos Pass	120673 0569F

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

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

- (1) Are below the closest applicable base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as flood hazard area and subject to the requirements of these regulations and, as applicable, the requirements of the *Florida Building Code*.
- (2) Are above the closest applicable base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a Letter of Map Change that removes the area from the special flood hazard area.

**Sec. 6-415. Other laws.**

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

**Sec. 6-416. Abrogation and greater restrictions.**

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

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

**Sec. 6-417. Interpretation.**

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

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

**Secs. 6-418—6-420. Reserved.**

**DIVISION 3. DUTIES AND POWERS OF THE FLOODPLAIN ADMINISTRATOR**

**Sec. 6-421. Designation.**

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

**Sec. 6-422. General.**

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

**Sec. 6-423. Guidance documents.**

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

- (1) Technical Bulletin 1, *Openings in Foundation Walls and Walls of Enclosures*
- (2) Technical Bulletin 2, *Flood Damage-Resistant Materials*

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

**Sec. 6-424. Applications and permits.**

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

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

disapprove the same in the event of noncompliance; and

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

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

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

- (1) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by an MAI-certified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made; any appraisal used for purposes of substantial improvement/substantial damage determinations must be current to within one year of the work commencing;
- (2) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; the determination requires evaluation of previous permits issued for improvements and repairs as specified in the definition of “substantial improvement”; and
- (4) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the *Florida*

*Building Code* and these regulations is required.

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

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

**Sec. 6-427. Notices and orders.**

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

**Sec. 6-428. Inspections.**

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

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

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

- (1) Establish, in coordination with the Building Official, procedures for administering and documenting determinations of substantial improvement and substantial damage made pursuant to § 6-424 of these regulations;
- (2) Require applicants who submit hydrologic and hydraulic engineering analyses to support permit applications to submit to FEMA the data and information necessary to maintain the Flood Insurance Rate Maps if the analyses propose to change base flood elevations, flood hazard area boundaries, or floodway designations; such submissions shall be made within 6 months of such data becoming available;

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

**Sec. 6-430. Floodplain management records.**

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

**Secs. 6-431—6-440. Reserved.**

## DIVISION 4. PERMITS

**Sec. 6-441. Permits required.**

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

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

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

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

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

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

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

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

- (1) Identify and describe the development to be covered by the permit or approval.
- (2) Describe the land on which the proposed development is to be conducted by legal description, street address or similar description that will readily identify and definitively locate the site.
- (3) Indicate the use and occupancy for which the proposed development is intended.
- (4) Be accompanied by a site plan or construction documents as specified in division 5 of these regulations.

- (5) State the valuation of the proposed work.
- (6) Be signed by the applicant or the applicant's authorized agent.
- (7) Give such other data and information as required by the Floodplain Administrator.

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

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

**Sec. 6-446. Expiration.**

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

**Sec. 6-447. Suspension or revocation.**

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

**Sec. 6-448. Other permits required.**

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

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

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

- (5) Delineation of the Coastal Construction Control Line or notation that the site is seaward of the coastal construction control line, if applicable.
- (6) Extent of any proposed alteration of sand dunes or mangrove stands, provided such alteration is approved by the Florida Department of Environmental Protection.
- (7) Existing and proposed alignment of any proposed alteration of a watercourse.

**Secs. 6-449—6-450. Reserved.**

**DIVISION 5. SITE PLANS AND CONSTRUCTION DOCUMENTS**

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

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

- (1) Delineation of flood hazard areas, floodway boundaries and flood zone(s), base flood elevation(s), and ground elevations if necessary for review of the proposed development.
- (2) Location of the proposed activity and proposed structures, and locations of existing buildings and structures; in coastal high hazard areas, new buildings shall be located landward of the reach of mean high tide or the 1978 Coastal Construction Control Line, whichever is further inland.
- (3) Location, extent, amount, and proposed final grades of any filling, grading, or excavation.
- (4) Where the placement of fill is proposed, the amount, type, and source of fill material; compaction specifications; a description of the intended purpose of the fill areas; and evidence that the proposed fill areas are the minimum necessary to achieve the intended purpose.

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

**Sec. 6-452. Additional analyses and certifications.**

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

- (1) An operation and maintenance plan when dry floodproofing is proposed:
  - a. At a minimum this plan must identify who is responsible for maintenance and installation of the flood barriers that will protect wall and door openings and where the flood barriers will be stored when not in use.
  - b. This plan must also provide a realistic estimate of the manpower, time, and equipment required for installation.
  - c. This plan must also include a binding requirement for present and future owners to conduct a test installation before May 31 of each year of all flood barriers, with 10 days' advance written notice provided to the town manager to allow the manager or Floodplain Administrator to witness this test.
  - d. The plan must also include a binding requirement that upon completion of each annual test, a written report will be submitted by the owners to the Floodplain Administrator within 30 days to document the results of the test and set

forth any corrective measures that may be necessary, including proposed revisions to the operation and maintenance plan as to responsibility for maintenance, installation, and storage of flood barriers.

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

**Sec. 6-453. Submission of additional data.**

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

**Secs. 6-454—6-460. Reserved.**

**DIVISION 6. INSPECTIONS**

**Sec. 6-461. General.**

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

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

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

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

The Floodplain Administrator shall inspect buildings, structures and facilities exempt from the *Florida Building Code* to determine compliance

with the requirements of these regulations and the conditions of issued floodplain development permits or approvals.

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

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

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

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

**Sec. 6-466. Manufactured homes.**

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

**Secs. 6-467—6-470. Reserved.**

**DIVISION 7. VARIANCES AND APPEALS**

**Sec. 6-471. General.**

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

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

**Sec. 6-472. Appeals.**

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

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

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

**Sec. 6-474. Historic buildings.**

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

**Sec. 6-475. Functionally dependent uses.**

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

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

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

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

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

Variances shall be issued only upon:

- (1) Submission by the applicant of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the site limit compliance with any provision of these regulations or the required elevation standards;
- (2) Determination by the Town Council that:
  - a. Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;
  - b. The granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, nor create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws and ordinances; and
  - c. The variance is the minimum necessary, considering the flood hazard, to afford relief;
- (3) Receipt of a signed statement by the applicant that the variance, if granted, shall be recorded in the Office of the Clerk of the Court in such a manner that it appears in the chain of title of the affected parcel of land; and
- (4) If the request is for a variance to allow construction of the lowest floor of a new building, or substantial improvement of a building, below the required elevation, a copy in the record of a written notice from the Floodplain Administrator to the applicant for the variance, specifying the difference between the base flood elevation and the proposed elevation of the lowest floor, stating that the cost of federal flood insurance will be commensurate with the increased risk resulting from the reduced floor elevation (up to amounts as high as \$25 for \$100 of insurance coverage), and stating that construction below the base flood elevation increases risks to life and property.

**Secs. 6-478—6-480. Reserved.**

**DIVISION 8. VIOLATIONS**

**Sec. 6-481. Violations.**

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

**Sec. 6-482. Authority.**

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

**Sec. 6-483. Unlawful continuance.**

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

**Secs. 6-484—6-490. Reserved.**

**DIVISION 9. DEFINITIONS**

**Sec. 6-491. Scope.**

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

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

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

**Sec. 6-493. Terms not defined.**

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

**Sec. 6-494. Definitions.**

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

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

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

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

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

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

*Coastal construction control line.* The line established by the State of Florida pursuant to section 161.053, F.S., and recorded in the official records of the community, which defines that

portion of the beach-dune system subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions.

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

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

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

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

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

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

*Existing manufactured home park or subdivision.* A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed prior to August 31, 1984.

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

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

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

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

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

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

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

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

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

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

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

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

that are determined to be compliant with these regulations.

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

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

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

*Historic structure.* Any structure that is:

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

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

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

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

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

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

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

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

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

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

elevation requirements of the *Florida Building Code* or ASCE 24.

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

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

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

*Market value*. The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. As used in these regulations, the term refers to either:

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

Value of the structure will be determined (for the structure only) by the Lee County Property Appraiser, by a private appraisal acceptable to the Floodplain Administrator, or by an independent appraisal commissioned by the Floodplain Administrator. This value shall not include the value of the land on which the structure is located, nor the value of other structures or site improvements on the site, nor the value of the structure after the proposed improvements or repairs are completed. Any proposed value submitted via a private appraisal that exceeds the Property Appraiser’s valuation by more than 35 percent shall be subject to peer review by a qualified local appraiser or a new independent appraisal, to be commissioned by the Floodplain Administrator, with the full cost of the review or

new appraisal paid by the applicant to the town prior to initiation of the process. In lieu of submitting a private appraisal, an applicant may obtain an independent appraisal through the Floodplain Administrator, with the full cost paid to the town prior to initiation of the process.

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

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

*New manufactured home park or subdivision.* A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after August 31, 1984.

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

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

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

- (1) Built on a single chassis;
- (2) Four hundred (400) square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

*Reinforced pier.* A system designed and sealed by a state-registered architect or engineer which is an integral part of a foundation and anchoring system for the permanent installation of a manufactured home or recreational vehicle, as applicable, so as to prevent flotation, collapse or lateral movement of the manufactured home or recreational vehicle due to flood forces. At a minimum, a reinforced pier would have a footing adequate to support the weight of the manufactured home or recreational vehicle under saturated soil conditions such as occur during a flood. In areas subject to high-velocity floodwaters and debris impact, cast-in-place reinforced piers may be appropriate. Nothing in this division shall prevent a design which uses pilings, compacted fill or any other method, as long as the minimum flood standards are met.

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

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

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

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

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

*Repetitive loss structure.* Buildings and structures that have sustained flood-related damage on two or more separate occasions during any five-year period, for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damages occurred.

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

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

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

Permanent construction does not include land preparation (such as clearing, grading, or filling), the installation of streets or walkways, excavation for a basement, footings, piers, or foundations, the erection of temporary forms or the installation of accessory buildings such as garages or sheds not occupied as dwelling units or not part of the main buildings. For a substantial improvement, the actual “start of construction” means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

*Substantial damage.* Damage of any origin sustained by a building or structure whereby the cost of restoring the building or structure to its before-damaged condition would equal or exceed 50

percent of the market value of the building or structure before the damage occurred. The term also includes flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the costs of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

*Substantial improvement.* Any combination of repair, reconstruction, rehabilitation, addition, or other improvement of a building or structure taking place during a 5-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the building or structure before the improvement or repair is started, or if the structure has been damaged, and is being restored, before the damage occurred. The term “substantial improvement” includes structures that have incurred “substantial damage,” regardless of the actual repair work performed. For each building or structure, the 5-year period begins on the date of the first improvement or repair of that building or structure. The term does not, however, include either:

- (1) Any project for improvement of a building required to correct existing health, sanitary, or safety code violations identified by the building official and that are the minimum necessary to assure safe living conditions.
- (2) Costs of alterations or improvements whose express purpose is the mitigation of future storm damage, provided the costs of such measures, plus the costs of any other improvements, do not exceed 50 percent of the market value of the structure over any one-year period; examples of such mitigation include the installation of storm shutters or impact resistant glass, strengthening of roof attachments, floors, or walls, and minor measures to reduce flood damage.
  - a. Storm mitigation improvements may be made during the same year as other improvements, but the total cost of improvements of both types that are made over any one-year period may not exceed 50% of the market value of the structure.
  - b. The annual allowance for storm mitigation improvements is not applicable towards any costs associated with a lateral or vertical addition to an existing structure or to the complete replacement of an existing structure.

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

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

**Secs. 6-495—6-500. Reserved.**

**DIVISION 10.  
FLOOD RESISTANT DEVELOPMENT**

***Subdivision I.  
Buildings and Structures***

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

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

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

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

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

with the intent and applicable provisions of these regulations and ASCE 24.

***Subdivision II. Subdivisions***

**Sec. 6-503. Minimum requirements.**

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

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

**Sec. 6-504. Subdivision plats.**

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

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

***Subdivision III.  
Site Improvements,  
Utilities and Limitations***

**Sec. 6-505. Minimum requirements.**

All proposed new development shall be reviewed to determine that:

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

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

**Sec. 6-506. Sanitary sewage facilities.**

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

**Sec. 6-507. Water supply facilities.**

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

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

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

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

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

***Subdivision IV.  
Manufactured Homes***

**Sec. 6-510. General.**

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

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

**Sec. 6-511. Foundations.**

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

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

**Sec. 6-512. Anchoring.**

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

**Sec. 6-513. Elevation.**

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

**Sec. 6-514. General elevation requirement.**

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

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

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

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

**Sec. 6-516. Enclosures.**

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

**Sec. 6-517. Utility equipment.**

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

***Subdivision V.  
Recreational Vehicles  
and Park Trailers***

**Sec. 6-518. Temporary placement.**

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

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

**Sec. 6-519. Permanent placement.**

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

***Subdivision VI. Tanks***

**Sec. 6-520. Underground tanks.**

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

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

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

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

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

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

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

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

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

**Sec. 6-523. Tank inlets and vents.**

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

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

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

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

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

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

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

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

***Subdivision VII.  
Other Development***

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

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

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

- (1) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;
- (2) Solid fences and privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under flood conditions less

- than the design flood or otherwise function to avoid obstruction of floodwaters; and
- (3) On-site sewage treatment and disposal systems defined in 64E-6.002, F.A.C., as filled systems or mound systems.

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

In coastal high hazard areas:

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

**CHAPTERS 7--9 RESERVED**

# FORT MYERS BEACH LAND DEVELOPMENT CODE

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## CHAPTER 10 DEVELOPMENT ORDERS AND ENGINEERING STANDARDS

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### ARTICLE I. IN GENERAL

- Sec. 10-1. Definitions and rules of construction.*
- Sec. 10-2. Purpose of chapter.*
- Sec. 10-3. Interpretation of chapter.*
- Sec. 10-4. Reserved.*
- Sec. 10-5. Reserved.*
- Sec. 10-6. Enforcement of chapter; penalty.*
- Sec. 10-7. General requirements.*
- Sec. 10-8. Design goals.*
- Sec. 10-9. Specific requirements.*
- Secs. 10-10--10-50. Reserved.*

### ARTICLE II. DEVELOPMENT ORDERS AND PLATS

#### **Division 1. Generally**

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

#### **Division 2. Development Orders**

##### **Subdivision I. In General**

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

##### **Subdivision II. Procedures**

- Sec. 10-101. Applicability of requirements.*
- Sec. 10-102. Employment of engineers and design consultants.*
- Sec. 10-103. Prior zoning approvals for development order submittals.*
- Sec. 10-104. Deviations and variances.*
- Sec. 10-105. Preapplication meeting.*
- Sec. 10-106. Revocation of existing development orders on granting of new development order.*
- Sec. 10-107. Initiation of application; designation of representative.*
- Sec. 10-108. Application procedure.*
- Sec. 10-108.1 Payment of taxes.*
- Sec. 10-109. Review procedure; action by director.*

- Sec. 10-110. Resubmittal of application following denial.*
- Sec. 10-111. Issuance of order; approval letter and stamping of drawings.*
- Sec. 10-112. Appeals.*
- Sec. 10-113. Recording of notice of development order.*
- Sec. 10-114. Contents of development order.*
- Sec. 10-115. Duration of development order.*
- Sec. 10-116. Effect of approval of development order.*
- Sec. 10-117. Phased projects.*
- Sec. 10-118. Amendments generally.*
- Sec. 10-119. Amendment to correct error or omission.*
- Sec. 10-120. Minor changes.*
- Sec. 10-121. Transfer.*
- Sec. 10-122. Violation of development order.*
- Sec. 10-123. Extensions.*
- Sec. 10-124. Coordination of review.*
- Secs. 10-125--10-150. Reserved.*

##### **Subdivision III. Submittals**

- Sec. 10-151. Generally.*
- Sec. 10-152. Requirement waiver.*
- Sec. 10-153. Application form and contents.*
- Sec. 10-154. Additional required submittals.*
- Secs. 10-155--10-170. Reserved.*

#### **Division 3. Limited Review Process**

- Sec. 10-171. Generally.*
- Sec. 10-172. Legal effect of approval*
- Sec. 10-173. General requirements for limited review process.*
- Sec. 10-174. Types of development entitled to limited review.*
- Sec. 10-175. Required submittals.*
- Sec. 10-176. Appeals.*
- Secs. 10-177--10-180. Reserved.*

#### **Division 4. Inspections and Certificate of Compliance**

- Sec. 10-181. Inspection of improvements generally.*
- Sec. 10-182. Inspection of work during construction.*
- Sec. 10-183. Final inspection and certificate of compliance.*
- Secs. 10-184--10-210. Reserved.*

**Division 5. Plats and Vacations**

**Subdivision I. Plats**

- Sec. 10-211. Required.*
- Sec. 10-212. Preparation and submission.*
- Sec. 10-213. Technical requirements.*
- Sec. 10-214. Contents.*
- Sec. 10-215. Waiver of requirements.*
- Sec. 10-216. Monuments.*
- Sec. 10-217. Lot recombination.*

**Subdivision II. Vacations of Platted Rights-of-Way and Easements**

- Sec. 10-218. Purpose and intent.*
- Sec. 10-219. Petitions to vacate platted rights-of-way and easements.*
- Sec. 10-220. Procedure.*
- Secs. 10-221--10-250. Reserved.*

**ARTICLE III. ENGINEERING AND ENVIRONMENTAL DESIGN STANDARDS**

**Division 1. Generally**

- Sec. 10-251. Applicability.*
- Sec. 10-252. General design standards.*
- Sec. 10-253. Consideration of flood hazards.*
- Sec. 10-254. Street names.*
- Sec. 10-255. Placement of structures in easements.*
- Sec. 10-256. Off-street parking and loading requirements.*
- Sec. 10-257. Refuse disposal facilities.*
- Secs. 10-258--10-284 Reserved.*

**Division 2. Transportation, Roadways, Streets, and Sidewalks**

- Sec. 10-285. Connection separation.*
- Sec. 10-286. Traffic impact statements.*
- Sec. 10-287. Traffic impact mitigation plan.*
- Sec. 10-288. Turn lanes.*
- Sec. 10-289. Sidewalks.*
- Sec. 10-290. Local streets.*
- Sec. 10-291. Access to street required.*
- Sec. 10-292. Public streets to connect to existing public street.*
- Sec. 10-293. Private streets.*
- Sec. 10-294. Continuation of existing street pattern.*
- Sec. 10-295. Street stubs to adjoining property.*
- Sec. 10-296. Street design and construction standards.*
- Secs. 10-297--10-320. Reserved.*

**Division 3. Surface Water Management**

- Sec. 10-321. Generally.*
- Sec. 10-322. Roadside swales.*
- Sec. 10-323. Rear lot line swales and ditches.*
- Sec. 10-324. Open channels and outfall ditches.*
- Sec. 10-325. Reserved.*
- Sec. 10-326. Inlet spacing.*
- Sec. 10-327. Dedication of drainage system; maintenance covenant.*
- Sec. 10-328. Reserved.*
- Sec. 10-329. Excavations.*
- Secs. 10-330--10-350. Reserved.*

**Division 4. Utilities**

- Sec. 10-351. Generally.*
- Sec. 10-352. Connection to potable water system.*
- Sec. 10-353. Connection to sanitary sewer system.*
- Sec. 10-354. Connection to reuse water system.*
- Sec. 10-355. Easements; location of water and sewer lines.*
- Sec. 10-356. Reserved.*
- Sec. 10-357. Inspection of water and sewer systems; piping materials.*
- Secs. 10-358--10-380. Reserved.*

**Division 5. Fire Safety**

- Sec. 10-381. Generally.*
- Sec. 10-382. Reserved.*
- Sec. 10-383. Variances.*
- Sec. 10-384. Minimum standards for all developments.*
- Sec. 10-385. Design standards.*
- Secs. 10-386--10-410. Reserved.*

**Division 6. Open Space, Buffering, and Landscaping**

- Sec. 10-411. Reserved.*
- Sec. 10-412. Definitions.*
- Sec. 10-413. Major indigenous plant communities of the town.*
- Sec. 10-414. Landscape and irrigation submittals.*
- Sec. 10-415. Open space.*
- Sec. 10-416. Landscaping standards.*
- Sec. 10-417. Irrigation standards.*
- Sec. 10-418. Reserved.*
- Sec. 10-419. Alternate landscape betterment plans.*
- Sec. 10-420. Plant material standards.*
- Sec. 10-421. Plant installation and maintenance standards.*
- Sec. 10-422. Landscape certificate of compliance.*

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

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

**DIVISION 5. PLATS AND VACATIONS**

***Subdivision I. Plats***

**Sec. 10-211. Required.**

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

**Sec. 10-212. Preparation and submission.**

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

**Sec. 10-213. Technical requirements.**

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

**Sec. 10-214. Contents.**

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

**Sec. 10-215. Waiver of requirements.**

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

**Sec. 10-216. Monuments.**

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

- (1) Permanent reference monuments (PRM’s) must be placed as required by F.S. ch. 177, as amended, and approved by a licensed, registered state professional land surveyor, on the boundary of all developments.
- (2) Monuments must be set in the ground so that the top is flush or no more than one-half foot below the existing ground. Subsurface PRM’s must be exposed for inspection when a plat is submitted for review. If development of the subdivision occurs after a plat is reviewed, the PRM’s must be raised or lowered to be flush or no more than one-half foot below the finished ground. Subsurface PRM’s must be exposed for inspection at the time of final inspection of the development.

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

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

**Sec. 10-217. Lot recombinations.**

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

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

the form provided by the director and must include:

- a. A copy of the plat book and page, if applicable;
  - b. Copies of the most recent deeds for all of the affected lots;
  - c. Copies of the deeds establishing that the lots are lots of record, if the lots are unplatted;
  - d. A statement, signed by the applicant under oath, that he is the authorized representative of the owner(s) of the property and has full authority to secure the approval(s) requested;
  - e. An area location map;
  - f. A survey sketch showing the existing and proposed lot lines and the existing and proposed legal descriptions of the affected lots; and
  - g. A written explanation of the reasons for the request.
- (2) *Relocation of easements.* All easements that are affected by a proposed lot recombination must be vacated and relocated, if applicable, in accordance with the Florida Statutes.
  - (3) *Appeals.* A denial of a lot recombination request is an administrative decision which may be appealed in accordance with the procedures set forth in § 34-86.
  - (4) *Combinations.* The combination of two or more lots of records into one lot is not a “division” and is not subject to the approval process described in this section; provided, however, that any easements that are affected by such combinations shall be vacated and relocated, if applicable, in accordance with the Florida Statutes.

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

**Sec. 10-218. Purpose and intent.**

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

the property rights of private landowners and public and private utility providers are protected.

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

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

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

(b) The petition must include the following:

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

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

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

- (9) Payment of the applicable fee in accordance with the schedule of fees adopted by resolution of the town council. In the absence of a resolution by the town council, the director will charge fees that are comparable to the fees charged by the board of county commissioners for similar applications.
- (10) Statement from the Lee County director of community development or designee whether vacation by Lee County is required.

**Sec. 10-220. Procedure.**

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

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

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

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

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

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

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

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

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

# FORT MYERS BEACH LAND DEVELOPMENT CODE

## CHAPTER 14 ENVIRONMENT AND NATURAL RESOURCES <sup>1</sup>

### ARTICLE I. BEACH AND DUNE MANAGEMENT

- Sec. 14-1. Definitions.*
- Sec. 14-2. Purpose and intent.*
- Sec. 14-3. Destruction or diminishment of dune or beach system.*
- Sec. 14-4. Trash and litter on the beach.*
- 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. 14-8. Dune systems.*
- Sec. 14-9. Enforcement.*
- Sec. 14-10. Restoration standards for dune vegetation alteration violations.*
- Sec. 14-11. Special events on the beach.*
- Secs. 14-12--14-70. Reserved.*

### ARTICLE II. SEA TURTLE CONSERVATION

- Sec. 14-71. Purpose and applicability.*
- Sec. 14-72. Definitions.*
- Sec. 14-73. Enforcement.*
- Sec. 14-74. Exemptions.*
- Sec. 14-75. Existing development.*
- Sec. 14-76. New development.*
- Sec. 14-77. Publicly owned lighting.*
- Sec. 14-78. Additional regulations affecting sea turtle nesting habitat.*
- Sec. 14-79. Guidelines for mitigation and abatement of prohibited artificial lighting.*
- Secs. 14-80--14-110. Reserved.*

### ARTICLE III. SOUTHERN BALD EAGLE PROTECTION

- Sec. 14-111. Purpose.*
- Sec. 14-112. Definitions.*
- Sec. 14-113. Violation; penalty.*
- Sec. 14-114. Provisions supplemental.*

- Sec. 14-115. Applicability.*
- Sec. 14-116. Eagle technical advisory committee.*
- Sec. 14-117. Public acquisition of rights and interest in critical eagle nesting habitat lands.*
- Sec. 14-118. Notification procedure.*
- Sec. 14-119. Mechanisms for the protection of critical eagle nesting habitat.*
- Sec. 14-120. Compensation incentives for protection of critical eagle nesting habitat.*
- Secs. 14-121--14-290. Reserved.*

### ARTICLE IV. WETLANDS PROTECTION

- Sec. 14-291. Applicability.*
- Sec. 14-292. Purpose.*
- Sec. 14-293. Definitions.*
- Sec. 14-294. Prohibited activities.*
- Sec. 14-295. Permitted activities.*
- Sec. 14-296. Permits required.*
- Sec. 14-297. Compliance enforcement.*
- Secs. 14-298--14-370. Reserved.*

### ARTICLE V. TREE PROTECTION

- Sec. 14-371. Reserved.*
- Sec. 14-372. Findings of fact.*
- Sec. 14-373. Intent and purpose.*
- Sec. 14-374. Definitions.*
- Sec. 14-375. Penalty for violation.*
- Sec. 14-376. Exemptions.*
- Sec. 14-377. Indigenous vegetation.*
- Sec. 14-378. Suspension of article during emergency conditions.*
- Sec. 14-379. Nonliability of town.*
- Sec. 14-380. List of protected trees.*
- Sec. 14-381. Unlawful injury of trees.*
- Sec. 14-382. Removal of protected trees.*
- Sec. 14-383. Tree protection during development of land.*
- Sec. 14-384. Restoration standards.*
- Secs. 14-385--14-410. Reserved.*
- Sec. 14-411. Permit required.*
- Sec. 14-412. Issuance of permit.*
- Secs. 14-413--14-450. Reserved.*

<sup>1</sup>Cross reference(s)—Open space, buffering and landscaping, § 10-411 et seq.; protection of habitat, § 10-471 et seq.; environmentally sensitive areas, § 34-1571 et seq.

**ARTICLE VI.  
MANGROVE ENFORCEMENT**

- Sec. 14-451. Purpose and intent.
- Sec. 14-452. Definitions.
- Sec. 14-453. Enforcement.
- Sec. 14-454. Restoration standards.
- Sec. 14-455. Permit required.
- Sec. 14-456. Conflicting provisions.

**ARTICLE I. BEACH AND  
DUNE MANAGEMENT <sup>2</sup>**

**Sec. 14-1. Definitions.**

For the purposes of this article, the following terms, phrases, words, and derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and the words in the singular number include the plural number. The word “shall” is always mandatory.

**Beach** means that area of sand along the Gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.

**Beach furniture or equipment** means any man-made apparatus or paraphernalia designed or manufactured for use or actually used on the beach or in the adjacent tidal waters. Examples include: chairs, tables, cabanas, lounges, umbrellas, sailing vessels up to 16 feet in length, personal watercraft, concession storage units, canoes, kayaks, paddle vessels, sailboards, surfboards, fishing gear, sporting equipment, floatables, tents, and bicycles.

**Beach width** means the perpendicular distance measured from the edge of wet sand to the place

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

where there is a marked change in material or physiographic form from beach sand to dune vegetation, seawall, turf grass, etc.

**Director** means the person to whom the town manager has delegated the authority to administer this article, or that person’s designee.

**Dune** means a mound, bluff, ridge, or emergent zone of loose sediment, usually sand-sized sediment, lying upland of the beach and deposited by any natural or artificial mechanism, which may be bare or covered with vegetation, and is subject to fluctuations in configuration and location (reference 161.54 F.S., 62B-33.002 F.A.C.). It encompasses those ecological zones that, when left undisturbed, will support dune vegetation. As to areas restored or renourished pursuant to a permit issued by the town or state, it encompasses the area specified in the permit as a dune or any area specified as suitable for establishment of dune vegetation.

**Dune vegetation** means pioneer species of native vegetation which, if left undisturbed by manmade forces, will begin to grow on a dune, including species such as bitter panicum, coastal panic grass, crowfoot grass, saltmeadow cordgrass, sandbur, seacoast bluestem, sea oats, seashore dropseed, seashore paspalum, seashore saltgrass, stiffleaf eustachys, beach bean, blanket flower, dune sunflower, fiddle-leaf morning glory, partridge pea, railroad vine, sea purslane, beach creeper, nicker bean, coin vine, inkberry, lantana, saw palmetto, seashore elder, baycedar, green buttonwood, cabbage palm, cocoplum, seagrape, and southern wax myrtle.

**Edge of wet sand** means the point where the visible darkening or staining of the beach sand from wave action is no longer detectable.

**Hand raking** means the use of a standard garden rake, pitchfork, potato fork, or any other handheld tool used for the purpose of removing or altering the “wrack line.”

**Mechanical beach raking** means a method of maintaining the beach by pulling a pronged rake or a piece of chain link fence that meets the requirements of § 14-6(c). The rake or chain link fence may be pulled behind a tractor, golf cart, ATV, or other vehicle, as approved by the town, that meets the maximum ground-to-tire pressure found in § 14-6(c).

**Seaward line of vegetation** means the location closest to the mean high water line containing, or suitable for, dune vegetation. If there is no such vegetation upon a parcel or portion of a parcel, it shall encompass a line alongshore projected from the closest areas on each side where such vegetation does exist.

**Wet sand** means the area on the beach where the sand is saturated by sea water from wave action. This area is identified by a visible darkening or staining of the beach sand from the water driven onshore by wave action.

**Wrack line** means a well-defined zone of the natural organic marine material cast on the shore by the last high tide, including seaweed and other vegetative and animal debris, but excluding manmade material. Any areas of organic marine material left on the upper beach due to abnormally high spring tides, storm tides, or other extreme conditions or events, as determined by the town, are not included in the definition of “wrack line.”

**Sec. 14-2. Purpose and intent.**

- (a) The purpose of this article is:
  - (1) To encourage a steward-like attitude toward the town’s most valuable asset, the beach.
  - (2) To preserve and improve the condition of that asset as a place for recreation, solitude, and preservation of beach vegetation and marine wildlife.

(b) This article provides minimum standards to safeguard the beach.

**Sec. 14-3. Destruction or diminishment of dune or beach system.**

(a) It is unlawful and prohibited for any person to do, conduct, or permit any of the following on a beach, upon a dune, or in the water adjacent to a beach:

- (1) harass, molest, or disturb wildlife;
- (2) plant vegetation other than dune vegetation;
- (3) destroy or harm a dune or remove dune vegetation;
- (4) maintain a dump of, or discard or leave litter, garbage, trash or refuse, vegetative clippings, or debris (see § 14-4);
- (5) deposit and leave human or animal waste (see § 14-4);

- (6) destroy or grossly interfere with the natural wrack line as by grooming or non-selective raking except as authorized in § 14-6;
- (7) operate any air-powered or any engine-powered non-watercraft vehicle, machine, or implement, including any battery or electrical powered vehicle, machine, or implement, except for a wheelchair or approved conveyance for a person with a disability which is actually being used by the person with a disability or as authorized in § 14-7;
- (8) excavate, mine, and remove, or haul sand or soil from the beach or dune except in emergency situations as declared by the Town Council;
- (9) detonate any explosive devices, including fireworks;
- (10) discharge any firearms;
- (11) light or maintain any open fire on Mulholland Point (Little Estero Island);
- (12) temporarily reside, camp, or sleep overnight;
- (13) deposit/install rocks, concrete, or other shoreline stabilization materials without a permit from DEP and the town;
- (14) deposit/add sand to the beach and dune system without a permit from DEP. All fill material shall be sand that is similar to the existing beach sand in both coloration and grain size and be free of debris, rocks, clay, or other foreign matter; or
- (15) conduct any commercial activities not explicitly authorized by this code or by other town ordinances.

(b) Permits may be issued by the town manager for activities otherwise prohibited by this section, which are found to be necessary for reasonable accommodation of persons with disabilities; adjunct to a lawfully existing activity; for the conduct of a civic or educational activity; for the conduct of scientific research; or for any purpose otherwise necessary to protect or to promote the public welfare, for such periods of time as appropriate for the circumstances. To the extent that a permit is allowed under this code for any of the above activities, the standards and procedures for issuance shall be governed by this code.

**Sec. 14-4. Trash and litter on the beach.**

(a) Pursuant to Ordinance 99-5, dogs on a leash are allowed on the beaches within the town, but owners must properly dispose of any type of dog waste off the beach. However, no pets shall be

allowed within the confines of the Critical Wildlife Area (CWA)/Mulholland Point (Little Estero Island) whose territory is defined as follows: This area includes the island itself and the wetlands and lagoons that have formed behind the island; the northern boundary is the Holiday Inn's southern riparian line, and the easterly line is the mean high water line of the old developed shoreline.

(b) Pursuant to Ordinance 99-7, trash and litter must be deposited within trash receptacles and not left on the beach.

(c) Any person wishing to light an open fire on the beach, except on Mulholland Point (Little Estero Island) as prohibited by § 14-3 (a)(11) and during sea turtle nesting season as prohibited by § 14-78(a), is limited to a 12 inch by 12 inch cooking fire that must be applied for as a permit through Town Hall. The permit will require a \$30.00 deposit for cleanup.

**Sec. 14-5. Beach furniture and equipment.**

(a) From May 1 through October 31, all beach furniture and equipment must be removed from the beach as follows:

- (1) All beach furniture and equipment must be removed from the beach between the hours of 9:00 P.M. until 7:00 A.M.
- (2) The beach furniture and equipment must be moved daily either behind the permanent dune line; or where no dune line is present and the beach is wide, then 200 feet from the mean high water line; or where the beach is narrow to the adjacent permanent structure and landward of any seawall. Where compliance with the foregoing provisions would cause an undue hardship, the town manager may, after determining the minimum variance from the requirements of this ordinance, designate the storage location.
- (3) Beach furniture and equipment that is removed from the beach as specified in § 14-5(a)(2) shall then be safely stacked in areas no larger than 10 feet by 10 feet and each stack must be at least 50 feet removed or apart from the next stack. All stacked items will be secured either by cable or chain to prevent the removal and scattering of items by unauthorized individuals at night. The cable and/or chain must be kept off the ground as these items pose a serious entanglement hazard.

(b) Trash containers are not included in the definition of beach furniture and equipment and may be left in place on the beach between the hours of 9:00 P.M. and 7:00 A.M.

(c) No later than the first day of June, beach properties that have more than 5 cabanas or offer beach equipment for use shall file a hurricane action plan with the town each year prior to the beginning of hurricane season and provide a contact person with current phone number.

(d) All beach furniture and equipment (such as chairs, umbrellas, cabanas, and rental podium, but excluding water-dependent equipment) shall be set landward of the mean high water line and at least 10 feet from a sea turtle nest or dune vegetation.

(e) Vendors wishing to use a vehicle to transport furniture and equipment to and from the beach must obtain a permit from the town through the permit process described in § 14-6(c) and must abide by the same restrictions. If a beach raking permit is also applied for, the permits will be incorporated into one permit. The following additional restrictions apply to all transport permits:

- (1) Equipment shall not be set out in the morning before 8:00 A.M. or before completion of daily monitoring for turtle nesting activity by an FWC-authorized marine turtle permit holder to examine the beach in the area of the authorized activity to ensure any new sea turtle nests are identified and marked, whichever occurs first.
- (2) Transporting vehicles shall not travel within 10 feet of a sea turtle nest or dune vegetation.
- (3) The vehicle and equipment cannot exceed a maximum ground-to-tire pressure of 10 PSI (pounds per square inch) using the formula in § 14-6(c)(4)d.1.

**Sec. 14-6. Beach raking and wrack line policy.**

(a) The use of boxblades on the beach or dune is prohibited. In an emergency and/or storm event resulting in a build-up of sand against seawalls, the use of a boxblade may be allowed with the approval of DEP, where required, and upon filing that approval with the town manager and meeting any other requirements set by the town.

(b) Under normal circumstances, the raking of the wrack line is prohibited. No mechanical or hand raking may take place seaward of the wrack line or

within ten feet (10') landward of the wrack line, provided, however that hand raking of the wrack line may be performed anytime to ameliorate hazardous conditions such as removal of sand castles or filling in of manmade holes on the beach. The town manager may approve the raking of the wrack line conditioned upon prior approval by the DEP if it is determined that excessive accumulation of natural or other debris caused by extreme events, including, but not limited to, red tide, red algae bloom, or storm carried debris, are present. Should such excessive accumulation be determined, the town manager may approve raking consistent with the authorization given by DEP. Any such raking which will result in the unreimbursed expenditure of town funds in excess of currently budgeted funds shall first be approved by the town council. If this occurs during sea turtle season (May 1 through October 31), the raking must be in compliance with the specific conditions in § 14-6(c)(4).

(c) Any mechanical beach raking other than town-initiated raking pursuant to subsection (b) above requires a permit from the town:

- (1) Application for a permit to mechanically rake an unvegetated portion of the beach shall be submitted to the director or their designee, in writing, on a form provided by the director. As part of this application, a site plan will be submitted depicting the property corners as represented by aerial photography available at the Lee County Property Appraiser's website ([www.leepa.org](http://www.leepa.org)), the dimensions of the area to be raked, and the location of existing vegetation and structures.
- (2) The application shall be made by the owner of the business that conducts the raking, or by the property owner or authorized agent of the property owner. Any application by a raking business must attach a current copy of the Lee County business tax receipt for such business and a letter of authorization from the property owner.
- (3) Any business that conducts mechanical beach raking shall be required to carry \$1,000,000 in liability insurance and name the Town of Fort Myers Beach as additionally insured. Mechanical beach raking conducted by a property owner or a condominium on their own property only is exempt from their requirement to carry liability insurance.
- (4) Any business that conducts mechanical raking shall require all operators to attend an educational and training session developed by

the town at least once every year. The education and training session shall address topics such as dune vegetation, sea turtles, and beach-nesting birds. All operators of the beach business and the business owner shall sign a form acknowledging that they understand and will abide by the town's raking regulations.

- (5) Prior to the granting or denying of the application, the director or their designee will conduct an on-site inspection to determine if the proposed raking conforms to the requirements of this article and if any native vegetation exists to be protected.
- (6) Based upon the information contained in the application and the site inspection, the director shall approve or deny the application.
- (7) A single permit may be issued to a business that conducts raking on multiple properties. A site permit for any newly-contracted properties must be added to the permit of any business that rakes multiple properties.
- (8) A restricted beach vehicle permit will also be issued with the mechanical beach raking permit provided that the vehicle meets the maximum ground-to-tire pressure found in § 14-6(c).
- (9) The director shall attach site specific conditions to the permit relating to identifying, designating, and protecting that existing vegetation and other natural features which are not to be removed in accordance with this ordinance. These conditions are in addition to the following standard permit conditions for all mechanical beach raking permits:
  - a. During the sea turtle nesting season (May 1 through October 31), mechanical beach raking activities shall be confined to daylight hours and shall not begin before 9:00 A.M. or before completion of daily monitoring for turtle nesting activity by the Florida Fish and Wildlife Conservation Commission (FWC) authorized marine turtle permit holder, whichever occurs first (see requirements in § 14-78(b)). During the rest of the year (November 1 through April 30), mechanical beach raking may be conducted at night (sunset to sunrise) only with sufficient lighting on vehicles. The lighting levels must be approved by town staff by an inspection of the field at night. All fixtures should be shielded to focus light only onto the direct work area. Red

- lights or red filters shall be used to reduce disturbance to wildlife such as shorebirds.
- b. During sea turtle nesting season (May 1 through October 31), the permittee is responsible for ensuring that a daily sea turtle nest survey, protection, and monitoring program is conducted throughout the permitted beach raking area. Such surveys and associated conservation measures shall be completed after sunrise and prior to the commencement of any mechanical beach raking. The sea turtle survey, protection, and monitoring program shall be conducted only by individuals possessing appropriate expertise in the protocol being followed and a valid *F.A.C.* Rule 68-E Permit issued by the FWC. To identify those individuals available to conduct marine turtle nesting surveys within the permitted area, contact the FWC, Bureau of Imperiled Species Management, at (850) 922-4330.
  - c. All turtle nests will be marked with wooden stakes, flagging tape, and an FWC sea turtle nest sign. No mechanical raking equipment is allowed inside of the staked area. All equipment operators shall be briefed on the types of marking utilized and should be able to easily contact the individual responsible for the nest survey to verify any questionable areas.
  - d. Mechanical beach raking equipment shall meet the following standards:
    1. The vehicle and equipment cannot exceed a maximum ground-to-tire pressure of 10 PSI (pounds per square inch) using the following formula:
      - a-  $PSI = \frac{\text{vehicle weight in pounds (includes person and equipment)}}{\text{footprint in square inches}}$
      - b- EXAMPLE:  $404 \text{ lbs. (ATV weight)} + 200 \text{ (person + equipment)} \div 198 \text{ square inches (ATV with } 6'' \times 8.25'' \text{ footprint} \times 4 \text{ tires)} = 3.1 \text{ PSI}$
    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. Mechanical beach raking equipment must travel seaward of the mean high water line with the rake disengaged when driving on the beach from one raking area to another, and shall not disturb any dune or dune vegetation.
  - e. Burial or storage of any debris (biotic or abiotic) collected is prohibited seaward of any frontal dune, vegetation line, or armoring structure. Removal of all accumulated material from the beach must occur immediately after raking has been performed in an area. Prior to removing the debris and to the greatest extent possible, beach compatible sand should be separated from the debris and kept on site.
  - f. All permit fees collected for mechanical beach raking permits shall be used only for environmental education and restoration.
  - g. Any violation of any special or standard permit conditions by a business owner, operator, or property owner may result in revocation of the permit for a particular property and/or for the entire permitted area. Revocation of a permit shall not prevent the town from pursuing any one or combination of the enforcement mechanisms provided in this code (for example, § 1-5, or article V of chapter 2) for any violation of the article. Permit revocations may be appealed to the town manager. Periodic compliance inspections will be conducted to insure compliance with the permit conditions and this ordinance.

**Sec. 14-7. Vehicular traffic on the beach.**

It is unlawful and prohibited to operate any engine-powered vehicle, machine, or implement, including any electrical powered vehicle, machine, or implement, on the beach, dune, or on sea turtle nesting habitat as defined in § 14-72, except for the following:

- (1) **Research or patrol vehicles**, only for authorized permittees of the FWC, DEP officials, law or code enforcement officers, EMS and firefighters, scientific monitoring, and town-approved service vehicles.
- (2) **Mechanical beach raking**. Vehicles operating under permits issued pursuant to § 14-6(c).
- (3) **Beach furniture and equipment transport**. Vehicles operating under permits issued pursuant to § 14-5(e).
- (4) **Jet-ski transport and storage**. Jet-ski transport and storage, when in accordance with § 27-49(1) and (9) even for jet-skis that are not available for rental in accordance with ch. 27.
- (5) **Wheelchairs**. A wheelchair, or other conveyance with prior approval from the town, for a person with a disability, which is actually being used by the person with a disability). Handicap access to the beach is encouraged through use of wheelchairs equipped with special beach friendly tires that are available for rent or purchase.
- (6) **Maximum tire pressure**. Any vehicle authorized to drive on the beach cannot exceed a ground-to-tire pressure of 10 PSI as computed in accordance with § 14-4(c)(4)d.1, except for wheelchairs permitted in accordance with subsection (5) above.
- (7) **Sea turtle nesting season**. See § 14-78(b) for additional restrictions during the sea turtle nesting season.

**Sec. 14-8. Dune systems.**

Consistent with the town comprehensive plan objective 5-D for beaches and dunes, "Conserve and enhance the shoreline of Estero Island by increasing the amount of dunes, renourishing beaches to counter natural erosion, and reducing negative man-made impacts on beaches and dunes," the town adopts the following:

- (1) In areas where the beach has experienced erosion, on public land or with the consent of the owner, the town will establish a dune system consisting of sea oat plantings, a

minimum of 10 feet wide, to be planted adjacent to the existing upland vegetation line, and to be planted at existing elevations.

- (2) In areas that have not experienced erosion, the town will encourage the establishment of a dune system but will not require same.

**Sec. 14-9. Enforcement.**

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

(b) When imposing a sentence or penalty, the court, special magistrate, or any other appropriate body may, in mitigation, consider the successful replacement of dune vegetation illegally removed, and the restoration of the subject area when deemed by the court, the special magistrate or any other appropriate body that the action taken by the violator has eliminated or significantly decreased the ability of the dune system to recover or perform those functions for which it is being protected.

**Sec. 14-10. Restoration standards for dune  
vegetation alteration violations.**

- dimension of 4 feet by 6 feet, except for any awning, umbrella, or integral roof whose sole purpose is to provide shade.
  - c. This structure must be portable and never be left on the beach before or after regular business hours.
- (4) **Signs on the beach.** This structure may contain a maximum of three identification or promotional signs painted on or mounted flat against the structure, no one of which can exceed 8 square feet as measured in accordance with § 30-91.
- a. Any rate charts or state-mandated informational signs smaller than 2 square each shall not be counted as part of the signage limitation above.
  - b. No signs or other advertising for the business are permitted on the beach other than the signage permitted on a table, podium, booth, or storage box.
- (5) **Signs off the beach.** A business may also have one portable sandwich-board sign displayed at its land-based site during regular business hours if such signs are otherwise permitted by ch. 30 of this code at that site. However, any such sign:
- a. must be placed indoors after business hours;
  - b. must not be illuminated; and
  - c. must not be placed on the beach at any time.
- (6) **Removing nonconforming structures from the beach.** Any legal nonconforming tables, podiums, booths, storage boxes, signs, or other structures on the beach as of September 24, 2001, may remain for up to twelve additional months but immediately thereafter must be removed or modified to be in conformance with this section.

**Sec. 27-52. PWVL and PAL applications; regulatory fees.**

(a) Application for a PWVL or PAL license shall be made to the town manager on a form provided by the town.

(b) Information to be provided by the applicant shall include, at a minimum:

- (1) **Business location:**
  - a. The STRAP number and street address from which the personal watercraft or parasailing activity business will operate;

- b. If the applicant is not the owner of the property from which the business will be operated, the applicant shall submit a notarized letter of authorization from the owner of the property to the applicant.
- (2) **Ownership information:**
- a. Business owner's name, home address, local address, telephone number;
  - b. Manager's name, home address, local address, telephone number;
  - c. Mailing address at which notice of any town information pertinent to any personal watercraft rental or parasailing activity business shall be considered received and binding upon the applicant or PWVL or PAL holder, on the fifth day after first-class mail is posted to said address;
  - d. State sales tax number.
- (3) **Business equipment information:**
- a. The number of, and a description of, the vessels to be used by the business, including model, year, manufacturer, color, and Florida vessel registration number(s).
  - b. For PWVL applications only, a description of the chase vessel(s) to be kept at the place of business as well as the Florida vessel registration number(s).
- (4) **Proof of insurance:** Proof of required insurance.
- (5) **Fire report:**
- a. For PWVL applications: Prior to annual license renewal, the fire marshal will submit evidence of a fire safety inspection to the town.
  - b. For PAL applications: Proof of compliance with fire regulations.
- (6) **CPR certification:** For PWVL applications only, proof of CPR certification of sufficient persons so that there will be one in attendance at all times of operation.
- (7) **Annual fee:** Pays an annual fee of:
- a. \$60 for town administrative processing costs; and
  - b. \$30 for the right to offer for business, as herein provided, the rental of personal watercraft or the right to operate a parasailing activity business; and
  - c. \$80 for town enforcement costs.

(c) **Misrepresentation.** Applicants who misrepresent information provided under this section shall not be issued a PWVL or PAL, or if issued, may suffer suspension or revocation of the PWVL or PAL.

(d) **Cap on number of licenses.** PWVLs and PALs and license renewals shall be issued on an annual basis coinciding with the town's fiscal year, October 1 through September 30.

- (1) There shall be no more than ten (10) PWVL licenses outstanding at any point in time.
- (2) There shall be no more than seven (7) PAL licenses outstanding at any point in time.
- (3) See § 27-55 for regulations on transfers of existing PWVLs and PALs.

**Sec. 27-53. PWVL and PAL renewals.**

(a) Except as provided in this chapter, upon application the town manager may renew the PWVL or PAL of any applicant who:

- (1) Held a valid PWVL or PAL and operated the personal watercraft rental or parasailing activity business during the previous year. The following evidence of such operation shall be accepted if provided separately for the specific business location and the specific license (PWVL or PAL) for which the renewal is requested:
  - a. Copy of a valid *Application to Collect and/or Report Tax in Florida* (DR-1) for the previous year, and
  - b. Evidence that tax payments have been made at least quarterly during the previous year in accordance with that specific application; and
- (2) Has provided the town with new or updated information, documents, and fees listed in this chapter and continues to meet the other regulations set forth in this code; and
- (3) Pays a late processing fee of \$25 for any renewal application filed after October 1.

(b) Upon application, the town manager may renew any PWVL or PAL suspended under this chapter, but any remaining term of suspension shall be applied to the renewed license, and during said term the PWVL or PAL confers no rights to offer the rental of any personal watercraft or to operate any parasailing activity.

(c) Any PWVL or PAL not renewed by October

15th shall be void and of no further use or effect whatsoever. No business deemed to be a nonconforming use in accordance with the provisions of this chapter or other provisions of this code, which fails to renew its license in a timely manner, shall again be issued a license except in conformity with the regulations then in effect.

**Sec. 27-54. Display of PWVL and PAL licenses.**

Any business offering the rental of personal watercraft or parasailing activities shall display the PWVL or PAL in plain sight at the location from which the rental of personal watercraft is offered or at the parasail activities operation's office.

**Sec. 27-55. Transferability of PWVL and PAL licenses.**

(a) **Transferability.** Provided that this chapter has been complied with, the PWVL or PAL is transferable to a new owner and/or to a different location if:

- (1) The location the business will be transferred to complies with the minimum separation requirements of this chapter; and
- (2) The new business owner files an amended application with the town providing the information required in this chapter; and
- (3) Transfer of a PAL to a new conforming location is only allowed when there are seven (7) or fewer licenses outstanding.
- (4) Transfer of a PWVL to a new conforming location is only allowed when there are ten (10) or fewer licenses

(b) **Nonconforming PWVLs.** Personal watercraft vendors who established or commenced business at a location on or before December 2, 1996, that does not comply with the location requirements set forth in this chapter may continue to operate as a nonconforming use after December 2, 1996, unless terminated for failure to obtain a PWVL or renewal as required by this chapter, voluntary discontinuation of business for a period of thirty (30) days or more, or revocation of the PWVL.

(c) **Nonconforming PALs.** Parasail operators who established or commenced business at a location on or before January 21, 1997, that does not comply with the location requirements set forth in this chapter, may continue to operate as a nonconforming use after January 21, 1997, unless

terminated for failure to obtain a PAL or renewal as required by this chapter, voluntary discontinuation of business for a period of thirty (30) days or more, or revocation of the PAL.

**Sec. 27-56. Insurance.**

(a) No person shall operate a personal watercraft or parasailing activity business unless covered by a comprehensive general liability insurance policy insuring the public against bodily injury or property damage resulting from or incidental to the operation, use, or rental of personal watercraft or parasailing activity. At a minimum, the policy shall provide coverage of not less than \$500,000 per occurrence and \$1,000,000 per aggregate. The policy shall list the Town of Fort Myers Beach as an additional insured, and shall provide that coverage not be canceled or materially altered except after 30 days' written notice has been received by the town, and be written through insurers licensed and authorized to do business in the State of Florida. The town shall also require a copy of the declaration page of the operator's insurance policy with a listing of all insured watercraft by serial number.

(b) Evidence of said coverage is subject to acceptance and approval by the town manager prior to issuance of PWVL or PAL.

(c) Coverage shall remain in full force during the entire time that the PWVL or PAL is valid and outstanding. Failure to provide such proof shall render the PWVL or PAL null and void, and of no further use and effect. The holder's subsequent application for a new PWVL or PAL shall be subject to the regulations for a new business and shall lose the nonconforming status afforded under this chapter.

**Sec. 27-57. Penalty.**

Violation of the provisions of this chapter, or failure to comply with any of the requirements, shall constitute a civil infraction. Any person who violates this chapter or fails to comply with any provision shall upon conviction thereof be fined \$150 for the first violation; \$300 for the second and third violation; and the town shall consider license revocation for more than three violations of this chapter, and in addition the violator shall pay all costs and expenses involved in the case.

**Sec. 27-58. Standardized rules.**

**RULES**

1. Operators must go slow speed until past all idle speed buoys. Operator must travel perpendicular to shore when entering or leaving the marked idle speed zone.
2. Operators must remain 200 feet from any watercraft and 500 feet from swimmers, waders or people floating in the water. Operator must yield right of way to all other vessels.
3. All renters must be at least 18 years of age.
4. Operator may not be under the influence of drugs or alcohol.
5. Operator must stay in the boundaries set by the rental vendor and in sight of rental location at all times.
6. No operator shall operate watercraft in a hazardous manner.
7. Operators must listen to and obey all verbal and written rules. If any rules are broken, operator's ride will be terminated. No refunds!

**REGLAS**

1. El operador tiene que ir a una velocidad despacica hasta que a pasado todas las marcas de velocidad. El operator tiene que viajar perpendicular a la costa cuando entrando o saliendo la zona marcada para una velocidad ociosa.
2. El operator tiene que quedarse 200 pies de cualquier bote y 500 pies de los nadadores o personas flotando en la agua. Operadores tienen que ceder a todas los buques.
3. Todos operadores tienen que ser a lo menos 18 años de edad.
4. Operadores no queden estar en la influencia de drogas o alcohol.
5. Operadores tienen que quedarce siempre en el limite hecho por las personal de alquiler y en la vista del lugar de alquiler.
6. Operadores no deben conducir el equipo en una manera dañoso o peligroso.
7. Operadores tienen que poner atención a todas las regulaciones oral y escritas. Si alguna regulacion no es seguida el alquiler va a ser terminado. El dinero no va hacer devuelto!

**Vorschriften zur Mietung  
eines Wasserfahrzeuges**

- #1. Der Bediener muss mit langsamer Geschwindigkeit fahren, bis er alle weissen Bojen passiert hat. Beim ReinKommen oder VerLassen der markierten Geschwindigkeitszone muss er sich senkrecht zum strand bewegen.
- #2. Der Bediener muss 60 m von Wasserfahrzeugen und 152 m von Schwimmern, Watvögeln und anderen Leuten, die sich im Wasser befinden, Abstand halten. Er muss allen Booten, die von rechts Kommen, Vorfahrt gewahren.
- #3. Der Bediener muss mindestens 18 Jahre alt sein.
- #4. Der Bediener darf nicht unter Einfluss von Drogen oder Alkohol stehen.
- #5. Der Bediener muss sich innerhalb der Grenze, die vom Vermieter gesetzt wird, und in der Sicht des Vermietungs standes bleiben.
- #6. Der Bediener soll das Fahrzeug nicht ordnungswidrig fahren.
- #7. Der Bediener sollte alle mundlichen und schriftlichen regeln befolgen. Falls irgendeine Regel missbraucht wird, wird die Fahrt sofort beendet. Es erfolgt keine Kostenerstattung.

sont pas suivies, le conducteur sera disqualifie(e), sans etre rembourse(e)!

**CHAPTERS 28<sup>3</sup> AND 29  
RESERVED**

**REGLES SANDART**

***Regle #1 • Vitesse***

Chaque conducteur doit garder une vitesse ralentie jusqu'au niveau des bouees. La rentree ou la sortie du jet ski doit etre perpendiculaire a la plage et toujours effectuee au ralenti.

***Regle #2 • Distance***

Le conducteur doit se tenir a 60 metres des autres vehicules, a 152 metres des nageurs et des matelats pneumatiques, ou bien des gens qui flottent. Le jet ski doit laisser la prioritee a droite.

***Regle #3 • Age***

Tout les conducteurs doivent avoir 18 ans ou plus, sans exception!

***Regle #4 • Drogue & Alcohol***

Tout les conducteurs doivent etre sobres!

***Regle #5 • Delimitation***

Chaque conducteur doit rester a tout temps dans les limites du territoire imposees par la maison de location.

***Regle #6 • Courtoisie***

L'operateur doit toujours conduire avec prudence.

***Regle #7 • Regle d'Or***

L'operateur doit preter attention et obeir a tout conseil et reglementation ecrite. Si les regles ne

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<sup>3</sup> Chapter 28, originally adopted by the Fort Myers Beach Parasailing Ordinance, Ordinance 97-02, and later amended by Ordinance 99-04, has been incorporated into Chapter 27 of this code.

# FORT MYERS BEACH LAND DEVELOPMENT CODE

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## 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. Applicability of chapter.*  
*Sec. 30-5. Prohibited signs.*  
*Sec. 30-6. Exempt signs.*  
*Secs. 30-7–30-50. Reserved.*  
*Sec. 30-51. Violation of chapter; penalty.*  
*Sec. 30-52. Reserved.*  
*Sec. 30-53. Powers and duties of town manager.*  
*Sec. 30-54. Variances.*  
*Sec. 30-55. Permits; inspections.*  
*Sec. 30-56. Non-conforming signs.*  
*Sec. 30-57. Designation of historically significant signs.*  
*Secs. 30-58–30-90. Reserved.*  
*Sec. 30-91. Computation of sign area.*  
*Sec. 30-92. Measurement of sign height.*  
*Sec. 30-93. Location.*  
*Sec. 30-94. Construction standards.*  
*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. Development identification signs.*  
*Sec. 30-153. Maximum sign area.*  
*Sec. 30-154. Standards for monument signs, projecting signs, and wall signs in commercial zoning districts.*  
*Sec. 30-155. Severability*
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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 is to encourage signs which are integrated with and harmonious to the buildings and sites which they occupy, to eliminate excessive and confusing sign displays, to preserve and improve the appearance of the town as a place in which to live and work and as an attraction to nonresidents who come to visit or trade, and to restrict signs which increase the probability of accidents by distracting attention or obstructing vision.

(c) This chapter provides minimum standards to safeguard life, safety, property, and public welfare by regulating size, construction, location, electrification, operation, and maintenance of all signs and sign structures exposed to public view within the town. These standards are content-neutral and regulate based on the form, and not the content, of signs. The visual appearance and traffic safety of the town cannot be achieved by measures less restrictive than the procedures and standards of this chapter.

(d) It is the intent of the Town Council that protection of First Amendment rights shall be afforded by these sign regulations. Accordingly, any sign, display or device permitted under these regulations may contain, in lieu of any other copy, any otherwise lawful non-commercial message that complies with all other requirements of this code. The noncommercial message may occupy the entire sign area or any portion thereof, and may substitute for or be combined with the commercial message. The sign message may be changed from commercial to noncommercial, or from one noncommercial message to another, as frequently as desired by the sign's owner, provided that the sign is not prohibited and the sign continues to comply with all requirements of this code.

### **Sec. 30-2. Definitions and rules of construction.**

(a) In case of any difference of meaning or implication between the text of this chapter and any other law or regulation, this chapter shall control.

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

**Alteration.** Any change in copy, color, size, or shape, which changes appearance of a sign, or a change in position, location, construction, or supporting structure of a sign, except that a copy change on a sign specifically designed for the use of replaceable copy, e.g., a reader board with changeable letters, is not an alteration.

**Animated sign.** Any sign, including electronic, laser, video, or digital displays, that uses movement or change of lighting to depict action or create a special effect or scene. Electronic message boards, electronic changing message centers, and any signs with flashing lights are considered to be animated signs.

**Awning sign.** Any sign consisting of letters which are painted or installed on a lawful awning, but not including a back-lit awning.

**Back-lit awning.** An awning with a translucent covering material and a source of illumination contained within its framework.

**Balloon sign.** One or more balloons, with or without messages or illustrations, that are used as a temporary or permanent sign or as a means of directing attention to a business or organization or to a commodity, service, or entertainment.

**Banner.** A temporary sign of flexible plastic, cloth, or any other fabric, either enclosed or not enclosed in a rigid frame, that is secured or mounted to allow movement caused by the atmosphere, including “streamers” and “pennants” but not including flags.

**Bench sign.** A sign that is painted on or attached to any part of a bench, seat, or chair placed one or adjacent to a public street, public plaza, or beach access.

**Building numbers.** The building number assigned by Lee County as the official premises address, painted or affixed to a building, mailbox, or similar structure.

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

**Business information sign.** Any sign containing the name or address of a building and may include hours of operation, information to customers such as business hours and telephone number, “open” and “closed,” “shirts and shoes required,” “no soliciting,” “no loitering,” emergency information, professional and trade association information, and credit card information.

**Canopy.** A permanent roof-like shelter open on four sides, to protect an area from the elements, such as over gasoline pumps.

**Canopy sign.** Any permanent sign attached to or constructed in, on, or below a canopy.

**Commercial message.** Any sign, wording, logo, or other representation that, directly or indirectly, names, advertises, or calls attention to a business, product, service, or other commercial activity. For purposes of this chapter, terms such as sale, special, clearance, or other words which relate to commercial activity shall be deemed to be commercial messages. The identification by name of an apartment or condominium development on a residential sign at the apartment or condominium development site shall not be considered to be a commercial message.

**Construction sign.** A temporary sign identifying a construction project and the persons, firms, or businesses participating in the construction project.

**Development identification sign.** A permanent sign, which is either a freestanding sign or a sign located on a subdivision entry feature or perimeter wall, at a main entrance to a subdivision or development, identifying the name of the development or subdivision.

**Directional sign.** Any sign which serves solely to designate the location of or direction to any place, activity, facility, or area and contains no commercial message.

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

**Election sign.** A sign temporarily installed in the ground or attached to a building relating to the election of a person to a public office or relating to a matter to be voted upon at a federal, state, or local election.

**Emitting sign.** A sign designed to emit visible smoke, vapor, particles, or odor, or a sign which produces noise or sounds capable of being heard, even though the sounds produced may not be understandable.

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

**Flag.** Any fabric or bunting used as a symbol (as of a nation, government, political subdivision or other entity) or as a signaling device.

**Freestanding sign.** Any sign supported by structures or supports that are placed on, or anchored in, the ground and that are independent from any building, wall, fence, vehicle, or object other than the sign structure for support.

**Frontage.** The distance measured along a public street right-of-way or a private street easement between the points of intersection of the side lot lines with the right-of-way of the easement line.

**Government sign.** Any sign erected and maintained pursuant to and in discharge of any governmental function, or required by law, ordinance or other governmental regulation.

**Illuminated sign.** Any electrically operated sign or any sign for which an artificial source is used in order to make readable the sign's message, including internally and externally lighted signs and reflectorized, glowing, or radiating signs.

**Incidental sign.** A sign, generally informational, that has a purpose that is secondary to the use of the site on which it is located, such as "No Parking," "Entrance," "Exit," "Telephone," "Open," "Beware of Dog," "No Trespassing," "Welcome," and other similar directives. The term incidental sign shall not include a sign designed to be transported by means of wheels, a sandwich-board sign, or a skid-mounted sign, regardless of the nature of the information that such sign may contain.

**Inflatable object.** An object of any shape that is expanded or capable of expansion by means of air or gas, such as a balloon, wind sock, or air tube, and which is used as a means of attracting attention to a site, product, or event.

**Licensed contractor.** A person holding a valid contractor's license issued by the Lee County construction board.

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

**Menu display box.** A small plaque or display case, not exceeding four (4) square feet in area and four (4) inches in depth, located on an exterior building wall, that displays a restaurant's menu near its entrance for the convenience of potential patrons who arrive on foot.

**Monument sign.** A free-standing sign with internal structural supports, where the height from the ground to the highest point on the sign is less than the sign's greatest horizontal dimension.

**Motion picture sign.** A sign capable of displaying moving pictures or images in conjunction with an outdoor advertising structure, accessory sign, or advertising statuary visible from any public street or sidewalk.

**Nameplate sign.** A non-illuminated identification sign indicating only the name, address, and/or occupation of an occupant or group of occupants of a building.

**Non-commercial sign.** A sign which contains no commercial message.

**Open house sign.** A sign identifying property for sale, rent, or lease and temporarily open for inspection.

**Off-premises sign.** Any sign normally used for promoting a business, individual, products, or service available somewhere other than the premises where the sign is located. A sign containing a non-commercial message shall not be considered to be an off-premises sign.

**Parasite sign.** Any sign not exempted by this chapter, for which no permit has been issued, and which is hung from, attached to, or added onto an existing sign.

**Permit board.** A freestanding device erected on a construction site for the sole purpose of providing a conspicuous display of and shelter for the permits required for construction activities being performed on such construction site. A permit board may display a contractor name or logo so long as such display does not exceed one (1) square foot.

**Pole sign.** A free-standing sign supported by an exposed structure of poles or other supports where the height of the exposed sign supports extends more than eighteen (18) inches from the ground to the bottom of the sign. A free-standing sign that meets this chapter's requirements for a monument sign is not considered to be a pole sign.

**Portable sign.** Any movable sign not permanently attached to the ground or a building.

**Projecting sign.** A sign which is attached to a building and projects more than eighteen (18) inches above, below, or outward from, and is supported by, a wall, parapet, or ceiling of a building.

**Public body.** Any government or governmental agency of the United States, the state, the county, or the Town of Fort Myers Beach.

**Real estate sign.** A temporary sign which advertises the sale, exchange, lease, rental, or availability of the parcel, improved or unimproved, upon which it is located.

**Residential sign.** Any sign, not otherwise defined or regulated in this chapter as an allowed sign in a residential zoning district, that is located in a district zoned for residential uses and does not contain any commercial message.

**Roof sign.** Any sign erected upon a roof or roof-mounted equipment. Signs placed flat against the steep slope of a mansard roof will not be considered roof signs.

**Sandwich-board sign.** An easily moveable sign not attached to the ground that is supported by its own frame which generally forms the cross-sectional shape of an A. For purposes of this

code, sandwich-board signs are not considered portable signs.

**Sign.** Any name, figure, character, outline, display, announcement, or device, or structure supporting the same, or any other device of similar nature designed to attract attention or convey a message outdoors, and shall include all parts, portions, units, and materials composing the same, together with the frame, background, and supports or anchoring thereof.

**Sign face.** An exterior display surface of a sign including non-structural trim exclusive of the supporting structure.

**Snipe sign.** A sign of any material, including paper, cardboard, wood, and metal, when tacked, nailed, or attached in any way to trees, telephone poles, or other objects located or situated on a public road right-of-way, or any sign which is installed on property without the permission of the property owner.

**Special event sign.** A temporary sign announcing a social function, promotional, or fund raising event, sponsored by a private, not-for-profit, or governmental entity which is open to the public, and which is distinct from the usual and customary business day functions of the organization.

**Temporary sign.** A sign displayed for a fixed, terminable length of time. Temporary signs are intended to be removed after the temporary purpose has been served. Included are for sale, lease or rent signs, political signs, service signs, special event signs, construction signs, directional signs to special or temporary events, and signs of a similar nature.

**Vehicle sign.** Any sign permanently or temporarily attached to or placed on a vehicle, including a motor vehicle, boat, trailer, or bicycle or human powered vehicle, where the vehicle is parked so as to be visible from the public right-of-way or parked on public property so as to clearly provide a commercial message close to the public right-of-way, unless said vehicle is used by a proprietor or employee of the business for the purpose of commuting between the business location and home or is used in the usual course or operation of a business. Factors to be considered in determining whether a vehicle is used in the usual course or operation of a business shall include, but

not be limited to, whether the vehicle is inoperable, whether the vehicle has a current registration in the State of Florida, the role the vehicle plays in the business, the frequency with which the vehicle is used in the operation of the business, and whether the size of the sign makes it impractical or dangerous to operate the vehicle. Any sign bearing a commercial message that is attached to or painted on a vehicle that is routinely parked or otherwise located on a site or sites other than the site where the business is located, or a sign whose size makes it impractical or dangerous to operate the vehicle, shall be presumed to be a prohibited vehicle sign.

**Wall sign.** Any sign attached to or painted on the wall of a building or structure and extending no more than eighteen (18) inches outward from the wall in a plane approximately parallel to the plane of said wall.

**Window sign.** Any sign viewable through and/or affixed in any manner to a window or exterior glass door such that it is viewable from the exterior, including signs located inside a building but visible primarily from the outside of the building.

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

**Sec. 30-3. Reserved.**

**Sec. 30-4. Applicability of chapter.**

(a) **Generally.** Except as otherwise provided in this chapter, it shall be unlawful for any person to erect, construct, enlarge, move, or convert any sign in the Town of Fort Myers Beach, or cause such work to be done, without first obtaining a sign permit for each such sign as required by this chapter.

(b) **Exceptions.**

- (1) This chapter shall not apply to any sign erected by the federal, state, county, or Town of Fort Myers Beach government or to the placement of temporary signs not exceeding eight (8) square feet in area within a right-of-way for purposes of business identification or access location, when necessitated by road construction and when authorized by the county or town.
- (2) The following activities shall not be considered the creation of a sign:

- a. **Change of copy.** Changing the copy on existing signs.
- b. **Maintenance.** Painting, repainting, cleaning, or other normal maintenance and repair of a sign not involving change of copy, structural, or electrical changes.
- c. **Window displays.** Changes in the content of show window displays, provided all such displays are within the building.

**Sec. 30-5. Prohibited signs.**

The following signs are prohibited:

- (1) **Any signs which are not designed, located, constructed, or maintained in accordance with the provisions of this chapter,** or which do not meet the requirements of all applicable Town of Fort Myers Beach, state, and federal codes.
- (2) **Signs that resemble any traffic control device,** official traffic control signs or emergency vehicle markings.
- (3) **Signs located at the intersection of any street right-of-way** in such a manner as to obstruct free and clear vision, or at any location where, by reason of the position, shape, or color, the sign may interfere with or obstruct the view of any authorized traffic sign, signal, or device; or which make use of the word “stop,” “look,” “drive-in,” “danger,” or any other word, phrase, symbol, or character in such a manner as to interfere with, mislead, or confuse vehicular traffic.
- (4) **Animated signs** except those displaying only cycling time or temperature.
- (5) **Back-lit awnings.** However, any business with an existing back-lit awning as of December 31, 2004, may continue to use that awning and may place or replace signage on that awning provided it otherwise conforms to this code. This right shall end if the business is discontinued or moved to a different location, or if the building is rebuilt or substantially improved.
- (6) **Balloons or balloon signs.**
- (7) **Banners, pennants, or other flying paraphernalia,** except as permitted in § 30-141 (temporary signs).
- (8) **Bench signs.**
- (9) **Canopy signs.**
- (10) **Emitting signs.**

- (11) **Inflatable objects.**
- (12) **Motion picture signs.**
- (13) **Obscene signs.**
- (14) **Off-premises signs.**
- (15) **Parasite signs.**
- (16) **Pole signs.**
- (17) **Portable signs.**
- (18) **Roof signs.**
- (19) **Sandwich-board signs.** Except as permitted by §§ 27-51(c)(4) and (5) for PWVL and PAL businesses.
- (20) **Signs with any lighting or control mechanism** which causes radio, television, or other communication interference.
- (21) **Signs erected, constructed, or maintained so as to obstruct or be attached to any fire-fighting equipment** or any window, door, or opening used as a means of ingress or egress or for fire-fighting purposes, or placed so as to interfere with any opening required for proper light and ventilation.
- (22) **Signs which are placed on any curb, sidewalk, post, pole, hydrant, bridge, tree, or other surface** located on public property or over or across any street or public street except as may otherwise expressly be authorized by this chapter.
- (23) **Snipe signs.**
- (24) **Vehicle signs.**
- (25) **Window signs** which cover more than thirty (30) percent of the window glass surface area.

**Sec. 30-6. Exempt signs.**

The following signs are exempt from the permitting requirements of this chapter:

- (1) **Awning signs.** Awning signs consisting of one line of letters or building or address numbers on the hanging border, or an identification emblem, insignia, initial, or other feature not exceeding an area of eight (8) square feet painted or installed elsewhere on an awning.
- (2) **Building numbers.** Posted building numbers must be between three (3) and eight (8) inches high for detached dwellings and for individual businesses, institutional, and multifamily buildings. Numbers on buildings that are set back more than fifty (50) feet from the street must be between eight (8) and eighteen (18) inches high. If the building number is prominently displayed on an

- identification sign for a multiple occupancy complex, the number need not be repeated for individual businesses within that complex.
- (3) **Business information signs.** Business information signs provided that such signs are posted on the entrance doors or within a window.
- (4) **Flags** that contain no commercial message.
- (5) **Garage sale signs.** Garage sale signs, provided they are erected not more than 24 hours prior to the sale and are removed within 72 hours of the time they were erected.
- (6) **Government and public safety signs.** Governmental signs for control of traffic and other regulatory purposes, street signs, danger signs, signs of public service companies indicating danger, “no parking” signs, and aids to service or safety which are erected by or on the order of a public official in the performance of his public duty.
- (7) **Incidental signs** not exceeding two (2) square feet in area per sign and limited to two (2) signs per parcel or lot. Additional incidental signs shall require a permit for each such additional sign.
- (8) **Instructional signs** or symbols located on and pertaining to a parcel of private property, not to exceed four (4) square feet in area per sign.
- (9) **Interior signs.** Signs located within the interior of any building, or within the inner or outer lobby, court, or entrance of any theater. This does not, however, exempt such signs from the structural, electrical, or material specifications as set out in this code and the Florida Building Code.
- (10) **Legal notices.** Legal notices and official instruments.
- (11) **Memorial signs or tablets.** Memorial signs or tablets, names of buildings, and date of erection when cut into any masonry surface or when constructed of bronze or other incombustible materials.
- (12) **Nameplates.** Any sign not exceeding one and one-half (1½) square feet in area per sign and not exceeding two (2) in number per lot. Such signs shall not be illuminated, and they shall not project over any public right-of-way.
- (13) **Posted property signs.** Posted property signs, not to exceed one and one-half (1½) square feet in area per sign and not

- exceeding two (2) in number per lot. Such signs shall not be illuminated, and they shall not project over any public right-of-way.
- (14) **Public information signs.** Any sign used for public information or direction erected either by or at the direction of a public body.
  - (15) **Real estate, open house, and model signs.** Real estate, open house, and model signs.
  - (16) **Sandwich-board signs,** but only as permitted by §§ 27-51 (c)(4) and (5) for PWVL and PAL businesses.
  - (17) **Signs incorporated on machinery or equipment.** Signs incorporated on machinery or equipment at the manufacturer's or distributor's level, which identify or advertise only the product or service dispensed by the machine or equipment, such as signs customarily affixed to vending machines, newspaper racks, telephone booths, and gasoline pumps.
  - (18) **Special event signs.**
  - (19) **Symbols or insignia of religious orders,** historical agencies, or identification emblems of religious orders or historical agencies, provided that no such symbol, plaque or identification emblem shall exceed sixteen (16) square feet in area.
  - (20) **Temporary signs.** Temporary election signs, special event signs, and real estate signs as provided in § 30-141.
  - (21) **Tow Away Zone signs** erected pursuant to and in compliance with Section 715.07, Florida Statutes.
  - (22) **Warning signs.** Signs warning the public of the existence of danger, to be removed upon subsidence of danger.
  - (23) **Waterway signs.** Directional signs along inland waterways.
  - (24) **Window signs.** Interior window signs which identify or advertise activities, services, goods, or products available within the building.
  - (25) In single-family residential zoning districts, no more than one (1) residential sign, in addition to any directional signs, flags, incidental signs, and temporary signs that may be otherwise allowed, shall be erected or located on the site and shall not exceed four (4) square feet in sign area and, if freestanding, five (5) feet in height.

- (26) In multifamily zoning districts, one (1) residential sign per street frontage of the site, in addition to any directional signs, flags, incidental signs and temporary signs that are otherwise allowed, shall be located on the site, provided, however, that in no event shall the total number of such signs exceed two (2) per site. The maximum sign area for each residential sign shall be sixteen (16) square feet and, if freestanding, the maximum height shall not exceed eight (8) feet.

**Secs. 30-7–30-50. Reserved.**

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

The town manager or designee is authorized to pursue any one or combination of the enforcement mechanisms provided in this code or by law for any violation of this chapter. Penalties may be assessed against any owner, agent, lessee, tenant, contractor, or any other person using the land, building, or premises where such violation has been committed or shall exist; any person who knowingly commits, takes part in or assists in such violation; and any person who maintains any sign or sign structure in violation of this chapter or in dangerous or defective condition.

**Sec. 30-52. Reserved.**

**Sec. 30-53. Powers and duties of town manager.**

(a) **Generally.** The town manager is hereby authorized and directed to administer and enforce the regulations and procedures and to delegate the duties and powers granted to and imposed upon him under this chapter.

(b) **Specific powers and duties.**

(1) **Issuance or denial of permits and certificates.**

- a. It shall be the duty of the town manager or designee, upon receipt of a completed application for a sign permit, to examine such plans and specifications and other data and, if the proposed structure is in compliance with the requirements of this section and all other applicable provisions of this chapter, to issue to the applicant a written permit evidencing the applicant's compliance therewith.

Permits shall be issued within fifteen (15) days of receipt of a complete application. Issuance of the permit shall in no way prevent the town manager or designee from later declaring the sign to be illegal if, upon further review of the information submitted with the application or of newly acquired information, the sign is found not to comply with the requirements of this chapter.

- b. No sign permit or certificate of compliance shall be issued except in compliance with this chapter and any other applicable ordinances and laws or court decisions.
- (2) **Lapse.** A sign permit shall lapse automatically if the business license for the premises lapses, is revoked, or is not renewed. A sign permit shall also lapse if the business activity on the premises is discontinued for a period of thirty (30) days and is not renewed within thirty (30) days from the date written notice is sent from the town to the last permittee that the sign permit will lapse if such activity is not resumed. A sign permit shall also lapse if the sign for which it is issued either is not erected and/or placed within one hundred eighty (180) days following the issuance of the sign permit or is removed for a period of sixty (60) days. Once a sign permit has lapsed, it shall be considered void and a new application and review process shall be necessary in order to have the sign permit re-issued.

**Sec. 30-54. Variances.**

Requests for variances or deviations from the terms of this chapter shall be administered and decided in conformance with the requirements for variances and deviations which are set forth in ch. 34.

**Sec. 30-55. Permits; inspections.**

- (a) **Sign permit required; modifications.**
- (1) Except as otherwise provided for in this chapter, no sign shall be located, placed, erected, constructed, altered, replaced, enlarged, moved, or converted in the Town of Fort Myers Beach, without first obtaining a sign permit.

- (2) In the event a sign is located, installed, or maintained upon real property in the Town of Fort Myers Beach without any required permits, after the expiration or lapse of a sign permit, or otherwise in violation of the requirements of this Chapter, the owner of the real property where the sign is located shall be responsible for the prompt removal of such sign and shall be responsible for and subject to all fines or penalties resulting from such violation.

(b) **Application for sign permit.** In order to obtain a permit to erect, alter, or relocate any sign under the provisions of this chapter, an applicant therefore shall submit to the town a sign permit application, which shall include:

- (1) A completed application form that includes the following:
  - a. The name, address, and telephone number of the applicant.
  - b. The name, address, and telephone number of the person constructing the sign, as well as the name, address, and telephone number of the owner of the sign.
  - c. Information as to the type of sign to be erected, e.g., monument, projecting, or wall-sign; illuminated or non-illuminated; temporary or permanent.
  - d. The approximate value of the sign to be installed, including the installation cost, and information concerning the design of the sign and the copy that will appear on the sign.
- (2) A *site location plan* that includes the following:
  - a. Location by street address and legal description (tract, block, and lot) of the building, structure, or lot where the sign is to be erected or installed.
  - b. A fully dimensioned plot plan, to scale, indicating the location of the sign relative to property lines, rights-of-way, streets, easements, sidewalks, and other buildings or structures on the premises, as well as the location, size, and type of any other existing signs whose construction requires a sign permit.
  - c. A sea turtle lighting plan for all lighted signs that are visible from the beach, including signs that are within buildings.

- d. A landscape plan for sign installations that will include landscaping.
- (3) *Application fee.* Applications for a permit to erect, construct, alter, or extend a sign or sign structure shall be accompanied by a fee in the amount established by the Town Council.
- (4) *A drawing to scale* showing the design of the sign, including dimensions, sign size, method of attachment, and source of illumination, and showing the relationship to any building or structure to which it is or is proposed to be installed or affixed.
- (5) Plans indicating the scope and structural detail of the work to be done, including details of all connections, supports, footings, and materials to be used.
- (6) Where determined to be necessary, a copy of stress sheets and calculations indicating that the sign is properly designed for dead load and wind pressure in any direction.
- (7) Where determined to be necessary, a listing of all materials to be utilized in the construction of the sign, or, in the alternative, a statement that all materials are in compliance with the Florida Building Code.
- (8) If applicable, an application, and required information for such application, for an electric permit for all signs that include electric components. Electrical components must be UL-approved and installed in conformance with the listing.
- (9) All signs, except exempt signs and certain temporary signs, are required to be installed or erected only by a licensed sign contractor or licensed electrical sign contractor. All persons engaged in the business of installing or maintaining signs involving, in whole or part, the erection, alteration, relocation, or maintenance of a sign or other sign work in or over or immediately adjacent to a public right-of-way or public property is used or encroached upon by the sign installer shall agree to hold harmless and indemnify the Town of Fort Myers Beach and its officers, agents, and employees from any and all claims of negligence resulting from the erection, alteration, relocation, or maintenance of a sign or other sign work.
- (10) *Expiration of sign permit.* A sign permit shall expire and become null and void six months from the date of issuance, except that it may be extended for good cause by the town manager or designee.

- (11) *Inspections.* All signs for which a permit is required by this chapter must be inspected by the town to ensure compliance with this chapter and all other applicable regulations. Failure to obtain a final satisfactory inspection within the permit period or any renewal shall render the permit invalid, and the applicant shall be required to reapply for a permit or remove the sign or sign or structure.
- (12) *Identification number.* All signs that were issued a permit after September 13, 1999, must have the sign permit number affixed to the upper right corner of the sign. The town will maintain digital photographs of all signs in the town in town hall.

**Sec. 30-56. Non-conforming signs.**

(a) *Non-conforming sign compliance.* All signs that do not conform to the requirements of this chapter shall be considered to be non-conforming signs. All non-conforming signs shall be either removed or brought into conformity with this chapter no later than December 31, 2011. The owner of the real property on which such non-conforming signs exist shall be responsible for ensuring that such signs are removed or brought into conformity.

(b) *Non-conforming sign permits.* Sign permits will not be issued for the alteration, replacement, or repair of any non-conforming signs.

(c) *Exception.* Signs that have been designated as historically significant pursuant to § 30-57 below, shall not be considered to be non-conforming signs. Such signs shall be governed by the provisions of § 30-57.

**Sec. 30-57. Designation of historically significant signs.**

Any existing sign may be nominated for designation as historically significant as provided herein.

(a) Nomination of a sign for designation as historically significant shall be made on an application provided by the director. The application should document the historical background of the sign.

(b) The historic preservation board will hold a public hearing on the nomination and will use the historic preservation element of the town’s comprehensive plan as a guideline to consider the nomination. The following criteria will be considered where applicable:

- (1) Whether the sign is associated with historic person(s), event(s), or location(s);
- (2) Whether the sign provides significant evidence of the history of the product, business, or service represented;
- (3) Whether the sign is characteristic of a specific historic period;
- (4) Whether the sign is an outstanding example of the art of sign-making, through its craftsmanship, use of materials, and/or design; and
- (5) Whether the sign is a local landmark that is popularly recognized as a focal point in the community.

(c) The historic preservation board will, after hearing public comment, vote to recommend that the Town Council either approve or deny historically significant status to the nominated sign.

(d) Following the historic preservation board public hearing, the Town Council will hold a public hearing to consider the nomination. In order to approve the designation of a sign as historically significant, the Town Council must find that the sign meets one or more of the criteria in § 30-57(b) and is consistent with the town comprehensive plan’s historic preservation element.

(e) A sign that has been designated historically significant may remain as a legal non-conforming sign notwithstanding the provisions of § 30-56 (non-conforming signs). If a sign that has been designated as historically significant is damaged or destroyed, it may be reconstructed, but such reconstruction must duplicate in all respects the sign that was damaged or destroyed.

**Secs. 30-58–30-90. Reserved.**

**Sec. 30-91. Computation of sign area.**

(a) The area of a sign shall include all lettering, wording, and accompanying designs and symbols together with the background, whether open or enclosed, on which they are displayed but not including any supporting framework and bracing

which are incidental to the display. The sign area shall be measured from the outside edges of the sign or the sign frame, whichever is greater, excluding the area of any supporting structures that are not part of the display.

(b) When a single sign structure is used to support two or more signs, or unconnected elements of a single sign other than individual letters or symbols, the sign area shall be computed on each sign face in the same manner as the sign area of a single sign. If the faces of a multi-faced sign are separated at any point by more than eighteen (18) inches, then each sign face shall constitute a separate sign.

(c) The area of a double-faced sign shall be computed on only one (1) side, provided, however, that where both sides are unequal in size, the area for the larger side shall be used.

(d) Where a sign consists of individual letters or symbols attached to or painted on a surface, building wall or window, the area shall consist of the single smallest rectangle or other regular geometric shape which encompasses all of the letters and symbols, including the sign background.

**Sec. 30-92. Measurement of sign height.**

The vertical height of a freestanding sign shall be the vertical distance measured from the highest adjacent grade or the crown of the adjacent street, whichever is higher, to the highest point of the sign face or its supporting structural elements.

**Sec. 30-93. Location.**

(a) **Visibility triangle.** No sign shall be erected that would impair visibility at a street intersection or driveway entrance as described in § 34-3131 of this code.

(b) **Street setbacks.** No sign or portion of a sign shall be erected closer than three (3) feet to any sidewalk or bike path or to any street right-of-way unless at least eight (8) feet of vertical clearance is maintained.

(c) **Signs near the beach.** Other portions of this code may affect the location or lighting of signs. For example:

- (1) Signs are permitted in the EC zoning district only if approved through the special exception process or as a deviation in the planned development zoning process (see § 6-366(b)), or where explicitly permitted by §§ 14-5 or 27-51. Where signs are permitted by § 27-51, equivalent signs containing non-commercial messages may be substituted.
- (2) A sea turtle lighting plan is required for new signs with artificial light sources that are visible from the beach, including signs that are within buildings. Guidelines for ensuring that sea turtle nesting habitat will not be directly or indirectly illuminated are found in § 14-79.

(d) **Clearance from power lines.** Signs shall be located no closer than ten (10) feet from all overhead electrical lines and conductors and no closer than three (3) feet from all secondary voltage service drops.

**Sec. 30-94. Construction standards.**

(a) **Generally.** All signs shall comply with the appropriate detailed provisions of the Florida Building Code relating to design, structural members, illumination, and connections. All electrical work shall be Underwriters' Laboratories approved or be certified by an electrician licensed in accordance with article II of ch. 6 of this code. Signs shall also comply with the additional standards set forth in this section.

(b) **Structural design.**

- (1) The town manager or designee may require wind load calculations for signs prior to issuance of a permit.
- (2) A wall must be designed for and have sufficient strength to support any sign that is attached thereto.

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

- (1) All monument signs shall be self-supporting structures erected on and permanently attached to the ground.
- (2) All wood permitted to be used, whether for new permanent signs, for replacement of existing permanent signs, or for any part thereof, shall be rot and termite resistant through open-cell preservation methods as specified by the American Wood

Preservation Association, or by any other open-cell preservation treatment approved by the Florida Building Code.

(d) **Electric signs.**

- (1) All electric signs shall be certified by a licensed electrical contractor that the sign meets the standards established by the Florida Building Code. All electric signs shall be erected and installed by a licensed sign contractor. The electrical connection to a power source shall be performed by a licensed electrical contractor.
- (2) Artificial light used to illuminate any sign from outside the boundaries of the sign shall be screened in a manner which prevents the light source from being visible from any abutting right-of-way or adjacent property. See ch. 14 of this code for sea turtle lighting restrictions.
- (3) All externally illuminated signs must also comply with the technical standards for lighting found in § 34-1833.

(e) **Supports and braces.** Metal supports or braces shall be adequate for wind loading. All metal wire cable supports and braces and all bolts used to attach signs to brackets or brackets and signs to the supporting building or structure shall be made of galvanized steel or of an equivalent corrosive resistant material. All such sign supports shall be an integral part of the sign.

(f) **Anchoring.** No sign shall be suspended by chains or other devices that will allow the sign to swing due to wind action. Signs shall be anchored to prevent any lateral movement that would cause wear on supporting members or connections.

(g) **Maximum angle for double faced signs.** Double faced signs with opposing faces having an interior angle greater than 30 degrees shall not be permitted.

**Sec. 30-95. Sign identification and marking.**

Unless specifically exempted from permit requirements of this chapter, all signs shall be photographed and filed with permit numbers in town hall.

**Sec. 30-96. Maintenance.**

(a) All signs, including their supports, braces, guys, and anchors, shall be maintained so as to present a neat, clean appearance. Painted areas and sign surfaces shall be kept in good condition, and illumination, if provided, shall be maintained in safe and good working order.

(b) Weeds and grass shall be kept cut in front of, behind, underneath, and around the base of monument signs for a distance of ten feet, and no rubbish or debris that would constitute a fire or health hazard shall be permitted under or near such signs.

**Secs. 30-97–30-150. Reserved.**

**Sec. 30-151. Temporary signs.**

The following temporary signs are permitted in all zoning districts subject to the following regulations. It shall be unlawful to erect, cause to be erected, maintain, or cause to be maintained any temporary sign which fails to comply with the following regulations.

(a) *Temporary business announcement signs* not exceeding sixteen (16) square feet in area and eight (8) feet in height are permitted for a new business, or an existing business that has moved to a new location where there are no permanent signs for such business. Such signs are permitted for a period of not more than sixty (60) days or until installation of permanent sign(s), whichever occurs first. No temporary announcement sign shall be permitted that exceeds either the number or size of permanent signs otherwise permitted by this chapter for the occupancy or location. Sign permits are required for temporary business announcement signs.

(b) *Construction signs.*

- (1) One construction sign shall be permitted per construction project on each street frontage. The sign shall be erected no earlier than five (5) days prior to the commencement of construction, shall be confined to the construction site, and shall be removed prior to issuance of a certificate of occupancy.
- (2) Construction signs may only denote the name of the architect, engineer, contractor, subcontractor, owner, future tenant financing agency, or other persons performing services

or labor or supplying materials for the project.

- (3) Maximum size limitations for construction signs shall be as follows:
  - a. For all residential and nonresidential developments, one non-illuminated sign not exceeding sixteen (16) square feet in area and eight (8) feet in height may be erected on each street frontage.
  - b. All construction signs must be located within the construction site.
  - c. Sign permits are required for construction signs.

(c) *Development signs.*

- (1) A development sign may be permitted in any residential development wherein more than twenty (20) percent of the total number of lots, homes, or living units remain unsold, subject to the following regulations:
  - a. One non-illuminated development sign not exceeding sixteen (16) square feet in area and eight (8) feet in height may be permitted at each street entrance into the subdivision or development.
  - b. The sign shall be located within the subdivision or development site.
  - c. Permits for development signs shall be valid for no more than one (1) year and may be renewed annually provided more than twenty (20) percent of lots, homes, or dwelling units remain unsold.
- (2) One non-illuminated development sign per street frontage may be permitted in any commercial zoning district to promote the sale or rental or lease of lots or units within the development. The maximum sign area shall be sixteen (16) square feet and the maximum height shall be ten (10) feet.
- (3) Sign permits are required for all development signs.

(d) *Election signs.* Election signs are permitted as follows:

- (1) *Sign area and height.* Election signs shall have a maximum area of four (4) square feet and, if freestanding, a maximum height of three (3) feet.
- (2) *Number.* In residential zoning districts, the number of election signs shall be limited to one (1) per ten (10) linear feet of street frontage. In commercial zoning districts, the

number of election signs shall be limited to one (1) per twenty (20) feet of street frontage.

(3) *Timing and removal.* Election signs may be erected no earlier than thirty (30) days prior to the primary or general election to which they relate and shall be removed no later than ten (10) days after the election, provided, however, that an election sign erected prior to a primary election may remain posted continuously until ten (10) days after the general election when the candidate referenced in the sign advances from the primary to the general election. In the event an election sign is displayed on a site outside of the time period allowed herein, or in the event the number of election signs located on a property exceed the number permitted herein, such sign(s) remaining outside the allowed period or the excess number of such signs shall no longer be deemed election signs, but instead, based on the zoning district, shall be treated as and subject to all conditions and regulations applicable to residential signs or non-commercial signs for the site at which the sign is located. If the one “residential sign” or “non-commercial sign” allowed as exempt under § 30-6 is already located on the site where the election sign is located, then any such election sign displayed on a site either beyond the permitted time period for election signs or in excess of the number of allowed signs per site, such sign(s) shall no longer be deemed to be an exempt sign, but instead shall be treated as and subject to all conditions and regulations applicable to a non-exempt sign located on the site.

(e) *Permit boards.*

(f) *Special event signs.* For special events where a special event permit is required, no signs relating to the event shall be erected until a special events permit has been obtained from the town. The following regulations shall also apply:

- (1) Special event signs may be erected no earlier than fourteen (14) days prior to a proposed event and must be removed within two (2) days after the event.
- (2) Special event signs shall not exceed sixteen (16) square feet in area and eight (8) feet in height.

- (3) Banners may be strung for special events if approved as part of a special events permit and shall be subject to the same duration limitations as other special event signs.
- (4) The persons(s) or organization(s) sponsoring the special event shall post with the town a cash bond of two hundred dollars (\$200.00). The cash bond shall be refunded upon removal of the sign(s) by the sponsoring person(s) or organization(s) and verification of their removal by the town. The cash bond shall be forfeited to the town in the event one (1) or more of the special event signs are not removed within two (2) days after the conclusion of the special event.

(g) *Real estate signs.* Real estate signs shall be permitted on properties where the owner is actively attempting to sell, rent, or lease such property, either personally or through an agent, as follows:

- (1) All properties listed for sale may have one (1) non-illuminated sign, perpendicular to the roadway, that is not more than four (4) square feet in area and five (5) feet in height. Not more than one (1) sign for each street frontage shall be permitted. Waterfront (canal, bay, lagoon, or beach) properties may also have one (1) monument sign which is no more than twelve (12) inches in height and twenty-four (24) inches in width and is located on the water frontage side of the property so that such sign is visible from the water.
- (2) The sign face may have the name of the licensed real estate professional, the real estate company or other licensed entity, any required professional indicia, and a phone number and/or address. The sign face may additionally state, “For Rent” or “For Lease” or both, but such statements must be included within the sign face.
- (3) No riders (such as name of agent, “sold,” “sale pending,” “pool,” “price reduced,” etc.) shall be attached to the sign.
- (4) If a property is both for sale and for rent, only one sign is allowed.
- (5) No signs may be fastened to trees.
- (6) No “goal post” supports are allowed.
- (7) *“Open house” signs.* “Open house” signs are allowed as follows:
  - a. One (1) “open house” sign per property per street and waterbody frontage.

- b. The area of any “open house” sign must not exceed four (4) square feet in area and three (3) feet in height, and the sign(s) may be placed only upon the property to be sold or leased.
- c. The sign(s) shall be displayed only when the premises are actually available for inspection by a prospective buyer or tenant.

(h) **Temporary directional signs.** For temporary events with a duration of one (1) day or less, temporary directional signs may be placed in the right-of-way along Estero Boulevard and at each intersection on the most direct route between Estero Boulevard and the property where the temporary event is taking place. Such signs may be placed on the day of the event only and must be removed within twenty-four (24) hours after the termination of the event. Such signs shall be no more than four (4) square feet in area and may only contain a brief description of the event, the address for the event and a directional arrow.

**Sec. 30-152. Development identification signs.**

Development identification signs shall be subject to the following:

- (a) **Residential development identification signs.**
  - (1) **Entrance signs.** Permanent wall or monument signs for identification purposes only, giving only the name of the condominium, subdivision, or development, may be permitted at each main entrance into such subdivision or development. Subdivision or development entrances which contain a median strip separating the entrance and exit lanes may be permitted:
    - a. A single monument sign located in the median strip of the entrance, provided that it is set back a minimum of fifteen (15) feet from the right-of-way of the public access road and a minimum of five (5) feet from the edge of the pavement of the entrance and exit lanes, or
    - b. Two single-faced signs equal in size and located on each side of the entranceway.
  - (2) **Limitations.**
    - a. The condominium, subdivision, or development shall have a property owners’ association or similar entity

which will be responsible for maintenance of the sign.

- b. The face of each permitted main entrance identification sign shall not exceed twenty-five (25) square feet and five (5) feet in height.
- c. The sign may be illuminated with a steady light so shielded as to not allow the light to interfere with vehicular traffic. See ch. 14 of this code for sea turtle lighting restrictions.
- d. The sign should be incorporated into accessory entrance structural features such as a wall or landscaping.

(b) **Schools, churches, day care centers, parks, recreational facilities, and libraries.** A school, church, day care center, park, recreational facility, or library shall be permitted one (1) monument or wall-mounted identification sign and one (1) directory sign within the property line, with maximum sign area of twenty-four (24) square feet and a maximum height of five (5) feet.

**Sec. 30-153. Maximum sign area.**

(a) **Single and multifamily residential uses in residential zoning districts.** Except for those signs identified as exempt signs in § 30-6 and temporary signs in § 30-141, no signs are allowed on sites containing residential uses in residential zoning districts. Any such exempt or temporary sign(s) located on a residential site in a residential zoning district shall comply with the regulations for exempt sign(s) contained in § 30-6 and the regulations for temporary signs contained in § 30-141.

(b) **Commercial uses in commercial zoning districts.** All signs located in commercial zoning districts, except for those signs identified as exempt signs in § 30-6 and temporary signs in § 30-141, shall comply with the following sign area limitations.

- (1) For a parcel of land containing one (1) or two (2) business establishments, each separate business establishment shall be allowed a maximum of thirty-two (32) square feet of sign area.
- (2) For a parcel of land containing three (3) or more business establishments, each establishment shall be allowed a maximum of sixteen (16) square feet of sign area. An additional thirty-two (32) square feet of sign

area may be utilized to identify the commercial development.

- (3) The maximum sign area provided herein may be allocated among a combination of one (1) or more monument signs, projecting signs, and/or wall signs.

**Sec. 30-154. Standards for monument signs, projecting signs, and wall signs in commercial zoning districts.**

Except as may be otherwise provided herein, all monument signs, projecting signs, and wall signs located in commercial zoning districts shall comply with the following regulations.

(a) Buildings that are required to meet the commercial design standards in §34-991-1010 cannot install internally lit box signs (see Figure 30-1). When internally lit signs are permitted for buildings that are not required to meet the commercial design standards, the sign face must be designed so that illumination occurs only on individual letters or symbols. An opaque background panel must be used so that the internal light only passes through the letters or symbols. This requirement also applies to all signs with changeable copy. See Figure 30-2 for an example of illuminated letters on an internally lit sign face.



Figure 30-1



Figure 30-2

(b) **Location.** Monument signs must be set back at least three (3) feet from any public right-of-way or roadway easement, provided, however, that monument signs may be located in a lawfully developed landscaped median strip that is within a public or private right-of-way or easement where the holder(s) of the right-of-way or easement have consented to the location of the monument sign in such right-of-way or easement. Monument signs located in such median strips must be set back a minimum of two (2) feet from the edge of the pavement and must not violate the visibility requirements of § 34-3131. Wall signs and

projecting signs may extend over public sidewalks provided they maintain a minimum clear height above sidewalks of eight (8) feet and do not extend closer than two (2) feet to an existing or planned curb.

(c) Monument signs may be elevated provided that the bottom of the sign is no more than eighteen (18) inches above the highest adjacent grade. The maximum height of a monument sign is five (5) feet.

(d) A wall sign must not extend above the lowest edge of the building’s eaves or above the highest horizontal members of the fence or wall to which it is attached.

(e) A projecting sign must not extend more than three (3) feet above the lowest edge of the building’s eaves.

**Sec. 30-155. Severability.**

(a) **Generally.** If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or work of this chapter is declared unconstitutional by a final and valid judgment or decree of any court of competent jurisdiction, this declaration of unconstitutionality or invalidity shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this chapter.

(b) **Severability where less speech results.** This subsection shall not be interpreted to limit the effect of subsection (a) above, or any other applicable severability provisions in the Code or any adopting ordinance. The town council specifically intends that severability shall be applied to these sign regulations even if the result would be to allow less speech in the town, whether by subjecting currently exempt signs to permitting or by some other means.

(c) **Severability provisions pertaining to prohibited signs.** This subsection shall not be interpreted to limit the effect of subsection (a) above, or any other applicable severability provisions in the code or any adopting ordinance. The town council specifically intends that severability shall be applied to § 30-5, “Prohibited signs,” so that each of the prohibited sign types listed in that section shall continue to be prohibited

irrespective of whether another sign prohibition is declared unconstitutional or invalid.

(d) ***Severability of prohibition on off-premises signs and commercial advertising signs.*** This subsection shall not be interpreted to limit the effect of subsection (a) above, or any other applicable severability provisions in the code or any adopting ordinance. If any or all of chapter 30 “Signs” or any other provision of the town’s code is declared unconstitutional or invalid by the final and valid judgment of any court of competent jurisdiction, the town council specifically intends that that declaration shall not affect the prohibition on off-premises signs contained in § 30-5.

**Division 18. Home Occupations; Live/Work and Work/Live Dwellings**

- Sec. 34-1771. Intent of division.*
- Sec. 34-1772. Home occupations.*
- Sec. 34-1773. Live/work dwelling units.*
- Sec. 34-1774. Work/live dwelling units.*
- Secs. 34-1775--34-1800. Reserved.*

**Division 19. Hotels, Motels, and Bed-and-Breakfast Inns**

- Sec. 34-1801. Definitions and general requirements.*
- Sec. 34-1802. Size of guest units.*
- Sec. 34-1803. Allowable intensity.*
- Sec. 34-1804. Parking.*
- Sec. 34-1805. Additional regulations for bed-and-breakfast inns.*
- Sec. 34-1806. Replacing a nonconforming hotel/motel.*
- Sec. 34-1807. Conversions of existing buildings.*
- Secs. 34-1808--34-1830. Reserved.*

**Division 20. Lighting Standards**

- 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.*
- Secs. 34-1835--34-1860. Reserved.*

**Division 21. Marine Facilities and Live-Aboard Vessels**

- Sec. 34-1861. Boats, floating structures, floating equipment and live-aboards.*
- Sec. 34-1862. Reserved.*
- Sec. 34-1863. Construction and maintenance of docks, seawalls and other structures designed for use on or adjacent to waterways.*
- Secs. 34-1864--34-1890. Reserved.*

**Division 22. Reserved**

- Secs. 34-1891--34-1920. Reserved.*

**Division 23. Mobile Homes**

- Sec. 34-1921. Mobile home subdivisions.*
- Sec. 34-1922. Mobile home parks.*
- Sec. 34-1923. Move-on permit.*
- Secs. 34-1924--34-1950. Reserved.*

**Division 24. Moving of Buildings**

- Sec. 34-1951. Building relocation permits.*
- Secs. 34-1952--34-1980. Reserved.*

**Division 25. Off-Street Loading Areas**

- Sec. 34-1981. Applicability of division.*
- Sec. 34-1982. Access.*
- Sec. 34-1983. Lighting, maintenance, and drainage.*
- Sec. 34-1984. Other use of loading areas.*
- Sec. 34-1985. Screening.*
- Sec. 34-1986. Loading area required; loading plan; location of loading area.*
- Sec. 34-1987. Number of spaces.*
- Secs. 34-1988--34-2010. Reserved.*

**Division 26. Parking**

- Sec. 34-2011. Types of parking facilities.*
- Sec. 34-2012. Definitions.*
- Sec. 34-2013. Access.*
- Sec. 34-2014. Parking plan.*
- Sec. 34-2015. Location and design.*
- Sec. 34-2016. Dimensional requirements; delineation of parking spaces.*
- Sec. 34-2017. Parking lot surfaces.*
- Sec. 34-2018. Joint use of parking lots.*
- Sec. 34-2019. Other use of parking lots.*
- Sec. 34-2020. Required parking spaces.*
- Sec. 34-2021. Reserved.*
- Sec. 34-2022. Seasonal parking lots.*
- Secs. 34-2023--34-2030. Reserved.*

**Division 26-A. Performance Standards**

- Sec. 34-2031. Performance standards, environmental quality.*
- Sec. 34-2032. Performance standards, creation of nuisance.*
- Secs. 34-2033--34-2050. Reserved.*

**Division 27. Places of Worship and Religious Facilities**

- Sec. 34-2051. Property development regulations.*
- Sec. 34-2052. Parking.*
- Sec. 34-2053. Expansion of existing place of worship.*
- Sec. 34-2054. Living quarters.*
- Secs. 34-2055--34-2080. Reserved.*

**Division 28. Reserved**

- Secs. 34-2081--34-2110. Reserved.*

**Division 29. Private Clubs and Membership Organizations**

- Sec. 34-2111. Applicability of regulations to membership organizations.*
- Secs. 34-2112--34-2140. Reserved.*

**Division 30. Recreation Facilities**

- Sec. 34-2141. Applicability.*
- Sec. 34-2142. Minimum lot area and setbacks.*
- Sec. 34-2143. Accessory uses.*
- Sec. 34-2144. Lighting.*
- Sec. 34-2145. Sound systems.*
- Secs. 34-2146--34-2350. Reserved.*

**Division 31. Recreational Vehicles**

- Sec. 34-2351. Recreational vehicle subdivisions.*
- Sec. 34-2352. Recreational vehicle parks.*
- Secs. 34-2353--34-2380. Reserved.*

**Division 32. Schools**

- Sec. 34-2381. All schools.*
- Sec. 34-2382. Noncommercial schools.*
- Sec. 34-2383. Schools operated as businesses.*
- Secs. 34-2384--34-2390. Reserved.*

**Division 32-A. Short-Term Rentals**

- Sec. 34-2391. Restrictions on weekly rentals in certain zoning districts.*
- Sec. 34-2392. Registry of certain pre-existing weekly rentals.*
- Sec. 34-2393. Code of conduct for short-term rentals.*
- Sec. 34-2394. Enforcement and penalties.*
- Sec. 34-2395--34-2410. Reserved.*

**Division 33. Signs**

- Sec. 34-2411. Location and construction.*
- Secs. 34-2412--34-2440. Reserved.*

**Division 34. Special Events**

- Sec. 34-2441. Special events defined.*
- Sec. 34-2442. Permits for special events.*
- Secs. 34-2443--34-2470. Reserved.*

**Division 35. Reserved**

- Secs. 34-2471--34-3000. Reserved.*

**Division 36. Storage Facilities and Outdoor Display of Merchandise**

- Sec. 34-3001. Applicability of division.*
- Sec. 34-3002. Mobile vendors and transient merchants.*
- Sec. 34-3003. Reserved.*
- Sec. 34-3004. Outdoor display of merchandise for sale or rent.*
- Sec. 34-3005. Storage facilities.*
- Secs. 34-3006--34-3020. Reserved.*

**Division 37. Subordinate and Temporary Uses**

**Subdivision I. In General**

- Sec. 34-3021. Subordinate uses.*
- Secs. 34-3022--34-3040. Reserved.*

**Subdivision II. Temporary Uses**

- Sec. 34-3041. Generally.*
  - Sec. 34-3042. Carnivals, fairs, circuses and amusement devices.*
  - Sec. 34-3043. Christmas tree sales.*
  - Sec. 34-3044. Temporary contractor's office and equipment storage shed.*
  - Sec. 34-3045. Alcoholic beverages.*
  - Sec. 34-3046. Temporary use of mobile home.*
  - Sec. 34-3047. Temporary telephone distribution equipment.*
  - Sec. 34-3048. Ancillary temporary uses in parking lots.*
  - Sec. 34-3049. Seasonal parking lots.*
  - Sec. 34-3050. Temporary use permits.*
  - Sec. 34-3051. Mobile tourist information centers.*
  - Secs. 34-3052--34-3054. Reserved.*
- Subdivision III. Special Events.**
- Sec. 34-3055. Special events.*
  - Secs. 34-3056--34-3060. Reserved.*

**Division 38. Tall Structures**

- Sec. 34-3061. Permit for tall structures.*
- Secs. 34-3062--34-3065. Reserved.*

**Division 38-A. Tattoo Studios and Body-Piercing Salons**

- Sec. 34-3066. Purpose of division.*
- Sec. 34-3067. Definitions.*
- Sec. 34-3068. Minimum spacing required for new or relocated establishments.*
- Sec. 34-3069. Destruction by natural disaster.*
- Secs. 34-3070--34-3100. Reserved.*

**Division 39. Use, Occupancy, Construction, and Moving Regulations**

- Sec. 34-3101. Compliance with applicable regulations.*
- Sec. 34-3102. Reserved.*
- Sec. 34-3103. Permit for moving building.*
- Secs. 34-3104--34-3130. Reserved.*

**Division 40. Vehicle Visibility**

- Sec. 34-3131. Vehicle visibility at intersections.*
- Secs. 34-3132--34-3150. Reserved.*

**Division 41. Water-Oriented Rentals**

- Sec. 34-3151. Water-oriented rental establishments.*
- Secs. 34-3152--34-3200. Reserved.*

## Conventional Zoning Districts

development regulations are contained in Table 34-3.

(c) In addition to these restrictions on allowable uses and dimensional requirements, the commercial design standards found in § 34-991–1010 apply to all commercial and mixed-use buildings or portions thereof that are being newly built and to “substantial improvements” to such buildings as defined in § 6-405.

### **Sec. 34-649. IN (Institutional) zoning district.**

(a) The purpose of the IN zoning district is to provide suitable regulations for churches, civic buildings, schools, and government buildings.

(b) In the IN zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

### **Sec. 34-650. CF (Community Facilities) zoning district.**

(a) The purpose of the CF zoning district is to provide suitable regulations for parks and nature preserves.

(b) In the CF zoning district, allowable uses are defined in Table 34-2 and property development regulations are contained in Table 34-3.

### **Sec. 34-651. BB (Bay Beach) zoning district.**

(a) The purpose of the BB zoning district is to implement the binding agreement that settled litigation over development rights in Bay Beach and to recognize prior rights granted for the construction and use of docks.

(b) Land uses in the BB zoning district shall conform to all requirements of the stipulated settlement agreement between Stardial Investments Company and the Town of Fort Myers Beach dated February 23, 2001, a copy of which is recorded in O.R. Book 3414, Pages 4775–4786, as amended in O.R. Book 3414, Pages 4787–4789, and including any future amendments to this agreement. Land uses in the BB zoning district must also conform to DRI development order #12-9394-124 regarding dock

construction that was issued by Lee County on December 5, 1994, notice of which is recorded in O.R. Book 2586, Pages 1851–1854.

- (1) Allowable land uses include those uses in lawful existence as of February 23, 2001, and those additional uses as defined in the settlement agreement and in the DRI development order.
- (2) Building size and placement shall be governed by the regulations in this code, including the property development regulations in the RM district, except where specifically superseded by terms of the settlement agreement.
- (3) Replacement buildings cannot exceed the height, square footage of floor and parking areas, and all other measurable parameters of the original buildings. See buildback regulations in § 34-3237–3238.

### **Sec. 34-652. EC (Environmentally Critical) zoning district.**

(a) *Purpose.* The purpose of the EC zoning district is to designate beaches and significant wetlands whose preservation is deemed critical to the Town of Fort Myers Beach through its comprehensive plan, including:

- (1) Beaches that have been designated in the “Recreation” category on the future land use map, and.
- (2) Wetlands that have been correctly designated in the “Wetlands” category on the future land use map.

(b) *Intent.* The application of the EC district is intended to prevent a public harm by precluding the use of land for purposes for which it is unsuited in its natural state and which injures the rights of others or otherwise adversely affects a defined public interest.

(c) *Accretion.* Accretions of beaches or wetlands, whether by natural causes or through beach renourishment or artificial filling, will automatically be assigned to the EC zoning district.

## Conventional Zoning Districts

(d) *Permitted uses.* In the EC district, no land or water use shall be permitted by right except for those uses and developments permitted by the Fort Myers Beach Comprehensive Plan in wetlands, beaches, or critical wildlife habitats, as applicable, including:

- (1) Boating, with no motors permitted except electric trolling motors.
- (2) Fishing.
- (3) Removal of intrusive exotic species or diseased or dead trees, and pest control.
- (4) Hiking and nature study, including pedestrian boardwalks and dune crossovers.
- (5) Outdoor education, in keeping with the intent of the district.
- (6) Recreation activities, residential accessory uses, and resort accessory uses that are performed outdoors. These activities and uses include passive recreation and active recreation that requires no permanent structures or alteration of the natural landscape (except as may be permitted by special exception (see § 6-366 and subsection (e) below). Any temporary structure used in conjunction with such uses must comply with all provisions of this code (for instance, see chapters 14 and 27). Artificial lighting may not be installed in the EC zoning district unless approved by special exception or as a deviation in the planned development rezoning process (see §§ 6-366 and 14-76).
- (7) Wildlife management, as wildlife preserves.
- (8) Expansion of area designated for the consumption and service of alcoholic beverages, subject to the regulations in § 34-1264(g)(1).

(e) *Special exception uses and structures.* Upon a finding that the proposed use or structure is consistent with the standards set forth in § 34-88, as well as all other applicable town regulations, the town council may permit any specific use or structure from the following list as a special exception, subject to conditions set forth in this chapter and in the resolution of approval:

- (1) Accessory structures, to include any building, structure, or impervious surface area which is accessory to a use permitted by right or by special exception in the EC district (see § 6-366).
- (2) Nature study center, noncommercial, and its customary accessory uses.
- (3) Single-family residence and its customary accessory uses at a maximum density of one dwelling unit per twenty acres.

(f) *Additional regulations.* See additional requirements in:

- (1) Article I of ch. 14 pertaining to beach and dune management;
- (2) Article IV of ch. 14 pertaining to wetlands protection); and
- (3) Coastal zone regulations in § 34-1575.

**Secs. 34-653--34-660. Reserved.**

## Alcoholic Beverages

### DIVISION 5. ALCOHOLIC BEVERAGES

#### Sec. 34-1261. Definitions.

For purposes of this division and when referred to elsewhere in this chapter, certain terms or phrases shall have the following meaning:

*Alcoholic beverage* means distilled spirits and all beverages, other than medicine, intended for human consumption and containing one-half of one percent or more alcohol by volume.

*Beach* means an area of sand along the Gulf of Mexico that extends landward from the mean low-water line to the place where there is a marked change in material or physiographic form, or to the line of permanent vegetation, usually the effective limit of storm waves.

*Beer, wine, and liquor* have the same meanings as provided in F.S. chs. 563, 564, and 565, respectively.

*EC (Environmentally Critical) zoning district.* When used in this division, EC zoning district only refers to beach areas located in the Recreation category on the future land use map.

*Erosion control line* means the line established by the Board of Trustees of the Internal Improvement Trust Fund prior to the commencement of a beach erosion control project in accordance with the provisions of F.S. § 161.141-161.211. Pursuant to F.S. § 161.191, title to all lands seaward of the erosion control line shall be deemed to be vested in the state by right of its sovereignty, and title to all lands landward of the erosion control line shall be vested in the riparian upland owners whose lands either abut the erosion control line or would have abutted the line if it had been located directly on the line of mean high water on the date the board of trustees' survey was recorded.

*Full course meals* means items on a menu at a restaurant which include soups and salads, main dishes with side orders, and desserts.

*Kitchen, commercial* means a facility used for the preparation of food which is sold to the public and that is subject to state and local health department inspections.

*Licensed premise* means the geographic area approved by either administrative approval, special exception, or other approval, for the retail sale, service, and consumption on-site of alcoholic beverages.

*Liquor license* means a license issued by the state for the retail sale, service, and consumption of liquor.

*Mean high water line* means the intersection of the tidal plane of mean high water with the shore. Mean high water is the average height of high waters over a 19-year period. See F.S. § 177.27(14-15).

*Park*, only when used in this division, means a park facility which is owned, leased, or operated by a governmental agency. It does not include beach access strips.

*Public beach* means any beach which is below mean high water lines; is owned by the town or county; has arisen upon it a right of customary use by the public; has arisen upon it a public easement, prescriptive or otherwise; or is the fore shore of tidal navigable waters, that is the land between the high water mark and the low water mark, and is owned by the state.

*Sale of*, only when used in this division, includes the term "or service."

*Sunset* means the daily disappearance of the sun below the horizon to the west, due to the earth's rotation.

#### Sec. 34-1262. Compliance with applicable regulations.

No structure, building, establishment, or premises shall be occupied, used, or maintained for the purpose of the retail sale, service, or consumption of alcoholic beverages except in conformity with all applicable town regulations, including this chapter, and with the applicable state regulations.

## Alcoholic Beverages

### Sec. 34-1263. Sale for off-premises consumption.

(a) **Where permitted.** The sale of alcoholic beverages for consumption off the premises shall be allowed in any zoning district where retail stores are a permitted use, provided that package stores must meet the additional regulations set forth in subsection (d) of this section.

(b) **Sealed containers only.** Only alcoholic beverages in original factory-sealed containers shall be permitted to be sold for off-premises consumption.

(c) **State liquor laws.** Any establishment engaged in the sale of alcoholic beverages for consumption off-site shall be required to comply with all applicable state liquor laws.

(d) **Location of package stores.** No package store or other establishment primarily engaged in the retail sale of liquor for consumption off-site shall be permitted closer than 500 feet to any place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit, or 500 feet from any other establishment primarily engaged in the sale of alcoholic beverages.

- (1) For purposes of this subsection, the distance shall be measured in a straight line from any public entrance or exit of the establishment to the nearest property line of the place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit, or any public entrance or exit of any other establishment primarily engaged in the sale of alcoholic beverages.
- (2) Where an establishment for the sale of alcoholic beverages is located in conformity with the provisions of this subsection, and a place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit is subsequently established in the proximity of such existing establishment, then the separation requirements shall not apply.
- (3) Notwithstanding subsection (d) (1) of this section, where a package store is located in a multiple-occupancy complex which is 25,000 square feet or greater in size, or in a retail sales establishment wherein the sale of alcoholic beverages for consumption off-site

is clearly incidental to other retail sales commodities, such as in a grocery store, supermarket, or drugstore, the separation requirements from any dwelling unit shall not apply.

- (4) In any planned development zoning district where the applicant is contemplating the sale of alcoholic beverages for consumption off the premises in an establishment which cannot meet the distance requirements set forth in subsection (d) of this section, the applicant shall request a deviation from the requirements of subsection (d).

### Sec. 34-1264. Sale or service for on-premises consumption.

(a) **Approval required.** The sale or service of alcoholic beverages for consumption on the premises shall not be permitted until such location has been approved by the town as follows:

- (1) **Administrative approval.** The director may administratively approve the sale or service of alcoholic beverages for consumption on the premises when in conjunction with the following uses if the proposed use satisfies the requirements set forth in this division. When circumstances so warrant the director may determine that administrative approval is not the appropriate action and that the applicant must instead apply for approval as a special exception. Such circumstances may include the previous denial of a similar use at that location, the record of public opposition to a similar use at that location, and similar circumstances. When the director has approved a request for consumption on the premises at a location where the actual building has not been constructed, the director shall not approve another request for consumption on the premises which could potentially violate the distance requirements. If the first building is completed within less than one year, and it can be shown the second use would not violate the prescribed distance requirements, the director may approve the second location subject to all other requirements contained in this division.
  - a. **Bars or cocktail lounges** located in commercial zoning districts which permit bars or cocktail lounges, provided the

## Alcoholic Beverages

- standards set forth in subsections (b)(1) and (3) of this section are met;
- b. *Charter, party fishing boat, or cruise ship*, provided the standards of section (b)(3) are met. The COP approval is specific to the charter, party fishing boat, or cruise ship operating from a specific location and does not run with the land nor is it transferable.
  - c. *Clubs and membership organizations* located in commercial zoning districts, where permitted, provided the standards set forth in subsections (b)(2)d and (b)(3) of this section are met;
  - d. *Cocktail lounges in golf course clubs*, provided the standards set forth in subsections (b)(2)c and (b)(3) of this section are met;
  - e. *Hotels/motels*, provided the standards set forth in subsections (b)(2)b and (b)(3) of this section are met; and
  - f. *Restaurants*, provided the standards set forth in subsections (b)(2)a and (b)(3) of this section are met.
- (2) ***Special exception.***
- a. A special exception for consumption on the premises shall be required for:
    1. Any establishment not covered by subsection (a)(1) of this section; or
    2. Any establishment which provides outdoor seating areas for its patrons consuming alcoholic beverages, except that a restaurant may have outdoor seating approved administratively provided the outdoor seating area is not within 500 feet of a place of worship, religious facility, school (noncommercial), day care center (child), park, or dwelling unit under separate ownership.
  - b. The burden of proof that the grant of the special exception will not have an adverse effect on surrounding properties lies with the applicant.
  - c. A single special exception for consumption on the premises for a multiple-occupancy complex in a conventional zoning district shall be sufficient to permit consumption on the premises in every restaurant which exists or may be established within the multiple-occupancy complex.
- (3) ***Planned developments.***
- a. No administrative approval is necessary where an individual establishment or other facility proposing consumption on the premises is explicitly designated on the master concept plan and is included on the approved schedule of uses.
  - b. If consumption on the premises is shown as a permitted use on the approved schedule of uses for a multiple-occupancy complex, no administrative approval for consumption on the premises shall be required for restaurants within the multiple-occupancy complex.
  - c. Consumption on the premises for other uses within planned developments require administrative approval or a special exception.
- (b) ***Location; parking.***
- (1) ***Prohibited locations.***
- a. Except as may be exempted in subsections (a)(1) or (b)(2) of this section, no establishment for the sale or service of alcoholic beverages for consumption on the premises shall be located within 500 feet of:
    1. A place of worship, religious facility, school (noncommercial), day care center (child), or park;
    2. A dwelling unit under separate ownership, except when approved as part of a planned development; or
    3. Another establishment primarily engaged in the sale of alcoholic beverages for consumption on the premises, excluding those uses listed under subsection (b)(2) of this section.
 Distance shall be measured from any public entrance or exit of the establishment in a straight line to the nearest property line of the place of worship, religious facility, school (noncommercial), day care center (child), dwelling unit, or park, or to the closest public entrance or exit of any other establishment primarily engaged in the sale of alcoholic beverages.
  - b. Where an establishment for the sale of alcoholic beverages is located in conformity with the provisions of this subsection, and a place of worship,

## Alcoholic Beverages

religious facility, school (noncommercial), day care center (child), park or dwelling unit is subsequently established in the proximity of such existing establishment, then the separation requirements shall not apply.

(2) **Exceptions to location standards.** Exceptions to location standards are as follows:

a. **Restaurants**, provided:

1. The restaurant is in full compliance with state requirements;
2. The restaurant serves cooked, full-course meals, prepared daily on the premises; and
3. Only a service bar is used and the sale or service of alcoholic beverages is only to patrons ordering meals, or, if the restaurant contains a cocktail lounge for patrons waiting to be seated at dining tables, the lounge shall be located so that there is no indication from the outside of the structure that the cocktail lounge is within the building.
4. The other requirements of § 34-1264(k) shall be met.

b. **Hotels/motels:**

1. The hotel/motel contains at least 100 guest rooms under the same roof and that bars or cocktail lounges are located within the hotel or motel and under the same roof; and
2. The exterior of the building must not have storefronts or give the appearance of commercial or mercantile activity visible from the street.

If the use contains windows visible from the street, the windows shall be of fixed, obscure glass. Access to the cocktail lounge or bar must be through the lobby. Additional entrances are not permitted unless the additional entrance or door opens into an enclosed courtyard or patio. The additional entrance may not be visible from the street. A fire door or exit shall be permitted, provided that the door or exit is equipped with panic type hardware and is maintained in a locked position except in an emergency.

c. **Golf course clubhouses**, provided that:

1. The golf course consists of at least nine holes a clubhouse, locker rooms, and attendant golf facilities, and comprises in all at least 35 acres of land.
2. Failure of such club to maintain the golf course, clubhouse, and golf facilities shall automatically terminate the privilege of the cocktail lounge and sale of beer from the refreshment stands.

d. **Membership organizations**, provided that:

1. such club or organization conforms to all the requirements of F.S. ch. 561 and other applicable state laws, and
2. there are no signs or other indications visible from the exterior of the clubhouse, building, or structure that alcoholic beverages are served.

(3) **Parking.** Restaurants providing alcoholic beverages for consumption on the premises must comply with the parking requirements set forth in § 34-2020(d)(2). Any bar or cocktail lounge must provide parking in accordance with § 34-2020(d)(2). All other uses must meet the parking requirements of the principal use.

(c) **Procedure for approval.**

(1) **Administrative approval.**

- a. **Application.** An applicant for a consumption on the premises permit shall submit the following information on a form provided by the town:
1. The name, address, and telephone number of the applicant.
  2. The name, address, and telephone number of the owner of the premises, if not the applicant.
  3. A notarized authorization from the property owner to apply for the permit.
  4. Location by STRAP and street address.
  5. Type of state liquor license being requested.
  6. A site plan, drawn to scale, showing:
    - i. The property in question, including all buildings on the property and adjacent property;
    - ii. Entrances to and exits from the building to be used by the public;

## Alcoholic Beverages

- iii. A parking plan, including entrances and exits;
  - iv. The floor area of the building and proposed seating capacity. If a restaurant is proposing a bar or lounge for patrons waiting to be seated in the restaurant, the floor area and seating area of the lounge shall be shown in addition to the restaurant seating area.
7. A town map marked to indicate all of the property within 500 feet of the building to be used for consumption on the premises.
  8. An notarized affidavit executed by the applicant indicating that no place of worship, religious facilities, day care centers (child), noncommercial schools, dwelling units or parks are located within 500 feet of the building to be used.
- b. *Findings by director.* Prior to permit approval, the director shall conclude that all applicable standards have been met. In addition, the director shall make the following findings of fact:
1. There will be no apparent deleterious effect upon surrounding properties and the immediate neighborhood as represented by property owners within 500 feet of the premises.
  2. The premises are suitable in regard to their location, site characteristics, and intended purpose. Lighting must be shuttered and shielded from surrounding properties.
- (2) *Special exception.*
- a. Applications for special exceptions shall be submitted on forms supplied by the town and shall contain the same information as required for administrative approval.
  - b. Advertisements and public hearings shall be conducted in accordance with the requirements set forth in article II of this chapter.
- (d) *Temporary one-day permit.*
- (1) *Intent; applicability.* It is the intent of this subsection to require that nonprofit and for-profit organizations and establishments in the town obtain a one-day temporary alcoholic beverage permit for the sale of alcoholic beverages at the specific location where an event is held. This subsection will pertain to but not necessarily be limited to the following uses:
    - a. Grand openings or open houses at residential or commercial developments;
    - b. Special outdoor holiday or celebration events at bars and restaurants;
    - c. Weddings and other special occasions at clubhouses;
    - d. Political rallies or events;
    - e. Block parties; and
    - f. Carnivals.
  - (2) Only twelve temporary alcoholic beverage permits may be issued per year to a specific location. If more than twelve permits are sought per year for a specific location, then the location must obtain a permanent alcoholic beverage special exception. If the event for which the temporary alcoholic beverage permit is sought continues for longer than one day, the applicant may petition the director for an extended permit. A temporary alcoholic beverage permit may not be issued for more than three days.
  - (3) *Procedure for approval.*
    - a. Any owner, lessee, or tenant seeking approval for consumption on the premises for a temporary alcoholic beverage permit, must submit a written request to the director. The written request must include:
      1. The name and address of the applicant;
      2. A general description of the exact site where alcoholic beverages are to be sold and consumed;
      3. The type of alcoholic beverages to be sold and consumed; and
      4. A fee in accordance with the adopted fee schedule.
    - b. The director will make a final decision within ten working days. The decision will be in the form of approval, approval with conditions or denial. The director may forward the request to other appropriate agencies for comment.
    - c. The town council will review all requests for temporary alcoholic beverage permits where an event will run longer than three days. Under no circumstances will a

## Alcoholic Beverages

temporary alcoholic beverage permit be issued for more than ten days.

(e) **Expiration of approval.** After the following time periods, the administrative or special exception approval of a location for the sale and consumption of alcoholic beverages on the premises granted in accordance with this section shall expire, and become null and void:

- (1) In the case of an existing structure, the approval shall expire six months from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. For purposes of this subsection, the term "operation" shall be defined as the sale of alcoholic beverages in the normal course of business.
- (2) In the case of a new structure, the approval shall expire one year from the date of approval unless, within that period of time, operation of the alcoholic beverage establishment has commenced. The director may grant one extension of up to six months if construction is substantially complete.

(f) **Transfer of permit.** Alcoholic beverage permits, as noted in subsection 34-1264(i), issued by virtue of this section are a privilege running with the land. Sale of the real property shall automatically vest the purchaser with all rights and obligations originally granted to or imposed on the applicant. Such privilege may not be separated from the fee simple interest in the realty.

(g) **Expansion of area designated for permit.** The area designated for an alcoholic beverage permit cannot be expanded without filing a new application for an alcoholic beverage permit in accordance with the requirements contained in this chapter. The new application must cover both the existing designated area as well as the proposed expanded area. All areas approved must be under the same alcoholic beverage permit and subject to uniform rules and regulations.

- (1) **Regulations applicable to expansion into EC zoning district.** A lawfully permitted establishment may expand the area where service of alcoholic beverages is permitted into an adjacent EC zoning district, subject to the following conditions and subject to the procedures established in § 34-1264(g)(2):

a. **Area of expansion.** The beach ecosystem is dynamic in nature and the physical characteristics of the EC zoning district are subject to change. Since the public has a right of access to the public beach area, pedestrian access to the shoreline must be a paramount consideration when determining the area where COP is permitted, understanding that the shoreline's location can vary greatly during extreme weather and tidal events, as well as due to erosion of the beach. The town manager shall therefore have the authority to temporarily enforce reductions in the area of expansion for the licensed premise into the EC zoning district when necessary to protect natural systems from the encroachment permitted by this subsection.

b. **Defined area.** The area of expansion of a COP licensed premises extending seaward into the EC zoning district, shall be limited to no more than 33% of the land area between the landward EC zoning district boundary and the mean high water line (up to a maximum of 100 feet), provided, however, that the erosion control line shall be used in place of the mean high water line in those areas where the beach has been nourished and provided further that at least fifty feet (50') remains for the public's right of passage along the beach. The side setbacks for the area of COP expansion shall be the same as the principal structure side yard setback in the adjacent upland zoning district. In instances where an existing licensed establishment has an existing deck and/or building that is seaward of the EC zoning line, the measurement of the allowable area of expansion shall commence from the most seaward point of the rear deck or building. Dominion and control of the area of the licensed premise that extends into the EC zoning district shall be established by rope and post. Required dune plantings may either be relocated to the area of the beach that is immediately seaward of the area of COP expansion, or the area of COP expansion may be shifted seaward to accommodate the existing required dune planting area. The rope and post shall

## Alcoholic Beverages

extend from the rear of the upland licensed premise in the adjacent zoning district and shall define the area in the EC zoning district where COP is permitted. Specific requirements for the rope and post method of dominion and control are established in subsection 34-1264(g)(1)b.4 below.

1. *Standard conditions of approval.* The following requirements shall be applicable to all premises that are approved for COP in the EC zoning district. Violation of any of the following provisions may be grounds for revocation in accordance with § 34-1264(i):
  - a- The area of expansion of licensed premises in the EC zoning district must be under the same ownership as the principal upland licensed premise (as licensed by the State of Florida Division of Alcoholic Beverages and Tobacco) and the upland licensed premise must be located immediately adjacent to and contiguous with the EC zoning district.
  - b- Patrons of the permitted establishments may not bring any alcoholic beverages or coolers into the licensed premise in the EC zoning district, nor may they consume any alcohol that has not been purchased from the permitted establishment.
  - c- Alcohol served in the EC zoning district may not be dispensed in glass or aluminum containers of any type.
  - d- The permit holder shall be responsible for ensuring that the licensed premises in the EC zoning district is free of litter and debris. Refuse containers that meet the requirements of § 34-1264(g)(1)b.4.d must be provided.
  - e- Hours of service and consumption for the area of the licensed premises that is located in the EC zoning district shall be limited to between the hours of 11:00 AM and 1 hour after sunset or 9:00 PM, whichever is earlier, except for any additional

hours that may have been granted by a special events permit. Hours granted by a previously granted special exception shall prevail.

- f- Entertainment within the area of the licensed premises that is located in the EC zoning district may only be accomplished by special exception or special events permit, unless previously granted by special exception.
  - g- Applicant shall maintain a valid certificate of insurance that covers the area of the licensed premises that is located in the EC zoning district.
  - h- The maximum area of expansion for the first 100 linear feet (or portion thereof) of property fronting the Gulf shall be 2,500 square feet. An additional ten (10) square feet may be added to the area of expansion for each additional foot of frontage on the Gulf.
  - i- The property shall comply with all sea turtle protection requirements contained in Chapter 14 of this code.
2. All conditions applicable to the upland area, as previously approved, shall likewise apply within the expanded area. In the event of any conflict with conditions for the expanded area of licensed premises in the EC zoning district established herein, the provisions herein shall prevail within the expanded area.
  3. No additional parking shall be required for the area of expansion in the EC zoning district.
  4. *Rope and post requirements:*
    - a- The permit holder shall establish dominion and control of the area of expansion in the EC zoning district with rope and post.
    - b- Rope and post shall have the same side yard setback as the principal structure in the adjacent upland zoning district. New dune vegetation may be planted on the outer side of the rope and post.
    - c- A maximum of one six-foot-wide pedestrian access opening is allowed

## Alcoholic Beverages

per one hundred feet of the rope and post along the side parallel to the waterline.

- d- The permit holder must provide refuse containers at each pedestrian access point onto the beach to ensure that no outside alcoholic beverage containers are brought onto the licensed premise, and that no alcoholic beverage cups are taken off of the licensed premise onto the beach.
- e- Each access point in the rope and post to the beach shall contain a sign, at each entrance, stating on both sides, "NO ALCOHOL ALLOWED BEYOND THIS POINT." The sign shall have maximum dimensions of two (2) feet by one (1) foot.

(2) **Procedure for approval of COP in the EC zoning district.** The following procedures are applicable to premises seeking expansion of COP into the EC zoning district:

- a. *Administrative approval:* An establishment that has been approved for COP in the DOWNTOWN zoning district prior to September 4, 2012, may expand the area where COP is permitted into an adjacent EC zoning district by administrative approval, subject to all conditions contained in § 34-1264(g)(1). Existing establishments with prior approval for COP in the EC zoning district must come into compliance with the conditions set forth in § 34-1264(g)(1) through the administrative approval process prior to March 4, 2013, or such use will become non-conforming and any future expansion will require special exception approval. The community development director, in his/her sole discretion, may require any administrative approval application to undergo special exception approval.
- b. *Special exception:*
  - 1. Any establishment in the DOWNTOWN zoning district that has not been approved for COP prior to September 4, 2012, may seek approval for expansion of COP into the EC zoning district, provided it is requested

at the time the COP in the DOWNTOWN zoning district is sought and provided further that all conditions identified in § 34-1264 (g)(1) are met.

- 2. No establishments located outside the DOWNTOWN zoning district shall be approved for COP in EC unless such establishment was approved for COP prior to September 4, 2012.
- c. *Commercial Planned Development:*
  - 1. No establishments located outside the DOWNTOWN zoning district shall be approved for COP in EC unless such establishment was approved for COP prior to September 4, 2012.
  - 2. Existing establishments located outside the DOWNTOWN zoning district with COP permitted in EC through either CPD zoning or a special permit previously approved by Lee County will be considered nonconforming and may only expand the area for COP by bringing their property into compliance with current regulations by incorporating the conditions of § 34-1264(g)(1) through the administrative approval process.
- (h) *Nonconforming establishments.*
  - (1) *Expansion.* A legally existing establishment engaged in the sale or service of alcoholic beverages which is made nonconforming by reason of new regulations contained in this chapter shall not be expanded without a special exception. The term "expansion," as used in this subsection, shall include the enlargement of space for such use and uses incidental thereto, the expansion of a beer and wine bar to include intoxicating liquor, as that term is defined by the Florida Statutes, and the expansion of a bar use to a nightclub use. Nothing in this subsection may be construed as an attempt to modify any prohibition or diminish any requirement of the state.
  - (2) *Abandonment.* An establishment engaged in the sale or service of alcoholic beverages may thereafter become a nonconforming use due

## Alcoholic Beverages

to a change in regulations, as provided in division 3 of article V of this chapter. Nonconforming uses may continue until there is an abandonment of the permitted location for a continuous nine-month period. For purposes of this subsection, the term “abandonment” shall mean failure to use the location for consumption on the premises purposes as authorized by the special exception, administrative approval, or other approval. Once a nonconforming use is abandoned, it cannot be reestablished unless it conforms to the requirements of this chapter and new permits are issued.

(i) ***Revocation of permit or approval.***

- (1) The town council has the authority to revoke an alcoholic beverage special exception, administrative approval, or other approval upon any of the following grounds:
  - a. A determination that an application for special exception or administrative approval contains knowingly false or misleading information.
  - b. Violation by the permit holder of any provision of this chapter, or violation of any state statute which results in the revocation of the permit holder’s state alcoholic beverage license by the state alcoholic beverage license board or any successor regulatory authority.
  - c. Repeated violation of any town ordinance at the location within the 12-month period preceding the revocation hearing.
  - d. Failure to renew a state liquor license, or written declaration of abandonment by the tenant and owner of the premises if under lease, or by the owner himself if not under lease.
  - e. Abandonment of the premises. An establishment which continually maintains (renews) its state liquor license, even though it has suspended active business with the public, shall not be deemed to have been abandoned for purposes of this subsection.
  - f. Violation by the permit holder of any condition imposed upon the issuance of the special exception or administrative approval.
  - g. Violation of any of the minimum standards of the special exception.

- (2) Prior to revoking an administrative approval, special exception, or other approval for alcoholic beverages, the town council shall conduct a public hearing at which the permit holder may appear and present evidence and testimony concerning the proposed revocation. At the hearing, the town council may revoke the permit if a violation described in this subsection is established by a preponderance of the evidence. The permit holder shall be notified of the grounds upon which revocation is sought prior to any hearing, and shall be given notice of the time and place of the hearing in the same manner as set forth in article II of this chapter.
- (3) When an alcoholic beverage permit is revoked in accordance with the terms of this subsection, the town may not consider a petition requesting an alcoholic beverage permit on the property for a period of 12 months from the date of final action on the revocation.
- (4) Upon written demand of the town council, any owner or operator of an establishment with a COP license, must make, under oath, a statement itemizing the percentage of gross receipts that are from the sale of alcoholic beverages. Failure to comply with such demand within 60 days of the date of demand shall be grounds for revocation of the special exception, administrative approval, or other approval.

(j) ***Appeals.*** All appeals of decisions by the director shall be in accordance with procedures set forth in § 34-86 for appeals of administrative decisions.

(k) ***Alcoholic beverages in restaurants.*** The sale of alcoholic beverages for on-premises consumption in restaurants (see § 34-1264(b)(2)) must conform to the following regulations:

- (1) The sale of alcoholic beverages must be incidental to the sale of food, and restaurants permitted to serve alcohol shall provide that food service facilities will remain open serving appropriate food items on the menu at all times coincident with the sale of alcoholic beverages.

## Alcoholic Beverages

- (2) The sale of alcoholic beverages shall be permitted only when it accounts for no more than 49% of the combined gross sales attributable to the sale of food and all beverages during any continuous twelve-month period.
- (3) Restaurants selling alcoholic beverages shall keep separate books and records reflecting the gross sales of food and nonalcoholic beverages and the gross sales of alcoholic beverages for each month. The failure to keep the books and records required herein shall be a violation of this code.
- (4) The town manager or designee may, during normal working hours, request to inspect and audit the books and records of the business from which alcoholic beverages sales are made wholly for the purpose of verifying that the gross sales of alcoholic beverages are no more than 49% of the gross sales of food and all beverages during any continuous twelve-month period. Refusal of an owner or operator of such business to allow said inspection shall be a violation of this code. Should the audit reveal that this requirement is not being met, the town manager shall initiate enforcement proceedings for a violation of this code.
- (5) For any restaurant which has been selling alcoholic beverages for less than twelve months, the provisions of this section shall be interpreted and applied with respect to said lesser period of time.
- (6) These regulations may be enforced through the normal code enforcement procedures of this code (for example, § 1-5, or article V of ch.2). In addition to these procedures, violations of these regulations may be restricted by injunction initiated by the Town of Fort Myers Beach, by any citizen thereof, or by any person affected by the violation of such regulations.

**Secs. 34-1265--34-1290. Reserved.**

Alcoholic Beverages

**DIVISION 6. ANIMALS**

**Sec. 34-1291. Keeping of animals.**

The keeping, raising, or breeding of any livestock, including poultry, usually and customarily considered as farm animals, and the keeping, raising, or breeding of reptiles, marine life, or animals not indigenous to the state, shall not be permitted. This shall not be interpreted as applying to pet stores or hobbyists keeping aquariums or domestic tropical birds in their own homes.

**Secs. 34-1292--34-1320. Reserved.**

**DIVISION 7. ANIMAL CLINICS AND KENNELS**

**Sec. 34-1321. Permitted activities.**

(a) Kennels, animal clinics, and boarding facilities are limited to the raising, breeding, treating, boarding, training, grooming, and sale of domestic animals.

(b) Kennels, animal clinics, and boarding facilities are permitted in any zoning district where *Offices, general or medical* are a permitted use.

**Sec. 34-1322. Enclosure of facilities.**

All animal clinics, animal kennels, and boarding facilities shall be completely enclosed within an air conditioned, soundproof building and shall have no outdoor cages, pens, runs, or exercise facilities.

**Secs. 34-1323--34-1350. Reserved.**

**DIVISION 8. AUTOMOTIVE BUSINESSES**

**Sec. 34-1351. Automobile repair**

(a) All services performed by an automobile repair establishment, including repair, painting, and body work activities, shall be performed within a completely enclosed building.

(b) Whenever an automotive repair establishment is within 75 feet of a residential use, all refuse and vehicle parts shall be stored within a completely enclosed area.

(c) New or expanded automobile repair establishments can be permitted only through approval of a suitable planned development zoning district (see § 34-620(d)) or as a special exception where allowed by Tables 34-1 and 34-2 in § 34-622.

**Sec. 34-1352. Display, sale, or storage facilities for vehicles.**

(a) *Applicability.* This section applies to all establishments engaged in the outdoor display, sale, or storage of motor vehicles, recreational vehicles, trailers, construction equipment, and similar vehicles and equipment.

(b) *New or expanded uses.* New or expanded establishments can be permitted only through approval of a suitable planned development zoning district (see § 34-620(d)).

(c) *Setbacks.*

- (1) All buildings and structures shall comply with the setback requirements for the zoning district in which the use is located.
- (2) All items covered by this section which are displayed or offered for sale shall be set back a minimum of ten feet from any property line, unless ch. 10 sets forth a different setback, in which case the greater setback will apply.

(d) *Display and parking areas.*

- (1) No parking space or loading zone required by the parking regulations set forth in this chapter shall be used for the display of merchandise.
- (2) Areas used for display may be grass or other surface, provided it is maintained in a slightly, dustfree manner.

(e) *Storage areas.* Areas used for the commercial storage of motor vehicles, trailers, recreational vehicles, and construction equipment which is not being displayed for sale or rent shall be enclosed (see division 36 of this article), unless *Storage, open* is permitted through approval of a suitable planned development zoning district (see § 34-620(d)).

## Temporary Uses

- (4) When deemed necessary, a bond shall be posted, in addition to an agreement with a responsible person sufficient to guarantee that the ground area used during the conduct of the activity is restored to a condition acceptable to the director.
- (5) All applications for temporary use permits, excluding those for the temporary use of mobile homes following a natural disaster (see § 34-3046), shall provide public liability and property damage insurance. This requirement may be waived by the town council.
- (6) Evidence shall be submitted that, where applicable, the applicant for a proposed use has complied with town ordinances pertaining to special events, including Ordinances No. 98-1, 00-16, and any later amendments (see also division 34 of this article).
- (7) Evidence shall be submitted that the law enforcement and fire agencies who will be coordinating traffic control or emergency services have been advised of the plans for a temporary use and that they are satisfied with all aspects under their jurisdiction.

(e) **Inspection following expiration of permit; refund of bonds.** Upon expiration of the temporary use permit, the director shall inspect the premises to ensure that the grounds have been cleared of all signs and debris resulting from the temporary use and shall inspect the public right-of-way for damages caused by the temporary use. Within 45 days after a satisfactory inspection report is filed, the director shall process a refund of the bonds. An unsatisfactory inspection report shall be sufficient grounds for the town to retain all or part of the bonds posted to cover the costs which the town would incur for cleanup or repairs.

### **Sec. 34-3051. Mobile tourist information centers.**

(a) **Defined.** Mobile tourist information centers are located in a mobile vehicle, either self-propelled or otherwise readily moveable from place to place, and are operated by a non-profit organization. Mobile tourist information centers are intended to promote community businesses and organizations and are therefore limited to providing information

without the sale or distribution of any product or service, provided, however, that such centers are permitted to sell tickets for local attractions and events. Mobile tourist information centers may not collect food or clothing or accept other donations.

#### (b) **Type of approval.**

##### (1) **Administrative**

- a. **Length of Permit.** A permit to operate a mobile tourist information center may be issued for a maximum of one (1) year, and may be renewed annually. No more than two (2) mobile tourist information centers may be operating at one time.
- b. **Location.** Mobile tourist information centers may be located in existing parking lots on property zoned commercial. The mobile tourist information center must be ancillary to the principal use and the required number of parking spaces for the principal use must be maintained.
- c. **Permit requirements.** In addition to the requirements found in § 34-3050, organizations must provide a photograph of the mobile tourist information center and its dimensions, corresponding locations where the mobile tourist information center will be operating, daily hours of operation for a minimum of 5 days per week, and a site plan of the parking lot, drawn to scale, with the location of existing parking spaces and the mobile tourist information center. Each mobile tourist information center is permitted one 24-square-foot identification sign, mounted on the mobile tourist information center, which should be shown in the required photograph.
- d. **Review of permit.** The director will approve or deny the application, in part or whole, based on the mobile tourist information center's compatibility with surrounding uses. The mobile tourist information center must be maintained in good condition, consistent with the photograph submitted with the application.
- e. **Emergency Evacuation.** Mobile tourist information centers must be removed from the town or placed within an approved off-site storage area within 48 hours of the

## Temporary Uses

issuance of a hurricane watch for the town by the National Hurricane Center.

**Secs. 34-3052--34-3054. Reserved.**

### *Subdivision III. Special Events*

**Sec. 34-3055. Special events.**

(a) A special event is any social, commercial, or fraternal gathering for the purpose of entertaining, instructing, viewing a competition, or for any other reason that would assemble an unusual concentration of people in one location.

(b) See division 34 of this chapter for a summary of permitting rules for special events.

**Secs. 34-3056--34-3060. Reserved.**